

PROLOGUE

The Navy's battle account between the cruiser and the raider in November 1941 as it now stands has been concreted in the minds of the public over the past 80 years. However, what is largely unknown is that the story of the action as it is now told is not based on all the evidence available, rather it has been mainly assessed from statements made by a select group of *Kormoran* survivors – this, in the complete absence of survivors from the *Sydney*. The Navy claims that the story told by these few Germans seemed to ring true.

Findings made by the recent Commission of Inquiry in 2009 unequivocally support the Navy proposition from an historical perspective, but as archival records purporting to corroborate the inquiry findings were based on the evidence of a few, in many instances statements often flagrantly disregarded by the inquiry disprove these findings. An opportunity to reconsider the whole ambit of evidence has therefore been necessary.

The 2008 Commission of Inquiry had the following terms of reference:

To inquire into and report upon the circumstances associated with the loss of HMAS *Sydney* II in November 1941 and consequent loss of life and related events subsequent thereto. President Justice Terrence Cole had also been authorised to issue the procedural directions he considered appropriate, inform himself on any matter relevant to the inquiry as he thinks fit, determine whether any part of the inquiry should be conducted in private and direct that all oral evidence be given on oath or affirmation.

Commissioner Cole had thus been given wide powers to investigate the circumstances of the *Sydney*'s loss. He had the resources of the Navy for the purpose of conducting investigations and he had a plethora of archival evidence from which to draw upon, as well as photographic evidence of the wrecks of the warships. But throughout the proceedings his call was on others to provide evidence, which he compared with information already sanctioned by the Navy. And in many instances, those who gave evidence in good faith were looked upon as adversaries, simply because their evidence did not conform to the Navy's version of events, as attested in the transcripts.

Overall, it was an inquiry that had delivered the desired result the government had wanted and on which they had sought to end any further discussion. The German story as told by those few Germans had proven to be accurate, according to Justice Cole – this, well before all the evidence had been heard. Many observers had good reason to suspect his findings would be a *fait accompli* and this proved to be the case when he delivered his status quo findings, which just happened to be very similar to those made back in early 1942.

The inquiry found that the battle was fought as a result of a chance encounter and that the *Sydney*'s Captain Burnett was responsible for the loss of the cruiser because he had not followed his orders. It found that the cruiser was struck by one of the above-water torpedoes because the *Kormoran* was moving too fast to launch the underwater torpedo. It also found that the RAN had no knowledge of the battle until the afternoon of 24 November, five days after the battle.

President Cole gave compelling reasons why Captain Burnett would have been suspicious of the *Kormoran*, which had been disguised as the Dutch merchant ship *Straat Malakka*, but in his final deliberations he appeared to ignore them all. He found

there was no basis for doubting the essential elements of the account the German officers gave of the engagement and the sinking of the *Sydney*, inferring that survivors gave similar accounts, whereas in fact many witnesses had portrayed the action very differently.

The inquiry also asserted that the *Sydney* was not at action stations but at cruising stations, and that Burnett obviously thought the disguised *Kormoran* was friendly and was taken by surprise after the cruiser had asked her to give the secret call sign. In simple terms, Burnett had been deceived by the vessel's appearance, did not take the necessary precautions when approaching and had flagrantly ignored the routine instructions for identifying a suspicious vessel. This is indeed a daft scenario for a captain of an Australian cruiser to display.

There is, however, compelling evidence that Burnett had been aware that he was facing an enemy vessel that he had been sent to intercept. A witness statement and an examination of the sailing schedules of a particular troopship, plus the fast return to the site of the action (for which permission from the Royal Navy had to be given), confirms that Burnett suspected that he was dealing with an enemy ship. Unpalatable as it may be to state it, this information had been made available to JSCFADT, but had been entirely disregarded by the Commission of Inquiry.

Even more outlandish was the finding that the observable damage to the *Sydney* is consistent with the German assertion that the *Kormoran* fired two torpedoes from her above-water starboard mounts, one of which hit the cruiser, even though underwater images of the damage to the bow do not indicate the origin of the torpedo, or indeed how many had been fired.

In some cases, the Commission of Inquiry made its deliberations on archival evidence alone, and in this respect, it can be argued that the findings can be justified. But much more was required.

It failed to investigate key documents and recent claims by German survivors hitherto entirely disregarded by the Navy.

The inquiry also failed to adequately address the message from Geraldton supposedly sent on the night of 19 November 1941, as well as failing to identify the emigrant from Germany in the 1950s purporting to be from the raider *Kormoran* who had stated that the *Sydney* had been finally torpedoed and sunk by a Japanese submarine. Detailed research has emerged rendering many other of Justice Cole's findings invalid.

Conspiracy theories are what they are – theories only. But when theory is supplanted by navigational fact, conspiracy becomes transparent and those initially responsible deserve condemnation. However, this is not to say that the present-day Navy should be censured as the originators or the perpetrators of the cover-up. Nevertheless, it should be borne in mind that these shortcomings are a product of wartime, during which unintended consequences often resulted in attempts to conceal the facts.

And history is not history based on the evidence of only a small sample of the hundreds of witnesses. Nor is it written and based on 'empirical' evidence that may appear to tell the full story. It is written only after an overall evaluation has been conducted and an independent analysis has been undertaken to confirm the evidence. The process of fact-finding is the only way to distinguish the truthfulness or otherwise.

On both counts, the inquiry failed to do the required investigative work before the commencement of proceedings, which resulted in a false portrayal of the action and to ultimately mislead the public and relatives of the *Sydney*'s deceased. The content of this book delineates the facts from the fiction from information that has been previously widely circulated. But due to the fact that the findings made in this

book are in many instances contrary to the Commission of Inquiry findings, it is therefore imperative that the reader be acquainted with Justice Cole's ruling, which can be found at the many libraries in Australia, and on the website, 'HMAS Sydney II Commission of Inquiry'.

