1. I have been appointed by the Chief of Defence Force, Air Chief Marshal Houston, to inquire into and report upon circumstances associated with the loss of HMAS *Sydney II* in November 1941, and consequent loss of life and related events subsequent there to. The Instrument of Appointment will be Exhibit 1. Please read the Instrument of Appointment.

2. Some have questioned the need for, or appropriateness of, this inquiry. Whilst it is not my function to justify its establishment, there are sound reasons for its creation. Each of the Prime Minister, Mr Rudd, the Deputy Prime Minister, Ms Gillard, and the Chief of Defence Force, Air Chief Marshal Houston, have spoken of the need to endeavour to solve what has been described as Australia’s greatest maritime mystery. They have also spoken of the need to provide answers to questions and issues raised by members of the families of those who perished. Those questions centre upon how it came about that *Sydney II* was lost in battle, and lost without any survivors.
3. I agree with the observations made by each of the Prime Minister, Deputy Prime Minister and Chief of Defence Force. May I add the following. The loss of *Sydney II* resulted in the loss of 645 persons who died in the service of our country, Australia. As Admiral Robertson reminded at the HMAS SYDNEY Memorial Service on 24 April, more servicemen were lost in this single incident than were lost by Australia in the whole of the Korean War.\(^1\) More servicemen were lost in this incident than were lost by Australia in the whole of the Vietnam war.\(^2\) And more serviceman were lost in this incident than were lost on the Kokoda Trail.\(^3\) One third of all sailors lost by Australia in World War II were lost in this single sinking.\(^4\) Yet the circumstances of the military engagement, and the reasons for the tragic loss of life suffered, especially by Australia, remain uncertain. No country which is respectful of it’s military personnel, or military traditions, or of its national history, can allow such a loss to remain unexplained when circumstances have occurred which may allow, for the first time, an explanation of the circumstances of their deaths.

4. Australia, as a nation, and the Navy as a service, should also give consideration to the feelings and expectations of relatives and dependants of those who lost their lives. Those relatives are entitled to assume that Australia will do all it can to establish the circumstances in which the deaths occurred. To quote the words of Dr Michael McCarthy, an early and persistent

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\(^4\) G. Herman Gill: *Royal Australian Navy 1942 – 1945* Vol 2, appendix 3 page 711
campaigner for finding *Sydney II*, the failure to do so would strike ‘at the heart of the notion of service to one’s country and the possibility of making the ultimate sacrifice in times of dire need.’\(^5\)

5. Much is known of the loss of *Sydney II* and her encounter with the German raider HSK KORMORAN, which also sank with the tragic loss of 81 lives. However, much remains unknown. There has never been a military inquiry into the loss. There was, between 1997 and 1999, a federal Parliamentary Inquiry which reviewed the then known circumstances of the loss. The outcome of that Inquiry was indecisive. As the Parliamentary Report made clear, the Committee ‘did not aim to examine in minute detail the technical dimensions of the engagement.’\(^6\) The Committee decided ‘to limit its comments and conclusions to those matters on which it itself took direct evidence and felt able to comment.’\(^7\) The loss of *Sydney II* has also been the subject of much research and many publications. However, no prior inquiry or research has had the advantage of such factual knowledge as may be gleaned from the finding of the two vessels, which finding occurred in mid-March 2008.

6. The Finding of the *Sydney II* and the *Kormoran*, their location and the obtaining of visual footage of their condition, allows, for the first time;

- An analytical assessment of the damage suffered by *Sydney II*;

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\(^5\) See G McDonald: Seeking Sydney – A Quest for Truth (page 99)

\(^6\) Parliamentary Report: paragraph 4.2

\(^7\) Parliamentary Report: paragraph 1.12
• A deduction, based on empirical evidence and expert assessment, of the immediate cause of the sinking of *Sydney II*; and

• A comparison of the accounts of the battle provided by the German survivors with the now observable damage suffered by both ships. This comparison may enable reasoned conclusions to be drawn regarding the veracity of their accounts.

• Importantly, it may also allow for a deduction to be made, based on such facts as can now be established, as to why there were no survivors from *Sydney II*.

7. In much past literature on the loss of *Sydney II*, there has not been a sufficient distinction drawn between established fact, legitimate and justifiable deductions from such facts, and surmise. There has been much speculation and conjecture. Some authors have commenced with a premise which, by selective use of material, they have sought to establish. It is my objective to provide to the Chief of Defence Force, to relatives of those lost, and ultimately to the Australian people and those interested overseas, an independent, reasoned, fact based account of the events relating to the loss of *Sydney II*. I will bring impartial objectivity to my assessment of the material before me. Whatever the report may find, it is my hope that it will enable those affected by the loss to put the past behind them.

8. The inquiry will be conducted as an open inquiry unless national security or similar considerations require otherwise. I cannot at present conceive of any circumstances arising preventing publication of all material. All material upon
which my report will be based will be made public. A public website within the Defence Force website has been established, and on that website will be placed, progressively, all material tendered by Counsel Assisting and admitted into evidence, and transcripts of all hearings.

9. There is a significant research task to be undertaken to distil from archival records documentary material of relevance. Archives in Australia, United Kingdom, Germany and probably Japan and the United States of America are being and will be searched. As the process proceeds, material will be progressively tendered so that all interested may consider it in a timely fashion. In addition there will be public hearings at which I anticipate evidence will be called regarding the location of the sunken vessels and debris, the visual images captured of those vessels and debris, interpretation of the damage suffered by the vessels, the probable effect of such damage on *Sydney II*, the immediate cause of her sinking, and the likely effect of both the damage sustained and the circumstances of the sinking on the prospects for the crew’s survival. This will involve issues of considerable technical complexity. I mention that some forty seven hours of video film and 1400 stills have been taken and require analysis. I caution those who have seen a minute sample of these films from drawing conclusions before the whole of the material is properly analysed and made public.

10. I anticipate there will also be evidence called regarding the international law of war and the conventions of war in 1941, and aspects of the responsibilities of Commanding Officers and others at that time.
11. Whilst there were no survivors from *Sydney II* after its engagement with *Kormoran* in November 1941, there still survive persons who served on *Sydney II* prior to that time. A number of such persons have been located and statements obtained from them and I anticipate taking evidence from those persons. Inquiries made in Germany have resulted in four survivors of *Kormoran* indicating that they are willing to assist this Inquiry, and one suggests that there may be a considerable number of other survivors from whom evidence might be obtained. However, the Commission has also been advised that many of those prospective witnesses are in frail health and, to obtain their evidence, it will be necessary for evidence to be taken from them in Germany. I am informed that the oldest *Kormoran* survivor is 96 years of age. It obviously will not be possible for persons of frail disposition to give evidence in normal commission type hearings. Where it is necessary, I will attend at the residences of these aged sailors and survivors to take their evidence, both in Australia and Germany. In those circumstances, all such evidence will be recorded, and hopefully video taped, and such evidence will be tendered and placed on the website. It will be the responsibility of Counsel Assisting me to ensure that all aspects relating to the circumstances of the encounter and subsequent events are explored, to the fullest extent possible, with such witnesses. This aspect is being given high priority because of the ages of those who might be able give valuable evidence to the Inquiry.

12. The inability to find *Sydney II* and *Kormoran* for such a long period has resulted in various conjectures and hypotheses being advanced regarding the
circumstances of the sinking, and the absence of survivors from Sydney II. These conjectures will be addressed, where necessary by oral and documentary evidence, and conclusions regarding them included in my report.

13. The public, Naval historians, and other persons who may have factual material which may be of relevance to my inquiry are invited to provide the Inquiry with such material. The Inquiry website indicates the manner in which such material may be forwarded. I note that the Parliamentary Inquiry conducted between 1997 and 1999 received nineteen volumes of submissions totalling some 4900 pages. The Parliamentary Report, transcripts of the evidence called before that Inquiry, and the submissions placed before the Committee, have been received and will, I anticipate, be tendered to this Inquiry and considered by me. Accordingly, I do not wish to receive submissions repetitive of those submissions. In due course I will call for submissions from interested persons based on the material tendered before me.

14. The distillation of the archival material, and the interpretation of all of the images obtained to date of the vessels and debris, will take some time. This Commission has not yet received all that material; it is thus not possible to give any estimate of when technical analysis of that material will be complete to a stage sufficient for it to be placed before me for consideration. Similarly, there is ongoing work being carried out to determine whether the remains of a seaman disinterred from a grave site on Christmas Island, having been buried there in February 1942, was a sailor from Sydney II. On the assumption that the sailor was from Sydney II, it will be necessary to examine the
circumstances in which the loss of *Sydney II* became known to military authorities, and the search response for survivors. This is necessary for the purpose of determining whether a different response might have located this or any other survivors from *Sydney II* who might have survived immediately after its sinking.

15. I publish procedural directions for the conduct of the Commission of Inquiry. Those directions will be Exhibit Two. As will be seen from those directions, Counsel Assisting me will present all evidence to the Inquiry. Accordingly, I invite all persons who believe they have material which may be of assistance to contact the Commission’s Solicitor. The directions may be amended in the future to accommodate any procedures necessary for the efficient conduct of the Inquiry, should circumstances so require.