

BOOK LAUNCH: LAW REPORTS OF THE AUSTRALIAN WAR
CRIMES TRIALS 1945-1951, VOLUME 1

**(Speech delivered by the Hon Alan Blow AO, Chief Justice of Tasmania
on 26 November 2024)**

Good afternoon everyone. Welcome to the Supreme Court of Tasmania. I would like to begin by acknowledging the traditional owners of the land, the muwinina people. Tragically they have no known living descendants. I acknowledge the palawa people, today's Aboriginal community, and pay my respects to their elders, past, present and emerging.

As most of you probably know, between 1945 and 1951, Australian military courts conducted war crimes trials in locations across south-east Asia and the Pacific. There were some 300 trials. Most of the defendants were Japanese. These courts did not give written reasons for their decisions. Until now, no comprehensive and systematic series of law reports in relation to these trials has ever been produced. Today marks a first step in correcting that situation, with the publication of Volume 1 of the Law Reports of the Australian War Crimes Trials 1945-1951.

Tens of thousands of defendants from both major theatres of World War II were tried by allied national tribunals. In the Pacific theatre, there were over 2000 trials of over 5000 members or associates of the Japanese Imperial Forces. A lot was written about the war crimes trials in Nuremberg and Tokyo, but a substantial body of jurisprudence developed in relation to the less conspicuous trials, and received very little attention.

It is envisaged that five or six volumes relating to the trials conducted by Australian courts martial will be published. This is the first of them. It covers 46 trials conducted in four places – Morotai, Wewak, Labuan and Darwin. The 46 trials vary a lot in relation to the seriousness of the charges and the status of the defendants. Some were short and some were long. Some involved lawyers but some did not. Transcripts were produced. The task of creating a series of reports using the available documentary records of the proceedings has been an enormous one. It has been begun by a team of academics led by my friend Professor Tim McCormack from the University of Tasmania Law School and Associate Professor Narrelle Morris from Curtin Law School in Western Australia.

Two Tasmanians are mentioned in this volume. One of them was Lieutenant Colonel Thomas Bartley. He was the commander of the Australian force in Timor after the end of the war. He signed the convening order for three trials in Darwin that related to war crimes committed in Timor.

The other Tasmanian is Colonel Malcolm Peter Crisp. He was a member of the court for 13 of the trials held on Morotai. We know of him as Sir Peter Crisp. He served as a judge of this Court from 1952 until 1971.

I dipped into this impressive volume and had a look at the reports of two trials conducted on the island of Morotai in early 1946. The first, beginning at page 186, is the trial of a Japanese captain who was charged with ill-treatment of a prisoner-of-war by causing an electric current to be passed through his body. His defence was that an electric shock was used as lawful disciplinary punishment. The prisoner had struck a Japanese soldier. Japanese army rules about the treatment of prisoners-of-war authorised the punishment of prisoners who committed offences.

A court comprising three Australian officers, without the assistance of a judge-advocate, found the accused guilty and sentenced him to 6 months' imprisonment. The accused petitioned against the finding and sentence. A reviewing officer recommended that the petition be dismissed. The Judge Advocate General concluded that the finding and sentence should not be lawfully confirmed. He noted that there was no evidence that the prisoner-of-war suffered any ill effects of a permanent nature. He commented that "it would appear to have been very similar to what years ago was common at bazaars when people attempted to take money out of a basin of water mildly electrified". The finding and sentence were subsequently quashed by the Chief of General Staff. The accused was handed over to the Dutch authorities for trial on other war crimes charges.

The next report is towards the other end of the spectrum of seriousness. It is a report of a trial of a Japanese major-general on a charge of neglecting to ensure that captured prisoners-of-war were treated properly by his subordinates in accordance with the laws and usages of war. Nine RAAF prisoners had been executed by his subordinates without being court-martialled. The accused was found guilty and sentenced to five years' imprisonment. A petition against the finding and sentence was unsuccessful. There was no evidence that the defendant had ordered any of the executions or even known of them. He was sentenced on the basis of criminal negligence in failing to carry out a duty by "not seeing that proper orders were issued and obeyed in his command with regard to the proper treatment of prisoners of war".

This volume of reports contains not only reports of the 46 trials, but also chapters relating to the background to them in each of the four centres where they were conducted. The reports give us important insights into Australian jurisprudence relating to war crimes. They are the product of a great deal of effort on the part

of talented academics and researchers. It is a pleasure, and an honour, to host the launch of this important first volume.

And I would now like to invite Professor McCormack to speak to you.