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VETERANS' ASSOCIATION
NATIONAL EXECUTIVE**

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*Commemorating 20 Years Of The Australian Engineer
Contingent to Namibia, S.W. Africa
(UN Transitional Assistance Group (UNTAG)).*

**Submission to the Government Review into the
Veteran Entitlement Review Committee (Clarke Review)
by the:
Australian Peacekeeper & Peacemaker Veterans' Association**

1. Background.

1.1 On the 2nd of April 2002, in response to the Federal Government's call for submissions into the Veteran Entitlement Review (Clarke Review); the then Australian Peacekeepers & Peacemakers Association (APPA), now known as the Australian Peacekeeper & Peacemaker Veterans' Association (APPVA), submitted a document numbered 1264.

1.2 The APPA later sent an amendment to 1264; however it may appear that it was not included into the Clarke Review. The APPVA has a vested interest in the Clarke Review, particularly toward those who have served on Peacekeeping and Post 1975 Operations. The APPVA represents younger veterans from many conflicts and operations and has a membership of up to 1,000 members.

1.3 The APPVA constituency consists of the following:

Current serving members of the ADF;

Current serving members of the Police International Deployment Group (IDG);

Young veterans and their families;

Returned veterans from Peacekeeping Operations;

Returned veterans from other Operations and conflicts/war Post 1975;

Peacetime service members of the ADF; and

"Looking After Our Own"

Defence Civilians who have been sworn into the ADF under the Defence Force Discipline Act 1982 (DFDA) who served on Operations.

1.4 Therefore, the APPVA has a wide range of constituents that it has served and continues to assist since 1997 to the current date. The Scope of constituents in terms of total committed figures (i.e. ADF or IDG personnel who have had more than one tour), to world peace, security and humanitarian operations equates to **89 Operations to 71 Countries** with a total contribution of **102,708**¹ personnel.² This does not include current commitments, however this will equal **375** IDG and **3,000** ADF members currently deployed and 500 committed to Australian Border Protection and Exclusive Economic Zone Protection Operations.³

2. Aim.

2.1 The aim of this paper is to provide a brief reinforcement of the APPVA's contentions toward the Recommendations of the Clarke Review that pertain to our constituency.

3. Key Messages.

1. That the Government **Rejects** Recommendation 26 and **supports** the cases presented, for retrospective reclassification and recognition to warlike service of the Peacekeeping Operations (PKO) and other operations presented. Change of service to the following Peacekeeping Operations:

- a. the Australian Army Contingent to OP PALLADIN (UN Truce Supervision Organisation (UNTSO)), during the Arab/Israeli Wars since 1956, particularly during combat operations during Feb 1984 and Jul-Aug 2006 from non-warlike service to warlike service during the periods of war listed in the attached paper;
- b. AASM Clasp Somalia awarded to RAN Ships during ADF Operations in Somalia;
- c. RAAF crews and GLO to be classified to warlike service for Namibia as for the army contingent under INST040; and
- d. OP ASTUTE (JTF631) to Timor Leste to be reclassified from non-warlike service to warlike service during the period May 2006-April 2008.

2. That the Government **Rejects** Recommendation 27 and **supports** the case for Kashmir retrospective Reclassification to warlike service as presented. That the VEA re-classification of Service with the UN Military Observer Group India Pakistan (UNMOGIP), and the UN India-Pakistan Observer Mission (UNIPOM) aka Kashmir, from Non-warlike service to Warlike Service during the two India/Pakistan Wars.

¹ <http://www.itsanhonour.gov.au/honours/awards/statistics.cfm> Post 1975 AASM = 53,013; Post 1975 ASM = 35,339; POSM = 3,104 totalling 94,956. This is exempt the HOSM statistics and future Humanitarian Operations to be retrospectively considered for medallic recognition. Also exempt is pre-14 Feb 1975 Peacekeeping Operations and clasps to medals.

² Copeland, P, Australian Peacekeeper & Peacemaker Veterans' Association Inc, Table of Australian Defence Force Peacekeeping/Peacemaking Operations (with Police) Since 1947 to the Present, 17 Dec 2008.

³ <http://www.defence.gov.au/opEx/global/index.htm> Defence Force Global Operations as at 01 March 2009.

3. That the Government **Rejects** Recommendation 28 and **supports** the case presented, for equilibrium of ADF and Police service on warlike service Operations and retrospectively reclassifies the listed Police Operations as warlike service. That anomalies and inconsistencies of the classification of VEA warlike service between ADF and Police peacekeeping service are amended to be of equilibrium in the listed areas of operations.

4. That the Government **Rejects** Recommendation 29 and **supports** the case presented for retrospective reclassification of the ADF Contingent to the NATO OPERATION PROVIDE COMFORT (OP HABITAT), Northern Iraq. That the inconsistencies of the classification of service in the Gulf during 1991 are made consistent to the VEA classification of service from Non-warlike Service to Warlike Service for OPERATION HABITAT, and that this change is made retrospectively.

5. That the Government **Supports** Recommendation 32 and commissions the ADF to conduct an investigation into the conditions of service, recognition and veteran entitlements to those who serve on Covert Intelligence and Signals Operations. That these operations are investigated by the Australian Defence Force for VEA & MRCA non-warlike service (Hazardous Service) and award the Australian Service Medal Clasp "SPECIAL OPS" to these specialists, for current and retrospective operations.

6. That the Government **Review** Recommendation 42 for the retrospective reclassification of Overseas Humanitarian Operations from Peacetime Service to Non-warlike Service. That the peacetime extension of VEA or MRCA service of Humanitarian Operations overseas are reclassified from peacetime service to non-warlike (hazardous) service for current and retrospective operations.

7. That the Government **Rejects** Recommendation 92 in total. This recommendation appears to have been made without the intricate knowledge of dual-eligibility provisions of ADF members under the VEA and SRCA, and the Military Compensation Rehabilitation Service (MCRS) instituted on 10 April 1994. That the dual eligibility of VEA and SRCA provisions **remains eligible** to those veterans under the provisions of the Acts pre-1 July 2004 and that the Consequential Transition Provisions Act 2004 under MRCA **not** influence such changes to pre-existing eligibility.

8. That the Government **Rejects** the Recommendations made at 93; 103 through to 106: *Rehabilitation*. The current in-service (ADF) arrangements are adequate in terms of rehabilitation. This rehabilitation should be used for decision making for stabilisation of conditions under the MRCA and/or SRCA. Within the veteran community, many are covered under the MRCA and SRCA, which allows them ongoing rehabilitation. Sensible approaches are made toward rehabilitation of veterans. That rehabilitation programs are offered to Mentally Ill veterans **as a choice, not as a mandatory necessity**.

9. That the Government **Rejects** Recommendation 106: "*Mental Health Rehabilitation as a priority group.*" The targeted veterans in this recommendation are high risk that is the veteran has gone through rehabilitation, in many cases the veteran continues seeking treatment by a consulting psychiatrist and trauma counselling from VVCS.

10. That the Government **reviews** the APPA (APPVA) Submission 1264, in conjunction with this submission. Of particular note are the following sections within Submission 1264, for closer consideration:

a. Section 4: Special Operations – Serving Vital Interests;

b. Section 5: Humanitarian Overseas Operations;

c. Section 6: Totally & Permanently Incapacitated and General Rate Younger Veterans (an emphasis of Younger Veterans to access a credible Veteran Entitlement to the Defence Service Homes Loan to be increased to the current Australian Median Housing Index with CPI);

d. Section 8: War Widows and Children of Younger Veterans;

e. Section 9: Means and Assets testing of Veteran Entitlements;

f. Section 11: namely the recommendations listed in 11.1:

(i) 2. The Committee recommends to the Minister: that veterans who have served on Overseas Humanitarian Operations, are issued an instrument in order to be recognised within the VEA & MRCA for Compensation and Benefits, namely retrospective reclassification to non-warlike service;

(ii) 3. The Committee recommends to the Minister: that all veterans employed within Special Operations and Special Operations Units be provided an instrument issued by the CDF, for inclusion into the VEA & MRCA as non-warlike service⁴;

(iii) 5. That the Committee recommends to the Minister: consideration be given to the Younger Veteran of today for TPI; SR; GR and inclusive of a veteran who has completed 6 years of continuous full time service, in the form of the incentives suggested by APPA in this submission (1264). The incentives are namely:

(1) Wealth Generation or creation schemes;

(2) Defence Service Home Loan Scheme for Younger Veterans. Currently younger veterans with low income or tax-free pensions are not eligible for home loans through home loan institutions. This is denying the veteran to provide for themselves and their respective families;

(3) Younger Veteran Career Incentive Scheme;

⁴ The original submission called for classification to warlike service. This has since been reconsidered to be reclassified to non-warlike service.

(4) Superannuation or Wealth Creation Education program for Younger Veterans; and

(5) No detrimental clauses for the Young Veteran on TPI (Severely Injured Adjustment (SIA) under SRCA), returning from work onto TPI SR.

g. 9. That War Widows/Widowers and their compensation pension are not counted as income toward Centrelink allowances and MCRS benefits and payments.

h. 10. That War Widows/Widowers have a sustainable Income Support Supplement (ISS), that is commensurate to the average standard of living in Australia;

i. 11. The Children of Younger Veterans, who have contracted a Biological, Chemical or Nuclear mutation from their veteran parent, are adequately compensated and supported by the Government.⁵

4. General.

4.1 The approach within this submission will be to list each individual Recommendation, include the Veteran Entitlement Review Committee (VERC) Report comments, provide Contention information, and summarise these contentions.

4.2 The Recommendations of this submission have been listed previously under Key Messages (Section 3).

4.3 The APPVA welcomes this opportunity to provide input into the Clarke Review and thanks the Minister for allowing this organisation to provide a late submission.

⁵ It is noted that the current Vietnam Veteran Family Study (VVFS), is currently investigating Veteran Intergenerational effects to veteran's families. This may be determined by the Government after the completion of this program.

Contentions to Clarke Recommendations.

Recommendation 26: *“No change be made to the eligibility provisions of the VEA for peacekeeping service.”*

1. VERC Discussion.

At 14.141 of the VERC report, the VERC states that warlike service involves military activities in which the application of force is authorised to pursue specific military objectives, the use of lethal force is authorised and there is an expectation of casualties.

From Vol2, Chap 14, paras 14.147 to 14.150, the VERC discusses that it reached its conclusions, in terms that practical considerations did not allow for the consideration of each and every peacekeeping operation. Instead, the VERC has approached the task by examine the nature of peacekeeping operations in the broader sense and applying the framework to determine whether the service was warlike and therefore constitutes qualifying service.

The VERC agreed that the Peacekeeping Force (PKF) can at times be hazardous and involve arduous conditions as described in the APPVA Submission. However, warlike service involves a mission to pursue a specific military objective in which the application of lethal force is authorised. The VERC stated that PKF do not perform such service.

The VERC stated that the PKF plays part of an objective and impartial third party that helps to create and maintain a cease-fire or form a buffer zone between conflicting sides. Peacekeeping Operations (PKO) do not involve the same level of enforcement or rules of engagement (ROE) that apply to military service in warlike operations. Nor is there a level of threat to peacekeepers in which casualties are expected, as there is in warlike service, despite isolated incidents where members are subjected to dangers and hazards.

The above basis was the VERC conclusion that there is no justification for recommending that all peacekeeping service be regarded as warlike service.

2. Contention.

2.1 Whilst the APPVA placed the case to the Clarke Review to have all Peacekeeping Operations changed to reflect eligibility for Qualifying Service (QS), it is acknowledged that this was perhaps an ambitious issue to raise with the Review Committee. Notwithstanding the common reasoning used by the Clarke Review appears to not provide for the incurred danger of various operations, but the insistence upon a military objective using lethal force.

2.2 Whilst it is mildly agreed by Clarke that PKF may be subject to a number of risks, the Report reinforces the Committee’s contention of the use of robust ROE and military objectives of a framework (that framework is not noted nor referenced), that determines such warlike service.

2.3 However, since the Clarke Review, the APPVA has been successful in having the following Peacekeeping Operations reclassified:

- 2.3.1. The Australian Medical Support Force (MSF) to the Second UN Assistance Mission in Rwanda (UNAMIR II), from **Non-warlike service to Warlike Service**; and

- 2.3.2. The Australian Training Support Team East Timor (ATSTEM) and other Defence Cooperation Program tasks during the period of service (warlike) of the UN Transitional Assistance in East Timor (UNTAET) and the UN Mission in Support of East Timor (UNMISSET), from **Peacetime Service to Warlike Service**.

2.4 In every case submitted, the APPVA has placed the argument of the “incurred danger test”, which has been used within the Federal Court and is used by the Nature of Service Review (NOSR) Committee, within the devised Decision Support Tool, (DST), which attempts an objective assessment of risk, danger and harm in various matrices for every operation.

2.5 Currently the APPVA has submitted to the Nature of Service Review Committee (NOSR) a further submission (April 2008) for the Australian Army Contingent to the UN Truce Supervision Organisation (UNTSO), in the Middle East, from Non-warlike Service to Warlike service, specifically for Australian UN Military Observers being involved in several Arab/Israeli wars since 1956 to 2006.

2.6 That the Warlike Service is specifically pertained to the period of hostilities or combat. Some veterans, who served in Beirut in 1984, during the Lebanese/Israeli war; and Major Mattina Stanfield who served during the Israeli/Hezbollah war in Lebanon July-August 2006, vindicate the necessity to consider these submissions.⁶

2.7 Please refer to the attached document of Submission toward the Retrospective Reclassification of Service of Non-warlike Service to Warlike Service OPERATION PALADIN The United Nations Truce Supervision Organisation (UNTSO) Australian Army United Nations Military Observers during the Arab/Israeli Wars, 1956 to 2006.

2.8 The above has been sent to the Director General of the Nature of Service Review (DG-NOSR), Brigadier David Webster in April 2008. However, it is also placed into this paper of the APPVA’s input into the Clarke Review.

3. Incurred Danger.

3.1 The test for “danger” is objective, rather than subjective. On appeal to the *Repatriation Commission v Thompson* (1988), the Full Federal Court stated what has become the most cited test for “incurred danger”:

The words “incurred danger” therefore provide an objective, not a subjective, test. A serviceman (or woman) incurs danger when he encounters danger, is in danger, or is endangered. He incurs danger from hostile forces when he is at risk or in peril of harm from hostile forces. A serviceman does not incur danger by merely perceiving or fearing that he may be in danger (at 9 AAR 203).⁷

⁶ Copeland, P, Submission toward the Retrospective Reclassification of Service of Non-warlike Service to Warlike Service OPERATION PALLADIN The United Nations Truce Supervision Organisation (UNTSO) Australian Army United Nations Military Observers During the Arab/Israeli Wars, 1956 to 2006, APPVA, April 2008

⁷ *Veterans’ Entitlement Law*, Creyke, Sutherland and Ridge, The Federation Press and Softlaw Community Projects, 2000, p124.

3.2 The Actual or potential danger has been tested with the case of the *Repatriation Commission v Thompson* (1988); the Full Federal Court held that there must be actual danger. The Full Federal Court referred to the word “danger” and “substantial”. But the word “danger” stands for itself. If a serviceman incurs danger from hostile enemy forces, that circumstance is sufficient to satisfy the statutory requirement (at 355).⁸

3.3 Following from the definition of Incurred Danger, the Court commented:

Danger is not incurred unless the serviceman is exposed, at risk of or in peril of harm or injury. (at 356).

3.4 And further, the Court commented “[Danger] must arise as a direct result of the activities of hostile forces of the enemy..... There must be established an actual risk of physical or mental harm” (at 356-57)⁹

3.5 The **Length of time** danger is incurred has been interpreted in the case of *Crawford and Repatriation Commission* (1987), The Tribunal noted that the Act did not state, nor was it necessary to determine, whether danger needed to be measured in minutes, hours, days or even longer. That view would be preferable to the view *Re Howlett and Repatriation Commission* (1987) in which the Tribunal found that danger must be faced during a substantial (or, at the very least, a not insignificant) period of time.

4. Summary of Contention:

4.1 The APPVA therefore contends, that whilst a number of PKO are not necessarily within the realms of warlike service, there will be peaks and troughs of activity, particularly combat and war between opposing factions. It is the peaks that indicate the extreme personal danger to ADF and AFP members, particularly during sustained battles and combat, of which these members would be caught in the middle thereof and actively conducting their duties in accordance with the given Mission statement or Operation Mandate.

4.2 Inconsistencies of warlike service conditions of service for various ADF elements and non-warlike or even peacetime service in the same area of operations for ADF elements, particularly at the levels of harm needs to be carefully considered.

4.3 In this case, the APPVA submits to the Government Review of the Clarke Report that the **Government rejects the VERC Recommendation 26** and that the following are retrospectively reclassified to warlike service for nominated periods of service:

4.3.1 The Australian Army Contingent to the UN Truce Supervision Organisation (UNTSO) aka OP PALADIN, during the various Arab/Israeli wars since 1956 (attached);

4.3.2 HMA Ships TOBRUK and JERVIS BAY providing direct support to OP SOLACE and OP IGUANA in Somalia (RAAF C-130 crews have already been

⁸ *Veterans' Entitlement Law*, Creyke, Sutherland and Ridge, The Federation Press and Softlaw Community Projects, 2000, p125.

⁹ *Ibid* p125.

awarded the AASM Clasp “*SOMALIA*” due to warlike service coverage for one operational sortie) are retrospectively awarded the AASM clasp “*SOMALIA*” as RAN Ships and elements are classified Allotted for Duty from 20 October 1992 – 27 November 1994 (INST052 and INST063);

- 4.3.3 RAAF C130 or other RAAF assets including Army Ground Liaison Officers (GLO), during the insertion of the Australian Engineer Contingent to the UN Transitional Assistance Group to Namibia, (UNTAG), S.W. Africa – are reclassified from peacetime service to warlike service, due to the Angolan insurgency and SWAPO guerrilla forces attacking Namibia during the period of force lodgement (INST040 Army has warlike service under schedule 2 Item 9 of the VEA); and
- 4.3.4 OPERATION ASTUTE (JTF 631), under INST175 the ADF Contingent in response to the Timor Leste crisis in May 2006 through to April 2008 (attached), from Non-warlike Service to warlike service during the period May 2006 to April 2008.

Recommendation 27: *“No change be made to the eligibility provisions of the VEA for service with the United Nations Military Observer Group in India Pakistan.” (Kashmir).*

1. VERC Discussion:

The VERC discusses the merit of eligibility provisions under the VEA for warlike service of the United Nations Military Observer Group India Pakistan (UNMOGIP) in Vol2, Chap 14, p.337 para 14.152 through to 14.155.

Submissions received by the VERC indicate that hostilities sporadically occurred between India and Pakistan, with most notable dates being 1965 and the end of 1971. The submissions argued that warlike service status should be awarded to service in UNMOGIP for the period August 1965 to January 1966, which covers the second India-Pakistan war over Kashmir.

Veterans explained that they were exposed to great danger and harm during these clashes, and experienced the full impact of the war, where they were subject to fire from small arms, mortars, field and medium artillery and, on occasions, air attack including the use of napalm.

The VERC again uses the un-referenced framework for defining warlike service and concluded that there is no justification for declaring service with UNMOGIP for the period August 1965 to January 1966 to have been warlike.

According to the VERC, service deemed to be warlike must have the application of authorised force in pursuit of a specific military objective. As UNMOGIP UNMO were unarmed and their mission was to monitor the cease-fire process, this was not pursuing a specific military objective with Rules of Engagement.

2. Contention:

2.1 The APPVA has viewed the submission for the reclassification of service for the UN Military Observer Group in India Pakistan (UNMOGIP) aka Kashmir, particularly during the India/Pakistan wars as potentially incurring danger. We are aware of periods of hostilities that Australian Army Observers may have been involved within combat operations between India and Pakistan during two periods.

2.2 In the same case presented by the APPVA in relation to UNTSO for reclassification of Warlike Service of the Arab/Israeli Wars since 1956, there holds a degree of merit to have the Kashmir Operation reviewed in some detail.

2.3 s7A (1) of the Veterans’ Entitlement Act 1988 (VEA), determines “incurred danger” from hostile forces of the enemy, however in this case it would be pertinent to note that hostile forces within the context of this case would relate to Belligerents, or the opposing forces conducting combat within the immediate space of the United Nations Military Observer (UNMO).

3. Incurred Danger.

3.1 The test for “danger” is objective, rather than subjective. On appeal to the *Repatriation Commission v Thompson* (1988), the Full Federal Court stated what has become the most cited test for “incurred danger”:

The words “incurred danger” therefore provide an objective, not a subjective, test. A serviceman (or woman) incurs danger when he encounters danger, is in danger, or is endangered. He incurs danger from hostile forces when he is at risk or in peril of harm from hostile forces. A serviceman does not incur danger by merely perceiving or fearing that he may be in danger (at 9 AAR 203).¹⁰

3.2 The Actual or potential danger has been tested with the case of the *Repatriation Commission v Thompson* (1988); the Full Federal Court held that there must be actual danger. The Full Federal Court referred to the word “danger” and “substantial”. But the word “danger” stands for itself. If a serviceman incurs danger from hostile enemy forces, that circumstance is sufficient to satisfy the statutory requirement (at 355).¹¹

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Danger is not incurred unless the serviceman is exposed, at risk of or in peril of harm or injury. (at 356).

3.4 And further, the Court commented “[Danger] must arise as a direct result of the activities of hostile forces of the enemy..... There must be established an actual risk of physical or mental harm” (at 356-57)¹²

3.5 The **Length of time** danger is incurred has been interpreted in the case of *Crawford and Repatriation Commission* (1987), The Tribunal noted that the Act did not state, nor was it necessary to determine, whether danger needed to be measured in minutes, hours, days or even longer. That view would be preferable to the view *Re Howlett and Repatriation Commission* (1987) in which the Tribunal found that danger must be faced during a substantial (or, at the very least, a not insignificant) period of time.

4. The war of 1965 to 1966.

4.1 In 1965, Pakistan was despairing of the UN doing anything to alter the status quo in Kashmir. Early in that year fighting broke out well south of Kashmir. Internal unrest, ranging from non-violent opposition to Indian government to full-scale acts of terrorism, was on the increase in Indian-held Kashmir, being blamed by India on Pakistani infiltration.

4.2 The Indian government found itself under pressure to take a tougher line in Kashmir, and in August the government announced the abandonment of the 1949 ceasefire. Fighting broke out all along the ceasefire line and the Indian army seized key passes on the Pakistani side.

4.3 Pakistan retaliated with a major attack in the Jammu area. Within a few weeks, in September 1965, the fighting in Kashmir spread to become an all-out war between India and Pakistan. The UN Security Council demanded a ceasefire, implement on 23 September, with

¹⁰ *Veterans’ Entitlement Law*, Creyke, Sutherland and Ridge, The Federation Press and Softlaw Community Projects, 2000, p124.

¹¹ *Veterans’ Entitlement Law*, Creyke, Sutherland and Ridge, The Federation Press and Softlaw Community Projects, 2000, p125.

¹² *Ibid* p125.

Russian mediated discussions in Tashkent led to an end of hostilities and a resumption of normal relations. The Tashkent negotiations did not, however deal with Kashmir.

4.4 At the beginning of the war in 1965, Pakistan Army hatched a plan to wrest Jammu and Kashmir from India, by deploying hundreds of mercenary fighters across the Cease Fire Line (now known as the LoC - with some modifications) in civilian garb and cause an insurrection among the "suppressed" people of Kashmir. The plan code-named "Operation Gibraltar", was put into action in early August 1965. Unfortunately for the Pakistanis, the Kashmiri people refused to co-operate with the invaders, so the "Mujahids" went on to create arson, murder, rape and robbery in Kashmir and the Indian Army was called to save the people from the invaders. Desperate after the initial plan bust, the Pakistan Army then made a major armour-cum-infantry thrust into the Chhamb area and threatened the vital Akhnur bridge on the Jammu-Punch road, in turn causing the outbreak of the full-scale war.¹³

4.5 The second Indo-Pakistani conflict (1965) was also started without a formal declaration of war. It is widely accepted that the war began with the infiltration of Pakistani-controlled guerrillas into Indian Kashmir on about August 5, 1965. Skirmishes with Indian forces started as early as August 6 or 7, and the first major engagement between the regular armed forces of the two sides took place on August 14. The next day, Indian forces scored a major victory after a prolonged artillery barrage and captured three important mountain positions in the northern sector. Later in the month, the Pakistanis counter-attacked, moving concentrations near Tithwal, Uri, and Punch. Their move, in turn, provoked a powerful Indian thrust into Azad Kashmir. Other Indian forces captured a number of strategic mountain positions and eventually took the key Haji Pir Pass, eight kilometres inside Pakistani territory.

4.6 The Indian gains led to a major Pakistani counter-attack on September 1 in the southern sector, in Punjab, where Indian forces were caught unprepared and suffered heavy losses. The sheer strength of the Pakistani thrust, which was spearheaded by seventy tanks and two infantry brigades, led Indian commanders to call in air support. Pakistan retaliated on September 2 with its own air strikes in both Kashmir and Punjab. The war was at the point of stalemate when the UN Security Council unanimously passed a resolution on September 20 that called for a cease-fire. New Delhi accepted the cease-fire resolution on September 21 and Islamabad on September 22, and the war ended on September 23. The Indian side lost 3,000 while the Pakistani side suffered 3,800 battlefield deaths. The Soviet-brokered Tashkent Declaration was signed on January 10, 1966. It required that both sides withdraw by February 26, 1966, to positions held prior to August 5, 1965, and observe the cease-fire line agreed to on June 30, 1965.¹⁴

4.7 To meet the crisis, the UN immediate response was to increase the size of UNMOGIP. At the same time, the UN established a new mission, the UN India-Pakistan Observation Mission (UNIPOM), as a strictly temporary body to supervise the ceasefire along the border outside Kashmir. UNIPOM operated for six months from September 1965 to March 1966. By March 1966, the parties had withdrawn their forces as agreed at Tashkent to the lines held before the conflict.

¹³ The Kashmir War, 1965: Raid on Badin By Aditya Gupta Oct 29, 2003 - http://www.acig.org/artman/publish/article_325.shtml

¹⁴ Armed Conflicts Data - <http://www.onwar.com/aced/chrono/c1900s/yr65/fkashmir1965.htm>

5. The war of 1971 and after.

5.1 The **Indo-Pakistani War of 1971** was a major military conflict between India and Pakistan. The war is closely associated with the Bangladesh Liberation War (sometimes also referred to as the Pakistani Civil War). Although there is some disagreement about the exact dates of the war, hostilities between India and Pakistan commenced officially on the evening of December 3, 1971. The armed conflict on India's western front during the period between 3 December 1971 and 16 December 1971 is called the "Indo-Pakistani War" by both the Bangladeshi and Indian armies. The war ended in the surrender of the Pakistani military after armed hostilities on two fronts.¹⁵

5.2 At the end of 1971, as war flared between India and Pakistan over the future status of East Pakistan, soon to become the independent nation of Bangladesh, fighting broke out once again in Kashmir. A ceasefire was declared by India and agreed to by Pakistan on 17 December, after two weeks of intermittent fighting.

5.3 The Indians took the attitude that the Karachi Agreement of 1949 had ceased to have force, and that the ceasefire line agreed to in Karachi no longer existed. Moreover, India viewed the parties should now negotiate bilaterally with each other, and that the UN no longer had a role to play. After some months of disagreement, the parties met at Simla in northern India in July 1972 and agreed to treat the ceasefire line of December 1971, as the new 'Line of Control'.

5.4 Since 1972 only Pakistan has lodged complaints about ceasefire violations with UNMOGIP. India also restricted the movements of UNMO, not allowing them close to the Line of Control on the Indian side, but nevertheless went on providing transport and accommodation facilities as before. After the crisis, Australia continued to contribute six observers to UNMOGIP.¹⁶

6. Contention Summary:

6.1 That the Australian Army Observers to UNMOGIP are provided an opportunity to present their case for reclassification of their service from Non-warlike Service to Warlike Service, in order for consideration, given the degree of incurred danger from the two Pakistan India wars in Kashmir.

6.2 There is no doubt that Australian UN Military Observers were intimately involved in the two Indo-Pakistani wars of **1965 (6 August 1965 to 23 September 1965); and 1971 (3-16 December 1971)**. Therefore, those Australian UNMO within the area of operations in the Kashmir region during both wars would have been exposed to the full effect of war, hence satisfying the Incurred Danger Test.

¹⁵ Wikipedia, the Indo-Pakistani War of 1971 - http://en.wikipedia.org/wiki/Indo-Pakistani_War_of_1971

¹⁶ Londey, P, 'Other People's Wars', A History of Australian Peacekeeping, pp 49-52, 2004.

7. Recommendation:

That the Government rejects the VERC recommendation 27, and provides retrospective eligibility under the VEA to those ADF veterans who served in Kashmir (UNMOGIP & UNIPOM) during the two Indo-Pakistani wars as dated above.

Recommendation 28: “The Committee recommends that no change be made to the eligibility provisions of the VEA for police involved in peacekeeping service.”

1. VERC Discussion:

Referring to Vol 2, Chap 14, pp338-339, paras 14.156 through to 14.162: The VERC noted the joint submissions of the Police Federation of Australia and the United Nations Civilian Police Association of Australia (UNCIVPOL).¹⁷ The submissions argued that police serving on UN operations have suffered from the effects of their duties, which were performed unarmed and under circumstances of extreme danger in locations of squalor and non-existent hygiene, and without the benefit of the ancillary services that accompany military units.¹⁸

The submissions added that police officers have been subjected to civil war, air attack, minefields, snipers and crossfire; have been taken hostage, threatened with death and taken ‘prisoner of war’; and have been stoned, spat upon, assaulted and insulted.

The Committee saw no justification in deeming the service of police in UN PKO to be warlike service, which would confer full entitlements under the VEA.

Again the VERC states that Warlike service involves a mission to pursue a specific military objective in which the application of lethal force is authorised. It was noted that Police service in UN PKO does not involve the same level of enforcement or rules of engagement that apply to military service.

The Committee concluded that civilian police service in UN PKO should not be considered warlike service under the VEA. The VEA is principally an Act for ADF veterans, and the inclusion of a specific part for police service would be outside the principles of the Act. Moreover, because police serving on UN PKO are Peacekeepers, operating in a peacekeeping capacity and not as police officers per se, they are already covered under the Act and the addition of a specific part of their service would serve no additional purpose in terms of extra coverage. The committee believed that police service in UN operations should remain peacekeeping service.

2. Contention.

2.1 The VERC appears to provide a strong denial of VEA warlike service toward Police Peacekeeping Service and eligibility toward QS. It is interesting to note conflicting cases of Philanthropic Organisations and Defence Civilians having access to the VEA or MRCA for the purposes of VEA entitlements, either warlike service or non-warlike service.

2.2 Within the INST016 VEA S5R(1)(a), Philanthropic Organisations are deemed to be members of the ADF which includes the following:

- a. Australian Red Cross society;
- b. The Campaigners for Christ – Everyman’s Services;

¹⁷ UNCIVPOL is now known as the UN Police Association of Australia (UNPAA).

¹⁸ Submission 2464.

- c. The Salvation Army;
- d. The Young Women's Christian Association of Australia;
- e. The Young Men's Christian Association of Australia; and
- f. The Australian Forces overseas Fund.

2.2 Within INST205-10, provision is provided for the above listed Philanthropic Organisations to be classified as warlike service, with Qualifying service in Namibia; Somalia; Cambodia; Gulf; Iraq; Kuwait; and Yugoslavia. These operational areas are provided in the case of Philanthropic Organisations as to be "Deemed a member of the ADF."

2.3 Within INST098, War Artists are also "Deemed members of the ADF", for the purposes of service in East Timor on warlike service with QS. Perhaps the best way to portray the inconsistencies with service classification for police would be to match the warlike service of the ADF with the Peacekeeping service of those police who served in the same area of operations. The Incurred Danger, would not be any different between the ADF and Police. However, the classification of service holds differential contexts.

3. Incurred Danger.

3.1 s7A (1) of the Veterans' Entitlement Act 1988 (VEA), determines "incurred danger" from hostile forces of the enemy, however in this case it would be pertinent to note that hostile forces within the context of this case would relate to Belligerents, or the opposing forces conducting combat within the immediate space of the United Nations Peacekeepers.

3.2 The test for "danger" is objective, rather than subjective. On appeal to the Repatriation Commission v Thompson (1988), the Full Federal Court stated what has become the most cited test for "incurred danger":

The words "incurred danger" therefore provide an objective, not a subjective, test. A serviceman (or woman) incurs danger when he encounters danger, is in danger, or is endangered. He incurs danger from hostile forces when he is at risk or in peril of harm from hostile forces. A serviceman does not incur danger by merely perceiving or fearing that he may be in danger (at 9 AAR 203).¹⁹

3.3 The Actual or potential danger has been tested with the case of the Repatriation Commission v Thompson (1988); the Full Federal Court held that there must be actual danger. The Full Federal Court referred to the word "danger" and "substantial". But the word "danger" stands for itself. If a serviceman incurs danger from hostile enemy forces, that circumstance is sufficient to satisfy the statutory requirement (at 355).²⁰

¹⁹ *Veterans' Entitlement Law*, Creyke, Sutherland and Ridge, The Federation Press and Softlaw Community Projects, 2000, p124.

²⁰ *Veterans' Entitlement Law*, Creyke, Sutherland and Ridge, The Federation Press and Softlaw Community Projects, 2000, p125.

3.4 Following from the definition of Incurred Danger, the Court commented:

Danger is not incurred unless the serviceman is exposed, at risk of or in peril of harm or injury. (at 356).

3.5 And further, the Court commented “[Danger] must arise as a direct result of the activities of hostile forces of the enemy..... There must be established an actual risk of physical or mental harm” (at 356-57)²¹

3.6 The **Length of time** danger is incurred has been interpreted in the case of Crawford and Repatriation Commission (1987), The Tribunal noted that the Act did not state, nor was it necessary to determine, whether danger needed to be measured in minutes, hours, days or even longer. That view would be preferable to the view Re Howlett and Repatriation Commission (1987) in which the Tribunal found that danger must be faced during a substantial (or, at the very least, a not insignificant) period of time.

4. Declared Warlike Operations.

4.1 Declared VEA warlike operations for ADF members, “war artists” and Philanthropic organisations, of which Australian Police served alongside are suggested to be the following:

Cambodia: **12 April 1992 – 8 October 1993;**

Somalia: **9 January 1993 – 25 November 1994;**

East Timor: (UNTAET 20 Oct 1999; UNMISSET 20 May 2002 – 17 August 2003).
Therefore the dates for warlike service are from **20 October 1991 through to 17 August 2003;**and

Afghanistan: **18 April 2003 – 30 June 2004.**

4.2 Therefore, in order to provide a consistency with the Incurred Danger test on warlike operations, there is no further reason why Police should not be eligible for QS and warlike service, in the same context as those that serve in the same area of operations.

5. OPERATION RAMP.

5.1 It is noted that International Deployment Group (IDG) of the Australian Federal Police (AFP) were called upon to assist in the Israeli/Hezbollah war in Lebanon of the evacuation of Australian and other nationals out of the war-zone, whilst they were deployed as the Police Contingent to the UN Force in Cyprus (UNFICYP).

5.2 The evacuation known as Operation Ramp, saw the ADF deploy about 120 personnel to assist the Department of Foreign Affairs and Trade (DFAT) in a number of specialised roles. They included a team of 22 to support the DFAT staff in Beirut , Cyprus and Turkey and a Task Force of 96 that included a command element, two evacuee processing teams, liaison officers, movements officers, health specialists and linguists.

²¹ *Ibid* p125.

5.3 The ADF and IDG elements supported the evacuation of over 5300 Australians and over 1300 foreign nationals from the Lebanese ports of Beirut and Tyre.

5.4 Unfortunately, the IDG Contingent were not included in the coverage of OPERATION RAMP (INST190), which also gives coverage of Non-warlike service to ADF members, but not Police members who were seconded from Cyprus to assist with the evacuation effort. Therefore, an anomaly exists with this service in terms of classification and recognition of Police during OPERATION RAMP.

6. Turkish Invasion of Cyprus.

6.1 Under Item 10 of Schedule 3 to the VEA (Peacekeeping Forces), Police have been classified as Peacekeeping service in Cyprus since 14 May 1964 to the current day. However, in 1974, an invasion by Turkish forces took the northern area of Cyprus, of which Australian Police were intimately involved. This was a full-scale war against the Greek Cypriots by the Turkish to regain control of Turkish Cyprus.

6.2 At 05:30 Saturday 20 July 1974 the Turkish air-force bombed and destroyed the 256 Infantry Regiment of the Cyprus National Guard at Glykiotissa, the 190 Light Artillery Regiment at Acheropoiitos Greek Orthodox Monastery, the 182 Heavy Artillery Regiment of Bosphoros, as well as all the military installations along the Kyrenia northern coastline at Panagra. The Turks managed to unload enough material and personnel on the shore. The Turkish invasion and the nightmare of the Greek-Cypriots just began.

6.3 Turkish invasion had three main objectives:

1. To land as much personnel and materiel on Kyrenia shores and create a stronghold pocket.
2. To drop paratroopers inside the Turkish enclaves of Nicosia-Agyrta.
3. To weaken the National Guard of Cyprus by intense air-raids with Napalm bombs, and prevent them from deploying any serious resistance.²²

6.4 The **Turkish invasion of Cyprus**, was a Turkish military operation against a coup which had been staged by the Cypriot National Guard against president Makarios III with the intention of annexing the island to Greece, but the invasion ended up with Turkey occupying a considerable area on the north part of it and establishing a government on it that only Turkey recognizes.

6.5 The invasion came after more than a decade of sporadic inter-communal violence between the island's Greek Cypriots and Turkish Cypriots resulting from the constitutional breakdown of 1963. Turkey invoked its role as a guarantor under the 1960 Treaty of Guarantee in justification for it.²³

6.6 Turkish forces invaded the island in two waves, occupying 37% of the island's territory in the north-east. The operation led to the widespread displacement of Cyprus' ethnic

²² The Turkish Invasion against Cyprus: http://www.kypros.org/Occupied_Cyprus/cyprus1974/turkish_invasion.htm

²³ How Did the Situation Change after July 1974? Republic of Turkey Ministry of Foreign Affairs.

communities, dividing the island between a Turkish Cypriot north and Greek Cypriot south. In the aftermath, Turkish Cypriots declared a separate political entity in the form of the Turkish Federative State of Cyprus and by 1983 made a unilateral declaration of independence as the Turkish Republic of Northern Cyprus, which was recognised only by Turkey. The United Nations continues to recognize the sovereignty of the Republic of Cyprus according to the terms of its independence in 1960. The conflict continues to overshadow Turkish relations with Greece and with the European Union.²⁴

6.7 The Greek junta collapsed in Athens, Sampson resigned in Nicosia, and the threat of war between NATO allies was over, but the Turkish army was on Cyprus.²⁵ Approximately 200,000 Greek Cypriots became refugees, with over 1500 people missing.

7. Timeline of the Turkish Invasion of Cyprus.

15 July 1974 – The Cypriot National Guard and EOKA-B launch a coup to overthrow the democratically-elected President, Archbishop Makarios III.

- **19 July 1974** - Whilst addressing the UN Security Council, Archbishop Makarios III accused Greece of having invaded Cyprus: “The coup of the Greek junta is an invasion, and from its consequences the whole people of Cyprus suffers, both Greeks and Turks.”
- **20 July 1974** – Turkey launches its Intervention in northern Cyprus. Two Cyprus Navy motor torpedo boats, the T1 and the T3, are sent out from Kyrenia to engage the Turkish naval flotilla approaching the shore. Both ships are sunk by combined Turkish air and naval attack. (Drousiotis, 2005)
- **20 July 1974** – Greek Cypriot forces launch an organised counter-attack against the Turkish beachhead at Kyrenia, supported by T-34 tanks, but this ultimately fails to dislodge the Turkish landing force. Four Greek-Cypriot T-34 tanks and two armoured vehicles are destroyed by Turkish infantry and air attacks (Drousiotis,2005)
- **20 July 1974** – The Cypriot National Guard, supported by all available T-34 tanks, as well as Greek ELDYK forces, launch a massive attack against the Turkish Cypriot enclave at Kioneli, attempting to prevent Turkish forces from forming a bridgehead to Nicosia. This attack fails and two Greek-Cypriot T-34 tanks are destroyed.
- **20 July 1974** – Cypriot National Guard commando and infantry forces launch a coordinated attack against the Turkish enclave of Agyrta-Nicosia, encircling the northern flanks in an effort to isolate it. Turkish parachutists are dropped in and around the enclave in order to reinforce it, leading to heavy infantry losses at Mia Milia, where they are accidentally dropped on Greek Cypriot defensive lines.
- **21 July 1974** – The Turkish destroyer D-354 Kocatepe is subjected to friendly fire from Turkish warplanes and sunk after being mistaken for a Greek ship. Two other destroyers are also damaged in the attack.

²⁴ Wikipedia, Turkish invasion of Cyprus: http://en.wikipedia.org/wiki/Turkish_invasion_of_Cyprus#cite_note-0

²⁵ Armed Conflict Events Data; Turkey Invasion of Cyprus 1974: <http://www.onwar.com/aced/nation/cat/cyprus/fturkeycyprus1974.htm>

- **21 July 1974** - Cypriot National Guard forces deploy around Kyrenia and begin to form defensive lines on the Kyrenia-Karavas road, and also at Trimithi.
- **21 July 1974** - Heavy fighting takes place in the Pentadaktylos Mountains between Greek Cypriot mountain commando forces and Turkish forces. The Greek Cypriots take Aspri Moutti, while the Turks take control of Ag. Ilariona, both sides using them as support positions.
- **21 July 1974** - Greek Cypriot mountain commandos are ordered to begin leaving the Pentadaktylos Mountains in order to secure other objectives. The Cypriot National Guard captures the village of Pileri.
- **21 July 1974** - An attempt is made to assassinate the Greek Cypriot Naval Commander as he travels to Karavas on the Mirtou-Asomatou road. The attempt, mounted by Turkish paratroopers, fails.
- **22 July 1974** – Turkish landing ships reach the beachhead and begin unloading M47 and M48 main battle tanks as well as supporting equipment. The Greek Cypriot forces in the area are unable to contain the new landing force and retreat.
- **22 July 1974** – An attempt by Turkish landing craft to land at Kyrenia harbour fails. Cypriot National Guard forces retreat towards Ky **15 July 1974** – The Cypriot National Guard and EOKA-B launch a coup to overthrow the democratically-elected President, Archbishop Makarios III.
- **23 July 1974** – Nikos Sampson is removed from office and replaced with Glafkos Klerides. The coup regime ends. A general ceasefire is declared, but in many parts of the island, this is not adhered to.
- **23 July 1974** – Turkish forces have advanced as far south as Nicosia International Airport, where they encounter stiff resistance from Greek and Greek Cypriot forces. Two Turkish M47 tanks are destroyed by anti-tank rockets fired by infantry defending the airport. The capture of the airport was one of the few objectives that the Turkish Army decisively failed to achieve during the invasion.
- **25 July 1974** – The first Geneva talks begin between the foreign ministers of the guarantor powers, to discuss the situation on the island.
- **26 July 1974** - Turkish forces occupy the villages of St Ermolaos and Sisklipos, as well as the pass of St Pavlos.
- **27 July 1974**- The village of St Ermalaos is briefly recaptured by Cypriot National Guard forces.
- **28 July 1974** - Cypriot National Guard forces retreat from St Ermolaos after holding the area for more than three days against sustained Turkish assault.
- **1 August 1974** - Heavy fighting at Karavas. One Turkish M47 tank is reported destroyed by an AT-3 Sagger anti-tank guided weapon.
- **2 August 1974** – The Battle of Kornos Hill results in a minor victory for the Cypriot National Guard, with an ambush capturing an M47 tank, "092273", and an M113 APC, "239943", while destroying an M47 tank and an M113 APC with recoilless rifle fire. (Vlassis, 2004)

- **6 August 1974** – Turkish forces of the 28th Division attack Lapithos and Karavas in the north of the island. Fighting in the general area progressed south, and continued until after the 14th of August.
- **8 August 1974** - Turkish forces occupy Lapithos after two days of resistance there by Greek Cypriot forces.
- **10 August 1974** – The second Geneva conference is held, during which time Glafkos Klerides and Rauf Denктаş meet to discuss the situation on the island.
- **14 August 1974** – Turkish forces commence the second stage of their operation, known as "Atilla-II", contravening the UN ceasefire.
- **14 August 1974** – The 28th and 39th Divisions of the Turkish Army advance beyond their previously observed UN ceasefire lines and engage in three days of assault against the Cypriot National Guard. Morphou and Lefka both fall to Turkish forces.
- **15 August 1974** – The last defences at Famagusta (Varosha) collapse, and Greek Cypriot forces withdraw to Larnaca. Two Turkish M47 tanks are reported destroyed by M40A1 recoilless rifle fire at Vasilia.
- **15 August 1974** – In Nicosia, Turkish and Greek Cypriot tanks encounter each other in the only known tank-to-tank battle of the conflict. One Turkish M47 is reportedly destroyed by fire from three T-34's, and a number of other Turkish M47's are forced to retreat under artillery fire. (Karkaletsis, 2004)
- **16 August 1974** – Turkish forces advance as far as the “Atilla” line, a pre-determined territorial occupation by which time, 37% of the island is now under Turkish control.

7.1 Given the described events during the Turkish Invasion of Cyprus, it would be reasonable to expect that Australian Policemen posted to UNFICYP and in the area of operations at the time would have incurred a high risk of danger, harm and trauma, whilst experiencing the full effects of war.

7.2 Therefore, Australian Police Contingent to UNFICYP should be reclassified to warlike service for the period **15 July 1974 to 16 August 1974**.

8. Contention Summary:

8.1 Given the inconsistencies with the classification of warlike service to ADF members and Philanthropic Organisations, inclusive of Defence Civilians, it is contended that the same incurred danger that is assessed for warlike classified service be afforded to IDG Police.

9. Recommendations:

9.1 That the Government rejects the Clarke Recommendation 28, and retrospectively reclassifies VEA Police peacekeeping service to warlike service in the following areas of operations:

Cyprus: 15 July 1974 to 16 August 1974;

Cambodia: 12 April 1992 – 8 October 1993;

Somalia: 9 January 1993 – 25 November 1994;

**East Timor: (UNTAET 20 Oct 1999; UNMISSET 20 May 2002 – 17 August 2003);
and**

Afghanistan: 18 April 2003 – 30 June 2004.

9.2 Note – this is the period of the existence of the VEA. The beneficial approach toward Police Overseas service on Peacekeeping Operations or other operations has yet to be determined by the Government. It is the position of the APPVA to have the Police Peacekeepers placed onto the MRCA with the same classifications of service as the ADF.

Recommendation 29. “No change be made to the eligibility provisions of the VEA relating to service providing humanitarian relief to the Kurds as part of OPERATION HABITAT in 1991.”

1. Veteran Entitlement Review Committee (VERC) Discussion:

Within the Summary of Submissions²⁶ and Discussion toward Operation Habitat; it would appear that 2 submissions indicated that the security conditions had deteriorated during the period of the Operation. Indeed, it is noted that Degree of Weapon Readiness (DOWR) was in the Load condition, amended Orders for Opening Fire (OFOF); including threats from a range of belligerents. This forced a defensive posture on 2 June 1991.

The VERC concluded that Operation Habitat was not warlike service and that the current assessment of this service as hazardous service is inappropriate.

The VERC contended that it was evident that Operation Habitat was a humanitarian aid relief effort to the Kurds in northern Iraq. Personnel involved in the operation did not have specific ROE to actively pursue military objectives. The ROE were defensive only.

The VERC considered that there is no reason to accord qualifying service, that Operation Habitat was not warlike service and that the current assessment of this service as hazardous service is appropriate.

2. Contention:

2.1 In order to provide a perspective of OP HABITAT, it is important to note the Kurdish political, social and historical background. Essentially, why did Australia send 75 Army and RAAF (3) personnel to Northern Iraq in 1991, not long after the Gulf War?

2.2 Kurdistan was erased from the world's maps after World War I when the Allied Powers carved up the Middle East and denied the Kurds a nation-state. More than twenty million Kurds live in parts of Iran, Iraq, Turkey and Syria. Throughout the 20th century their struggles for political and cultural autonomy were opposed by the region's countries and the Kurds were often used as pawns in regional politics.

2.3 The Kurds' plight captured the world's attention in 1991 following the end of the Gulf War. Television around the world showed images of northern Iraq's Kurds fleeing Saddam Hussein's Iraq through the mountains of Turkey and Iran. Since the 1920s, negotiations between Iraq's Kurds and the government in Baghdad have always broken down over issues of Kurdish independence, and the Kurds' desire to control the oil-rich city of Kirkuk and to have their own militia.

2.4 The Pusat Khidmat Kontraktor (or Kurdish Workers Party PKK) played a significant role in the aftermath of the failed 1991 uprising in Iraq against Saddam Hussein. The UN established no-fly-zones in Kurdish areas of Iraq giving those areas de facto independence. It should be noted that the PKK is a listed Terrorist organisation.

²⁶ Veteran Entitlement Review Committee (VERC), Vol 2, Chap 14, 14.165 to 14.169 – Post-World War II issues, 2003.

2.5 In America's dealings with Saddam Hussein and Iraq, Iraq's Kurds have been a tragic side show. For decades, the Kurds looked to the U.S. for support in their struggle against Saddam's government. Washington's response has been classic realpolitik - using the Kurds when it wanted to hurt Saddam and then abandoning them when their usefulness had run out.²⁷

2.6 Weeks after the war's end, when Saddam turned his tanks north on rebelling Kurds, U.S. policymakers faced an unanticipated crisis: More than 2 million Iraqi Kurdish refugees began to flee the advancing Iraqi forces and amass along Turkey's south-eastern border, presenting Turkish President Turgut Ozal with a serious dilemma.

2.7 Turkey, a country fighting its own war against internal Kurdish opponents since 1985, feared that admitting these refugees would create an explosive situation and undermine its efforts to control the 10 million to 15 million Kurds who live in Turkey. As the refugee flow continued, however, a massive humanitarian crisis was in the making and international outrage at Turkey was growing. Ozal sought help from his friend George Bush (Snr). The result was **Operation Provide Comfort** - a U.S.-led effort to create a "**security zone**" inside northern Iraq where the Kurdish refugees would feel safe to leave Turkey and resettle.

2.8 This security zone was less a way to ease the instability and warring factions of the Kurds and to protect them against the PKK, Peshmerga, Iraqi National Guard, Secret Police and the Turkish military forces. The Security Zone was less a method to ease the suffering of the Kurds than a U.S. effort to assist Turkey - a NATO member and an important partner in the international sanctions effort against Saddam.

2.9 Provide Comfort was initially intended as a short-term humanitarian and protection operation. The U.S. military **secured** a small area, including Dahuk, one of three major Kurdish urban centres in Iraq. The Bush (Snr) administration declared that Iraqi ground forces would be prevented from crossing into this area. The United States - along with Britain, France and Turkey - established a "no fly" zone over all Iraqi territory north of the 36th parallel - including the major Kurdish city of Irbil.²⁸ The refugees returned. Kurdish hopes soared, and so did goodwill toward the United States and its coalition partners. Elections were held in May 1992 and a fledgling Kurdish parliament was put in place. The situation was far from perfect, but given the history of the war-torn region and the long struggle of the Kurdish people, the accomplishments were dramatic.²⁹

2.10 The 1991 uprisings in Iraq were a series of anti-governmental intifada (rebellions) in Southern and Northern Iraq during the aftermath of the Gulf War in March–April 1991.

2.11 On the 16th May 1991, 75 Australian Defence Force (ADF) personnel were deployed to Kurdistan, northern Iraq on **Operation Habitat**, Australia's contribution to the multinational response known as **Operation Provide Comfort**. The Operation continued until 30th June 1991.

²⁷ Frontline Report of the "Survival of Saddam" by Greg Barker on website:
<http://www.pbs.org/wgbh/pages/frontline/shows/saddam/kurds/>

²⁸ *Katherine A. Wilkens*, Sunday, September 15 1996; Page C01, The Washington Post.

²⁹ *By Katherine A. Wilkens*, Sunday, September 15 1996; Page C01, The Washington Post.

2.12 The goal of this mission was to **defend** approximately 4 million Kurdish people fleeing their homes in the aftermath of the Gulf War and supply them with humanitarian aid.

2.13 When the ADF contingent arrived, the situation was improving but was far from normal. The Kurds were living in tents located on the side of the road or in their destroyed villages. Poor water supply and sanitation was a major problem. Temperatures were in the high 40's to low 50's °C and high tens during the night. Accommodation for the ADF personnel was in tents, with a defended perimeter, weapon fighting pits and barbed wire.

2.14 The ADF contingent was located at Gir-i-Pit, approximately 30 km north of Dahak in northern Iraq. 4 medical teams of 5 personnel each were deployed, each consisting of a medical officer, nursing officer and three medical assistants. Each team had an interpreter attached. A dental team, preventative health team, engineering section and headquarters/administration support group were also deployed. Personnel were sourced primarily from the 2nd Field Ambulance of the Operational Deployment Force (the 3rd Brigade) in Townsville and from various units in the ADF including members from the 1st Health Support Battalion (1HSB).³⁰

2.15 ADF medical teams operated in an area approximately 500km². While 1 medical team remained at base, the other 3 medical teams would travel approximately 200km and treat 60-100 patients each day. More than 3000 patients were seen by the ADF medical teams, with over 80% of those being paediatric. The common conditions treated included diarrhoea, dehydration, malnutrition, scabies, respiratory tract infections, malaria, typhoid fever, anaemia, and a range of chronic diseases. Fragmentation injuries were also seen due to the **vast number of land mines and unexploded ammunition strategically placed or littered across the countryside.**³¹

3. Diary Notes.

3.1 Some notes extracted from a Diary of Sergeant Gary Wilson, RAAF depicts some of the threats to the ADF Contingent during OP HABITAT:

May 24, 1991- Two US Marines were injured and one killed today by mines within the secure zone of Northern Iraq.

May 25, 1991- Two US Marines injured and two US Marines killed by landmines today. Conducted minefield recovery practice during the afternoon. Three journalists killed by Iraqi, PKK or Peshmerger forces.

May 26, 1991- Set up barbed wire around the camp perimeter and organised piquet duty rosters. Trenches and fortifications work commenced. Mine and grenade deaths/ injuries continue.

May 29, 1991- Tension in Bagira. High Risk.

May 30, 1991- Intelligence alert for Operation Habitat: medical stores now a target by PKK and Peshmerger. Two persons noted observing our position throughout the night. Over 73,000

³⁰ Australian Gulf War Veterans' Study 2003, Department of Veterans' Affairs website: <http://www.dva.gov.au/media/publicat/2003/gulfwarhs/html/ch2.htm>

³¹ Little, Mark (December 1991). "Operation Habitat: Humanitarian aid to the Kurdish refugees in northern Iraq". *The Medical Journal of Australia* **155**: 807–812

belligerents in our zone. Very little clean water for drinking. On Alert all night in quick response posture (fully clothed, boots on Weapon at the ready).

June 3, 1991- "40°C today. Very hot, the weapon pits in accordance with our increased threat. Now a machine-gun pit is in. The threat is real and they are not playing games."

June 4, 1991- Intel has informed us that the threat has increased and it is thought the secret police have entered the area and will possibly be causing trouble. We have to travel in groups of two vehicles (armed). Stopped at Zawita/Gurigavan water pool and confronted by a grenade wielding Iraqi.

June 6, 1991- Guard duty throughout the night, finished weapons pits.

June 13, 1991- Things are hotting up to US aircraft were fired upon from one of Saddam's Palaces. Grenade thrown into (US) Control Point at Zakhu and the Iraqis had broken the 36th parallel and are camped at the Dahuk Dam. We were at the Dam earlier today and now preparing to move as a precaution.

June 14, 1991- 56°C packing up the equipment. Guard duty as always. Temperature gauge past the registered scale. Withdrawal Plan "Nighting-Gale" brief.

4. Some NATO Force Diary notes during the period 7 May to 30 June 1991.

- 27 June 1991 - As Provide Comfort ground units began their withdrawal from northern Iraq, US officials reiterated their earlier ban on Iraqi flights north of the 36th parallel.
- 7 June 1991 - The United Nations High Commissioner for Refugees assumed responsibility for the refugee camps constructed by Combined Task Force Provide Comfort in northern Iraq.
- 6 June 1991 - The last Operation Provide Comfort border camp closed.
- 7 May 1991 - In two separate incidents 10 minutes apart, an A-10 and an F-16 reported coming under anti-aircraft artillery fire while over northern Iraq.

5. The NATO Force comprised of the following:

5.1 EUROCOM was tasked to Command OPERATION PROVIDE COMFORT and the task elements and combat elements in order to provide protection toward the Kurdish people after a brutal reprisal from Hussein;

5.2 US Marine Corps 24th Marine Expeditionary Unit (USMC 24 MEU), The MEU was under the command of Commodore Turner, commander, Mediterranean Amphibious Ready Group 1-91, aboard his flagship USS *Guadalcanal*;

5.3 The United Kingdom, France, the Netherlands and Australia. Britain deployed 40 and 45 Commando Royal Marines and air transport assets to help protect refugees as well as deliver humanitarian aid. The British used the name Operation Haven;

5.4 France deployed transport aircraft and Special Forces;

5.5 The Netherlands deployed troops from the Netherlands Marine Corps; and

5.6 Australia contributed transport aircraft and medical, dental and preventive health teams (under the Australian name, Operation Habitat.)

6. ADF Departure.

6.1 By the time the ADF personnel had completed Operation Habitat on 30th June 1991, life for the Kurdish people was returning to normal and the health in the region was rapidly improving. Kurds were returning to their farms, rebuilding their villages and the children were going back to school.

7. Operational Similarities.

The situation with OPERATION HABITAT is similar to that of the Australian Services Contingents to Rwanda (OP TAMAR), Middle East (OP PALADIN) and the Australian Training Support Team in East Timor (ATSTEM). Notwithstanding the comparative nature of the aforementioned, is the fact that unarmed Australian UN Military Liaison Officers (UNMLO) serving with the ADF contribution to OP TANAGER of the UN Transitional Assistance in East Timor (UNTAET) and the later ADF contribution to OP CITADEL of the UN Mission in Support of East Timor (UNMISSET), **were under ADF warlike service conditions and were accordingly recognised as such within the VEA with Qualifying Service and Warlike Service.**

8. Allotted for Duty.

8.1 The VERC appears not have been cognisant of the operational environment, threat and dangerous situations presented within the Clarke Report and therefore dismissed the case for retrospective reclassification for OP HABITAT to warlike service.

8.2 The VERC also contends that the ROE for defensive purposes only and that the ROE for the operation did not provide for active pursuit of military objectives. The argument against this statement from the VERC, is that the Contingent to OP HABITAT was primarily Medical. Medical services in any conflict do not have to pursue an identified enemy, but to suffice to say are in support of combat and warlike operations.

8.3 This would be the case with OP HABITAT, whilst the Medical Contingent had no choice but to provide a defensive posture and rely on combat elements from the coalition to deal with military and terrorist threat, they served in a warlike environment.

8.4 It is therefore deemed that the mechanism or the assessment used by the VERC is flawed in terms of mis-understanding the operational environment, whilst Australian Medics supported a humanitarian aid relief operation under the protection of NATO.

8.5 Section 6C of the Veteran's Entitlements Act 1986 provides:

1. *"Subject to this section, a member of the Defence Force who has rendered continuous full-time service in an operational area as:*
 - a. *A member who was allotted for duty in that area; or*

- b. *a member of a unit of the Defence force that was allotted for duty in that area; is taken to have rendered operational service in the operational area while the member was so rendering continuous full-time service.*”

10. Incurred Danger.

10.1 s7A (1) of the Veterans’ Entitlement Act 1988 (VEA), determines “incurred danger” from hostile forces of the enemy, however in this case it would be pertinent to note that hostile forces within the context of this case would relate to Belligerents listed within 14.166 of the Clarke Report from a submission noting:

“the security situation later deteriorated. After 3 June 1991, all military movements within the area of operations were conducted in pairs³² and the entire contingent carried its weapons in the loaded state, with amended orders for opening fire in the event of a threat or hostile action endangering life. Additionally, it is claimed that there were constant threats from the presence of land mines;³³ Pershmerga;³⁴ Iraqi Army; Iraqi Police and Iraqi Secret Police.³⁵ It is also contended that there was not civil authority and that development of base camp defences were placed for added protection on 2 June 1991.”

10.2 The test for “danger” is objective, rather than subjective. On appeal to the *Repatriation Commission v Thompson (1988)*, the Full Federal Court stated what has become the most cited test for “incurred danger”:

The words “incurred danger” therefore provide an objective, not a subjective, test. A serviceman (or woman) incurs danger when he encounters danger, is in danger, or is endangered. He incurs danger from hostile forces when he is at risk or in peril of harm from hostile forces. A serviceman does not incur danger by merely perceiving or fearing that he may be in danger (at 9 AAR 203).³⁶

10.3 The Actual or potential danger has been tested with the case of the *Repatriation Commission v Thompson (1988)*; the Full Federal Court held that there must be actual danger. The Full Federal Court referred to the word “danger” and “substantial”. But the word “danger” stands for itself. If a serviceman incurs danger from hostile enemy forces, that

³² In this context, Military Movements in pairs is by military soft-skinned vehicle, of which if a security threat is imminent, vehicles must move in pairs in order to provide a degree of mutual protection in the case of ambush or attack. This was common practice during warlike operations in Cambodia; Somalia and Rwanda.

³³ It is estimated that 15 million land mines were scattered within the Kurdish area of operations.

³⁴ Pershmerga were resistance fighters of Jalal Talabani’s Patriotic Union of Kurdistan, supported by Iranian revolutionary guards. It was to be the local Kurdish security force. They were continually in combat with border clashes with Turkey, Syria and from Iraq.

³⁵ US President George Bush (Snr), called on the Kurdish people to uprising against Saddam Hussein, but were not provided support. This caused the brutal retaliation from Saddam Hussein by his military and para-military forces in the area of operations.

³⁶ *Veterans’ Entitlement Law*, Creyke, Sutherland and Ridge, The Federation Press and Softlaw Community Projects, 2000, p124.

circumstance is sufficient to satisfy the statutory requirement (at 355).³⁷

10.4 Following from the definition of Incurred Danger, the Court commented:

Danger is not incurred unless the serviceman is exposed, at risk of or in peril of harm or injury. (at 356).

10.5 And further, the Court commented “[*Danger*] must arise as a direct result of the activities of hostile forces of the enemy..... There must be established an actual risk of physical or mental harm” (at 356-57)³⁸

10.6 The **Length of time** danger is incurred has been interpreted in the case of Crawford and Repatriation Commission (1987), The Tribunal noted that the Act did not state, nor was it necessary to determine, whether danger needed to be measured in minutes, hours, days or even longer. That view would be preferable to the view *Re Howlett and Repatriation Commission* (1987), in which the Tribunal found that danger must be faced during a substantial (or, at the very least, a not insignificant) period of time.

11. The Threat, Risk and Incurred Danger to ADF Members serving on OP HABITAT.

11.1 Threats from not only the 15 Million land mines³⁹, the Peshmerga and the Iraqi military and para-military police and secret police; would have emanated from countless chemical unexploded ordnance from the 1988-1989 destruction of the Kurdish people, of which 90% of villages, small towns and cities were destroyed by Hussein. It was two years later, that Australians would be deployed to the area to commence Humanitarian aid, in an area that had not recovered from such destruction, with no further clearance of the 15 million land mines in the area of operations. Psychological harm would be considered to be high.

11.2 Armed threats were from well equipped and aggressive belligerents including children using AK-47s. Insurgents and Terrorist groups such as the PKK and Peshmerger had fire power consisting of machine guns, anti-tank ordnance and field artillery. The Insurgents and Terrorist groups contrived to deter the multinational forces operations for their own purposes.

11.3 The above placed the deployed Australian Contingent to OP HABITAT in an extremely dangerous and vulnerable area of operations. Precarious edges of hostilities by the belligerents against the Australians presented a constant threat for the Contingent, operating with limited combat assets and resources.

11.4 There was the danger of air attack by Iraqi Air Force jets within the air-space, which was patrolled by coalition aircraft on 2 minutes notice 24/7, controlling the air-space within

³⁷ *Veterans' Entitlement Law*, Creyke, Sutherland and Ridge, The Federation Press and Softlaw Community Projects, 2000, p125.

³⁸ *Ibid* p125.

³⁹ According to a study by the Ministry of Reconstruction and Development of the Kurdish Government, a total of 4,049 villages were destroyed and 673 spared in the three governorates of Erbil, Duhok and Suleymaniye. This study does not include the province of Kirkuk, where several hundred more villages were destroyed.

the area of operations for OP HABITAT.

11.5 NATO acknowledged the threat and provided this protective measure against air/ground attack for OP PROVIDE COMFORT/OP HABITAT, using F-16 fighter bombers; AHA64 Apache Attack Helicopters; A10 Thunderbolt anti-Tank jets; Super Stallion and Chinook helicopter support. Hence, a combat force was lodged and was in direct support within the OP HABITAT area of operations to deal with belligerent actions. This was beyond the scope of the combat resources of the ADF Contingent to OP HABITAT and was necessary for the Force Protection of OP PROVIDE COMFORT, whilst in a combat environment.

11.6 Other Combat Forces co-located with the ADF Contingent were UK units of 7th Battery (Artillery) at Mangesh; and 8th Battery was located at Begera. There were 24 British Special Forces in the area South of Girripit; and Regimental HQ was in Garigavan.

11.7 Threat of attack from SCUD missiles was always a real threat, of which missile systems were used by the Iraq military during the hostilities of the war, killing a number of Allied troops on the ground. Surface-to-surface; surface-to-air; air-to-surface missile systems were a constant threat to the integrity of the ADF Contingent serving in the area of operations during OP HABITAT.

11.8 Other dangers have been mentioned within the VERC from submissions, however most notably was the high level of tension in the area of operations, the need for the NATO forces to protect the secure zone and the plethora of mines would have been constant operational dangers and threat to the members of OP HABITAT.

11.9 It is also noted with interest, within **INST188** that another Humanitarian Relief Operation has been recognised by the classification of Warlike Service, Qualifying Service and the subsequent awarding of the AASM Clasp VIETNAM 1975, for RAAF activities with TSF Butterworth to UNICEF and RAAF activities with HQRICDET S to UNICEF during the period 29 Mar to 28 April 1975.

12. Conflicting Instruments in Determination of Service – Gulf.

12.1 There exists conflicting Instruments within the Instrument of Allotment of Persons, with the dates of deployment of OP HABITAT, which deployed from 7 May 1991 – 30 June 1991 to other Instruments of the same period. The Service Eligibility Assistant (SEA), within the Consolidated Knowledge of Information and Knowledge (CLIK), is compiled by the Department of Veterans' Affairs, in order to provide easy reference to various service classifications within the VEA. Utilising the SEA, the following Instruments fall within the dates of the deployment of OP HABITAT:

INST031 – Gulf. Not Specified Schedule 2 (RAN Ships/Units), Allotted for Duty during the period 22 August 1990 – 9 June 1991. QS approved with VEA Reference: S5(12)(d) [current ref S.5B(2)(b)];

INST032 – Gulf. Not Specified Schedule 2 (RAN), Allotted for Duty during the period 2 August 1990 – 9 June 1991. QS approved with VEA Reference: S5(12)(d) [Current ref S.5B(2)(b)];

INST042 – Gulf. Not Specified Schedule 2 (Army), Allotted for Duty during the period 1 September 1990 to 9 June 1991. INST042 also provides Qualifying Service (QS) with the reference of s5(12)(d) [Current ref S.5B(2)(b)];

INST182 – Gulf. OPERATION HABITAT (Aid to Kurdish refugees). Hazardous Service during the period 7 May 1991 – Ongoing, without QS. VEA Reference: S.120(7), was a revoked instrument from 22 October 1991 and specifically notes the service of OP HABITAT and service afloat after **8 June 1991** by Royal Australian Naval or allied units deployed in the waters of Arabian Gulf, the Gulf of Oman, the Northern Arabian Sea, the Gulf of Aden and the Red Sea bounded to the south and east by the following coordinates:

25.00 North – 61.50 East
 20.00 North – 61.50 East
 11.50 North – 51.17 East.

INST212 – Gulf - OPERATION SOUTHERN WATCH. Warlike Service during the period 31 August 1992 – 12 January 2003. QS approved with VEA Reference: S5C(1). OP SOUTHERN WATCH was ADF members seconded to the US elements of the coalition force operation to patrol the Iraq No-Fly Zones. The area of operations comprised of Saudi Arabia, Kuwait and the Incirlik airbase in Turkey. This was a revoked Instrument when OP SOUTHERN WATCH was previously non-warlike service and determined on 16 April 2007.

INST214 – Gulf – OPERATION BOLTON. Warlike Service during the period 31 August 1992 – 12 January 2003. Previously determined as Non-warlike service that was revoked on 27 May 2003. OP BOLTON was seconded ADF members to the UK elements of the coalition force operation to patrol the Iraq No Fly-Zones. The Determination is taken to have commenced on 16 April 2007.

INST216 – Gulf - OPERATION JURAL. Warlike Service during the period **30 June 1991** – 12 January 2003. QS approved with VEA Reference: S.5C(1). OP JURAL was for those ADF members seconded to the UK elements of the coalition force operation to patrol the Iraq No-Fly Zones. The same No-Fly Zones that were established for the security of OP PROVIDE COMFORT – or in ADF terms OP HABITAT. The Determination commenced on 16 April 2007.

INST217 – Gulf – OPERATION NORTHERN WATCH. Warlike Service during the period 1 January 1997 – 12 January 2003. QS approved with VEA Reference: S.5C(1). This was for ADF personnel seconded to the US elements of the coalition force operation to patrol the Iraq No Fly-Zones area of operations, of which the Determination was made on 16 April 2007.

INST218 – Gulf - OPERATION PROVIDE COMFORT. Warlike Service during the period 11 August 1991 – 15 December 1996. QS approved with VEA Reference: S.5C(1). OP PROVIDE COMFORT was for ADF members assigned for service with the US elements of the coalition force operation to patrol the Iraq No-Fly Zones on Operation PROVIDE COMFORT, in the area of operations – the same area of operations as OP HABITAT was previously assigned. The Determination is taken to have commenced on 16 April 2007.

12.2 The conflict of service classification in terms of INST031; INST032; and INST042, takes various ADF elements as having QS and warlike service up to 9th June 1991. Yet, under INST182, OP HABITAT is specifically singled out as “Hazardous Service”, within the VEA from 7 May 1991 – ongoing. Of note under the same Instruction is that RAN service or allied

units deployed within the waters of the Middle East Area of Operations (MEAO) as not changing to Hazardous Service until **after** 8th June 1991. Indications from INST031; INST032 and INST042 suggest that **after** the **9th June 1991** (10th June 1991), is the date that warlike service in the area of operations changed to non-warlike service.

12.3 There is a clear conflict of service classification within the area of operations from these listed Instruments. It is argued that the operational environment for those members of OP HABITAT would be of the same service as those Army and RAN units serving in the area of operations (outside of Iraq). Where OP HABITAT was actually located in Northern Iraq and on the ground providing self-protection. They were operating in an actively patrolled secure zone with No-Fly Zone protection, of which NATO was prepared to actively engage in combat if necessary, to protect OP PROVIDE COMFORT.

12.4 Interestingly, were the RAAF B-707 crews that flew within the range of the No-Fly zones, landing in Cyprus. It is noted that some of these crews had one or two sorties within the Area of Operations, not necessarily over the Iraqi air space, of which they were provided warlike service coverage under the VEA and subsequently awarded the Australian Active Service Medal (AASM).

12.5 Special note must be made of the conduct of coalition air operations patrolling and enforcing the air space of the designated No-Fly Zones. Of note is INST216, where on **30 June 1991**, ADF members were seconded to the UK force and provided with warlike service classification. OP HABITAT departed the area of operations on 30th June 1991, therefore providing further warlike service classification in equilibrium to INST216.

12.6 From INST212; INST214; INST216; INST217; and INST 218, indicates that the threat of Iraqi forces were capable of launching aircraft and missiles, including chemical weaponry; had the mandatory requirement to be actively patrolled and enforced. Whilst much of these Instruments are beyond or just outside of the service from OP HABITAT, it places evidence that it was necessary for NATO and/or the Coalition Forces to conduct active patrolling of the air-space, particularly in Northern Iraq, during the conduct of OPERATION PROVIDE COMFORT.

13. Medallie Recognition.

13.1 In terms of medallie recognition, it is consistent with the Regulations for the AASM 1975- Clasp "KUWAIT"⁴⁰ that one day or one sortie into the area of operations, particularly into Iraq, where the remaining ADF assets were operating to remove Iraq out of Kuwait, would be adequate recognition for service during OP HABITAT under the classification of warlike service during the period 7 May to 9 June 1991 and 30 May 1991.

13.2 Non-warlike service, which was served by ADF members on OP HABITAT between the dates 10 June 1991 – 29 June 1991 is suggested to retain the ASM Clasp "IRAQ."⁴¹ It is noted that there is a 30 day requirement within the CAG, however given the clause c (v) of CAG S195, it is suggested that the CDF has the power to deem the period of service that is notwithstanding that the member has not met the qualifying period of 30 days.

⁴⁰ Commonwealth of Australia Gazette (CAG) S195 of 27 May 1997

⁴¹ CAG S64 of 28 Feb 2002.

13.3 The Regulations (Australian Service Medal (4)), also provides flexibility in that Operations may not necessarily meet the qualifying criteria, should there be a change or terminated due to Government or Defence Force reasons (CAG S195 c.(vii)(B).

13.4 Retrospective awarding of the Iraq Campaign Medal is also recommended to the ADF Contingent to OP HABITAT (including all ADF assets deployed during the Gulf War 1991).

13.5 Within the CAG⁴² section 3, the Declaration of Prescribed Operations may be made by the Governor General on the recommendation of the Minister, may declare an operation in Iraq, including support operation in the surrounding areas, in which members of the Defence Force are engaged or have been engaged on operations on or after 18 March 2003.

13.6 The qualifying service is recommended to be that of seven days, consistent with the Determination under the Iraq Medal Regulations 2004⁴³ or that the determination of qualifying service is consistent with the warlike service period.

13.7 In the case above, it is strongly recommended that the Minister for Defence retrospectively recognise service in the Gulf of 1991 of those who served on Warlike Operations, of which a change to the Schedule of the Iraq Medal Regulations 2004 may be changed to service on or after 17 Jan 1991 to 9 June 1991 and again from 30 June 1991 to 12 January 2003.

14. Contention Summary.

14.1 It may have been easy to mis-construe the interpretation of OP HABITAT as being a Humanitarian Aid Relief Operation, for Kurdish Refugees, however it is evident that there existed higher levels of risk and harm than would normally be considered as “Hazardous Service” or Non-warlike service. The naming of OP HABITAT as a Humanitarian operation, in itself could mis-lead those who have not taken a depth of research into the subject and concluded the actual threat and risk levels fits the warlike service criteria.

14.2 It is quite evident that inconsistencies exist toward classifications of warlike and non-warlike operations, particularly with OP TANAGER and OP CITADEL to unarmed UNMLOs in East Timor being on warlike service in comparison to OP HABITAT who were armed, self-defensive, had NATO combat assets conducting force protection, whilst serving in a highly dangerous warlike environment.

14.3 Given the tension within the Northern Iraq area during OP HABITAT, the threat of belligerent forces and identified enemy (Iraqi military forces) on the ground, the air threat, chemical and biological warfare threat, un-exploded ordnance containing chemical or biological warheads or high explosive; 15 million mines strategically placed, un-marked nor cleared; the high risk of disease; a hardened defensive posture, along with the necessary self-protection of ADF members, it is clear that there was a high degree harm and risk of incurred danger.

⁴² CAG S421 of 22 October 2004, Schedule Iraq Medal Regulations 2004.

⁴³ CAG S125 of 6 July 2005, sub-para (b)(v)(A)(1).

14.4 NATO lodged force protection measures to ensure that OP PROVIDE COMFORT/OP HABITAT were able to operate within a warlike environment with combat assets ready to engage. Of course the ADF Medical Contingent to OP HABITAT did not have active ROE to pursue a Military Objective! They were not an infantry or combat arm, they were in Northern Iraq to provide **medical support to a humanitarian disaster in warlike conditions**. They did their best to provide for self-protection and heavily relied on the NATO forces for force protection in order to conduct their duties. This situation for a Medical Force is **no different** to what is occurring in Iraq and Afghanistan today.

14.5 The period **after** 9th June to 29th June 1991, may also be considered to be of non-warlike service, consistent with INST182. Therefore, OP HABITAT may be classified warlike service from 7th May 1991 to 9th June 1991; and perhaps non-warlike service from 10th June 1991 to 29th June 1991; and back to warlike service from 30th June 1991.

14.6 It is contended that the similar classification or determination of Warlike service must be given to ADF members of OP HABITAT on an equal and consistent basis to those ADF members listed in INST031; INST032; and INST042, who had warlike service conditions from **7th May 1991 to 9th June 1991**, and on **30th June 1991**, respectively.

15. Recommendation:

That the Government rejects the Clarke Report Recommendation 29 and that the ADF Contingent to OP HABITAT in 1991 be provided eligibility for VEA warlike service and Qualifying service, retrospectively. The case presented by the Clarke Report, along with the VEA Instruments of service are inconsistent and the Committee have not considered the tactical warlike environment that the Contingent served in Northern Iraq.

Recommendation 32: *“The Department of Defence further reviews the activities of personnel undertaking covert intelligence gathering, or involved in covert signals operations, to determine their operational status for benefits under the VEA.”*

1. VERC Discussion:

It is noted in Vol 2, Chap 14 paras 14.182 to 14.184 that discussion of the nature of personnel involved in Covert Intelligence Gathering or Covert Signals Operations.

The Committee received four submissions, however there appears to be some confusion as to the nature of service either being warlike or non-warlike under the VEA. It was difficult for the VERC to provide a balanced judgement on the claims of such operations.

As the work’s sensitive nature, and understanding that clearance levels of the VERC would not have been briefed to the extent of various operations, the VERC made the recommendation that only the Department of Defence can make the appropriate assessment of these activities.

2. Contention:

2.1 To date, the APPVA has not been officially made aware of any such review in relation to Covert intelligence gathering or covert signals operations. It is contended that the review includes evidence by those who have served on such operations, as it is clearly above and beyond normal operations within the ADF. ADF members are selected through a rigorous background checks and reviews in order to obtain the highest levels of security clearances and compartmentalisation.

2.2 Operations conducted by ADF members would provide a higher degree of risk to an individual given the presence of Hostile Intelligence Services, Foreign Intelligence Collection and exploitation by such Intelligence Services. It is also suggested that this service is beyond the normal call of duty within Australia.

2.3 Of an additional note, is the strain placed on individuals who are cleared to conduct various operations, not to talk about their work, of which if disclosed, will place the individual in breach of the Defence Act 1903 and the Secrets Act. These operations were highly classified and highly sensitive to the Australian Government.

2.4 The criteria of the Australian Service Medal Clasp “SPECIAL OPS” is highly recommended to recognise this service, particularly due to the sensitivity to the relations of targeted countries if such information of Operations were compromised. This would have the potential to invoke significant Diplomatic embarrassment or backlash to the Australian Government within the S.E. Asia and S.W. Pacific regions of which the country maintains various partnerships.

2.5 In the same context of Recommendation 31A (Service on submarines during special operations be deemed non-warlike hazardous for the purposes of the VEA), it is evident that these operations were made in the Strategic and Tactical capacity in the same instance as for Recommendation 32.

3. Special Operations – Serving Vital Interests.

3.1 Special Operations have been the forefront of Australia's Strategic Defence Policy, since its inception during World War II in the form of "M & Z" Special Units. Signals Reconnaissance Division (SRD) etcetera. On the frontline of Special Operations since 1956 to the present day are those veterans who have served and who have been placed into Operationally Stressed situations – both physically and mentally.

3.2 Special Operations are highly classified operations conducted by the Australian Government and are normally Operations that are unilaterally, or mutually supported by Allied agencies, or for Allied agencies.

3.3 Without compromising or disclosing the Operations that have been conducted by ADF personnel over the period 1956 to the present, we are concerned of the amount of veterans who have served in these situations, who have developed medical and/or psychological conditions, and are unable to provide their cases because of the restrictions of information in the interests of National Security.

3.4 A veteran who has served in a **Special unit (Special Forces, Intelligence & Electronic Warfare)**, have been exposed to a rigorous training regime, specifically designed to focus onto a particular function, that will be directed toward a covert operation. The **risks involved** with the training and operational employment of the veteran includes the following:

3.4.1 **Highly demanding tasks both physically and mentally**, that in the interests of National Security, cannot be publicly discussed. ADF personnel employed within a highly secretive environment are briefed to never divulge information of the particular operation.

3.4.2 **Specialised training and the effects.** The Special Operations community are a group of highly trained specialists that hold qualifications ranging from eavesdropping to un-armed combat to linguistic skills. The training and operations usually expose personnel to Mental Stress; risk of injury through covert weapons and tactics; relationship & marital problems – due to the high level of tempo; short notice warning for deployment and long term absence from the home, in which the partner is not allowed to be privy of the reasons for absence; and Operational Stress whilst conducting Live operations against a determined target or country, or simply awaiting for a live operation to occur.

3.4.3 **Other Hazards.** Hazards that are also essential within Special or covert operations include: Diesel fuel and fume exposure within Submarines; Claustrophobia; Asbestos exposure; Carcinogenic exposure to various chemical and biological hazards (CS Gas and Radio Frequency (RF) Hazard (commonly known as "RADHAZ" in the ADF)); Military parachuting hazards (including specialist insertion methods; threat of detection, compromise or capture (inclusive of hostile interrogation); Counter-Terrorism training; and Long term exposure to shift work in moderate to high level electronic interception and analytical duties.

3.4.4 **Inhibitions.** The above listed hazards and exposures to a Covert environment does inhibit an individual's desire to live a normal life. Their social life is limited due to active participation of hostile intelligence services attempting to identify these specialists in their private life. These Hostile Intelligence Services also attempt to corrupt our people, in order to gain the upper hand. This was very

pertinent during the “Cold War” and is now, more than ever, pertinent with the current Global Terrorism threat. The simple fact here is that ADF personnel employed in Special Operations do not live a normal life as compared to their ADF colleagues and indeed the community as a whole.

4. VEA or MRCA Consideration. To date there is no existence of an instrument to provide VEA/MRCA entitlements for this Special group of veterans. As each covert or special operation is a subtle or intentional or undetected act by the Australian Government and Allies, against a targeted group or Country – for the Strategic Defence of Australia and interested regions, it would be appropriate to recognise the ADF personnel, who are placing themselves to various risks, including their lives, who are the executors of such operations. It is therefore logical to express the following:

- 4.1.1 That the service is “Hazardous Service” or “non-warlike Service”, note the inherent risks previously listed in 3.4;
- 4.1.2 That the service is training and operating against an identified enemy, whilst maintaining a high degree of readiness to execute Strategic and National directives and tasks;
- 4.1.3 That the service, whilst not overtly engaging with an enemy, the service is covert strategic engagement of an enemy, acting against a targeted country or identified individuals and serving vital interests to Australia and its Allies. Active participation is also conducted in the form of Electronic Warfare from within Australia; covert Signals or communications operations in another country under a cover-story; and transmission from Australia to targeted countries of communications deception plans and messages.

5. Recognition.

5.1 As described in para 2.4 to this section, appropriate recognition from the Australian Government has not been forthcoming and is difficult to obtain for this group of veterans. We view that their service as protecting and serving our Vital Interests for the Long Term Strategic protection of Australia, along with binding Strategic ties with Australia’s Allies.

5.2 Currently, the Australian Service Medal Clasp “SPECIAL OPERATIONS” is awarded on the discretion of the CDF. It is our belief that the ASM be awarded to those members posted to units that performed these operations. Disclosure of these units can be made by the author upon classified interview.

6. Contention Summary.

6.1 In conclusion, given the specialised nature of the high levels of security clearance, the high sensitivity of the duties performed, the risk of exploitation by Hostile or Foreign Intelligence Services, the inability to discuss operations and to retain the integrity of the operation would also provide a higher than usual degree of stress upon the given individual.

6.2 These ADF members are specifically trained, selected, background checked and entrusted with the keys to the Nation’s Strategic and Tactical secrets and operations within the Defence Telecommunications networks and other ADF Electronic Warfare assets, in order to provide high grade intelligence product and protection measures against a live enemy or belligerent toward the integrity of Australia’s regional security.

6.3 It is therefore contended that the Department of Defence actively engages in a review into these operations by appropriately cleared people with an impartial and open-minded approach. (Please see attachment on Special Ops for further information).

7. Recommendation:

That the Government supports the Clarke Report Recommendation 32 and commissions the ADF to investigate covert operations as described and to provide the opportunity for those veterans of such operations to be able to disclose such information within a Classified setting.

Recommendation 42: *“There should be no extension of current VEA coverage for peacetime defence service.”*

1. VERC Discussion:

The Committee went into some detail in considering and presenting the intention of the VEA for peacetime service. The committee, within Vol 2, Chap 14 para 14.235 indicated an area of interest to the APPVA, that being the committee coming to the conclusion that account of the following factors:

The underlying principle of the repatriation system is that compensation is provided to veterans for the effects of service in wars or conflicts, or warlike or non-warlike service;

The decision to extend repatriation benefits to peacetime service was an improvised and temporary measure intended to solve a 1972 problem;

for those who have not served in operational circumstances, disability compensation coverage is already available under Commonwealth employees’ compensation legislation for peacetime service before 1972; and

The extension of the VEA would conflict with the recommendation handed down in the Tanzer Report and undermine government intentions regarding the new MCS [Military Rehabilitation and Compensation Act 2004 (MRCA)].

2. Contention:

2.1 At the time of the APPVA submission, peacetime service was not potentially an issue. However, over the past 23 years (1986 to present), there have been a number of Humanitarian Relief Operations or Defence Aid to Civil Community (DACC) Operations overseas that have been classified as peacetime defence service.

2.2 Most significant of these operations was the Indian Ocean tsunami disaster, of which the ADF responded with a large contingent to various areas in S.E. Asia, pre-dominantly in Banda Aceh and Nias on the Indonesian island of Sumatra. This was known as OP SUMATRA ASSIST I&II. Unfortunately, 9 ADF members were killed when their Sea King Helicopter from HMAS KANIMBLA (Shark 02) crashed on Nias Island.

2.3 Another operation that was conducted utilising ADF assets was the Earthquake relief operation of OP PAKISTAN ASSIST, near the Kashmir region in N.E. Pakistan during the period October 2005 to May 2006.

3. Incurred Danger during Humanitarian Operations.

3.1 The test for “danger” is objective, rather than subjective. On appeal to the *Repatriation Commission v Thompson* (1988), the Full Federal Court stated what has become the most cited test for “incurred danger”:

The words “incurred danger” therefore provide an objective, not a subjective, test. A serviceman (or woman) incurs danger when he encounters danger, is in danger, or is endangered. He incurs danger from hostile forces when he is at risk or in peril of harm from hostile forces. A serviceman does not incur danger by

merely perceiving or fearing that he may be in danger (at 9 AAR 203).⁴⁴

3.2 The Actual or potential danger has been tested with the case of the *Repatriation Commission v Thompson* (1988); the Full Federal Court held that there must be actual danger. The Full Federal Court referred to the word “danger” and “substantial”. But the word “danger” stands for itself. If a serviceman incurs danger from hostile enemy forces, that circumstance is sufficient to satisfy the statutory requirement (at 355).⁴⁵

3.3 Following from the definition of Incurred Danger, the Court commented:

Danger is not incurred unless the serviceman is exposed, at risk of or in peril of harm or injury. (at 356).

3.4 And further, the Court commented “[*Danger*] must arise as a direct result of the activities of hostile forces of the enemy..... There must be established an actual risk of physical or mental harm” (at 356-57)⁴⁶

3.5 The **Length of time** danger is incurred has been interpreted in the case of *Crawford and Repatriation Commission* (1987), The Tribunal noted that the Act did not state, nor was it necessary to determine, whether danger needed to be measured in minutes, hours, days or even longer. That view would be preferable to the view *Re Howlett and Repatriation Commission* (1987) in which the Tribunal found that danger must be faced during a substantial (or, at the very least, a not insignificant) period of time.

3.6 A copy of the APPVA Submission into the Reclassification of Humanitarian Operations from Peacetime service to non-warlike service is attached to this paper.

4. Contention Summary:

4.1 ADF Humanitarian Operations are above and beyond of what is expected within mainland Australia. There are inherent risks and harm levels associated with these operations, which includes contamination of corpses; death; destruction and disease, more often than not in countries with poor medical support and infrastructure.

4.2 Therefore, these operations are highly recommended to be classified as non-warlike operations. Please read the Recommendations from the attached Reclassification of Humanitarian Operations submission, together with the contentions made in this paper, particularly toward the Incurred Danger Test in Section 3.

⁴⁴ *Veterans' Entitlement Law*, Creyke, Sutherland and Ridge, The Federation Press and Softlaw Community Projects, 2000, p124.

⁴⁵ *Veterans' Entitlement Law*, Creyke, Sutherland and Ridge, The Federation Press and Softlaw Community Projects, 2000, p125.

⁴⁶ *Ibid* p125.

5. Recommendation:

That the Government supports the extension of the VEA & MRCA eligibility to Peacetime Defence Service Humanitarian Operations and reclassify these Operations to non-warlike Operations retrospectively.

Recommendation 92: *“The Government require of the veteran with a dual entitlement under the VEA and SRCA a one-time election, which would restrict the veteran to receiving benefits under either the VEA or the SRCA, at that time or in the future if he (she) has not already made a claim under either Act.”*

Contention:

This recommendation appears to have been made without a full knowledge of the Legislation of the VEA and SRCA, and the terms of dual eligibility provisions, which were Legislated in 1986 (VEA); 1988 (SRCA); Defence Act 1903; and the Military Compensation Rehabilitation Service from 9 April 1994.

Contention Summary:

Given an apparent mis-understanding of the Clarke Committee, the APPVA contends that this recommendation is quashed.

Recommendation 93; 103 through to 106: *Rehabilitation.***Contention:**

The APPVA contends that there are adequate provisions for Rehabilitation within the MRCA and SRCA. In addition, the ADF Rehabilitation Program (ADFRP) has been further developed since the writing of the Clarke Report. The ADF has always had the policy of ensuring that a Medically Discharged member from the ADF is given the opportunity to optimally restore their physical and mental health to the closest standard at the time of discharge.

To place an ADF member, who has undergone such Rehabilitation, particularly as the ADF Service Chiefs have the prime responsibilities as Military Rehabilitation and Compensation Commissioners (MRCC), within the MRCA, that this should not be repeated once an ADF member has discharged. In all cases, it is preferable to have the ADF Medically Discharged member stabilised prior to Discharge, with every opportunity to rehabilitate, retention, retrain and lastly to discharge.

Special provisions must be made toward Medically Discharged members, who have already undergone a significant rehabilitation and treatment regime within their service. This regime must be utilised by the Department of Veterans' Affairs (DVA) as adequate rehabilitation and allow compensation after stabilisation pre-discharge. Transition Management Cells within the ADF and DVA, must be cognisant of this rehabilitation and allow the claims to be expedited for determination.

After service life, requires veterans (ex-serving ADF members and Police Peacekeepers), to maintain a quality of life. In order to retain this quality of life, SRCA and MRCA allows a degree of compensation for such rehabilitation. However, there are noted difficulties as there is an expectation for the individual to improve in their disabilities, hence undergoing a review.

The approach to providing quality of life and a reasonable standard of living to a veteran and his/her family, along with on-going treatment is considered the primary approach.

The APPVA is also very concerned by comments made by Mr Barry Telford in a presentation called "Rewarding Illness?" in a DVA Research seminar in September 2008. This has shown to be a highly controversial and insensitive presentation, which has sought many negative comments from the ESO community.

The APPVA is deeply concerned toward this posture, where the emphasis should be providing every opportunity for the individual to rehabilitate, and at the same time provide for his/her family, without detriment to their customary income when they were working or serving in the ADF or AFP.

Contention Summary:

It is of the view of the APPVA, that the veteran, whilst in service is undergoing adequate rehabilitation, particularly under the guidelines of the MRCC within the realms of the Service Chiefs. Defence Instructions indicate that all necessary approaches are to be used to ensure the best possible rehabilitation of the ADF member prior to Discharge. Unfortunately the rehabilitation of these serving members is not recognised by DVA. Causing a great deal of strain and stress of the veteran and his/her family.

The approach of DVA post medical discharge or of any disabled veteran, should be the opportunity to maintain a quality of life, rather than being viewed as having potential for work. Once a Rehabilitation program has been completed, the condition stabilised, it should therefore be deemed that the veteran be entitled to Permanent Impairment compensation (Non-Economic Loss).

Recommendation 106: *“Mental Health Rehabilitation as a priority group.”***Contention:**

The APPVA views the comments in relation to forcing rehabilitation upon those with accepted mental conditions as a priority group is **marred** with potential damage to the individual.

It has been our experience that Young Veterans, once diagnosed and treated, are most reluctant to undergo treatment programs for Mental Health Illness. Many view this as a repetitive approach which will return them into highly agitated people, particularly with having to go through their experiences again to non-consulting psychiatric specialists.

Many Young Veterans have attempted to move on with their lives, many continue to be in a great deal of psychosis and symptomatic behaviour of very ill veterans. They have settled into a routine and to take them out of this routine may have some catastrophic consequences to the veteran and his/her family.

There also has been a noted reluctance by some young veterans to deal with DVA due to the stress placed on them when making claims. Many have not been determined as TPI, hence some are living on very low income, because they cannot bear to go through the process for an Application for Increase (AFI) for their accepted conditions.

Contention Summary:

Caution is therefore placed with this recommendation, whilst the APPVA views rehabilitation as being of some benefit to those who are prepared to undertake a program, forcing mentally ill veterans onto a mandatory rehabilitation program may cause considerable stress and damage.

Attachments:

1. Copeland, P, Submission toward the Retrospective Reclassification of Service of Non-warlike Service to Warlike Service OPERATION PALLADIN The United Nations Truce Supervision Organisation (UNTSO) Australian Army United Nations Military Observers During the Arab/Israeli Wars, 1956 to 2006, APPVA, April 2008.
2. Copeland, P, Ministerial Submission or the Reclassification of OPERATION ASTUTE – JTF 631, TIMOR LESTE, From Non-warlike to Warlike Service, 21 Nov 2008.
3. Copeland, P, The Australian Peacekeeper & Peacemaker Veterans' Association, National Executive, Submission of the Reclassification of service of Humanitarian Operations, And/or Defence Aid to Civilian Community Operations Overseas, From Peacetime Service to Non-Warlike "HAZARDOUS SERVICE" dated 17 Dec 2008.
4. Copeland, P, Special Operations, Clarke Review Attachment.

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Copeland, P, The Australian Peacekeeper & Peacemaker Veterans’ Association (Incorporated in Victoria), National Executive, Ministerial Submission for the <i>Reclassification of OPERATION ASTUTE – JTF 631, TIMOR LESTE, From Non-warlike to Warlike Service</i> , November 2008.
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Copeland, P, Australian Peacekeeper & Peacemaker Veterans’ Association Inc, <i>Table of Australian Defence Force Peacekeeping/Peacemaking Operations (with Police) Since 1947 to the Present</i> , 17 Dec 2008.
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Map: UNTSO Deployment as of July 1997; Department of Field Support Cartographic Section DPKO.

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Map: UNDOF DEPLOYMENT December 2007; Department of Field Support Cartographic Section DPKO.

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