

**Case For the awarding of the Australian Active Service Medal 1975 Clasp IRAQ
to those ADF members who served with the Australian Contingent to Northern Iraq
on OPERATION HABITAT,
(NATO OPERATION PROVIDE COMFORT).**

1. Introduction.

1.1 The APPVA has represented the case for retrospective reclassification of service from Non-warlike Service (NWLS), to Warlike Service (WLS), of the Australian Contingent to the US led NATO Operation of “PROVIDE COMFORT”, which provided assistance to the Kurdish people in Northern Iraq, immediately after the Gulf War of 1991.

1.2 The APPVA has sent a submission to the Director Nature of Service Review (NOSR), via the Minister for Defence, Science and Personnel on 3 March 2009. The case was presented in response to the Review into the Veteran Entitlement Review Committee (VERC), aka the Clarke Review, for Recommendations that were not implemented by the previous Howard Government.

1.3 The Minister for Veterans’ Affairs, The Hon Alan Griffin, MP, forwarded the APPVA’s submission, as it was not within the scope of the Terms of Reference of the VERC Review to the Minister of Defence, Science and Personnel, then The Hon Warren Snowden, MP.

1.4 The APPVA submits this Case for the retrospective awarding of the Australian Active Service Medal (AASM 75), Clasp IRAQ to the ADF Contingent to OPERATION PROVIDE COMFORT, along with recognition of the ASM 75 Clasp IRAQ for respective eligible service.

1.5 Additionally, retrospective awarding of the Australian Iraq Campaign Medal is placed as a recommendation to this paper for various Operations conducted by ADF members during the eligible service for the AASM 75.

2. Veteran Entitlement Review Committee (VERC) Discussion:

Within the Summary of Submissions¹ 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.

¹ Veteran Entitlement Review Committee (VERC), Vol 2, Chap 14, 14.165 to 14.169 – Post-World War II issues, 2003.

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.

3. APPVA Contention:

3.1 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?

3.2 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.

3.3 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.

3.4 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.

3.5 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.²

² Frontline Report of the "Survival of Saddam" by Greg Barker on website: <http://www.pbs.org/wgbh/pages/frontline/shows/saddam/kurds/>

3.6 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.

3.7 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 with NATO Forces to create a "**security zone**" inside northern Iraq where the Kurdish refugees would feel safe to leave Turkey and resettle.

3.8 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, Iraq 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.

3.9 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.³ 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.⁴

3.10 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.

3.11 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.

³ *Katherine A. Wilkens*, Sunday, September 15 1996; Page C01, The Washington Post.

⁴ *By Katherine A. Wilkens*, Sunday, September 15 1996; Page C01, The Washington Post.

3.12 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.

3.13 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.

3.14 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).⁵

3.15 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.**⁶

3.16 In comparison to the British Medal System, those British Forces elements assigned to OP PROVIDE COMFORT, particularly during the time of OP HABITAT were awarded the General Service Medal (GSM) 1962 Clasp "N. Iraq & S. Turkey". The GSM 1962 was instituted in 1962 to replace a previous GSM System (1918 – 1962), and was awarded to personnel of all services for campaigns and operations that fell short of full-scale war. The GSM system ceased in 1999 when a new Operational Service Medal (OSM) system was instituted by the Ministry of Defence, United Kingdom (MODUK).

3.17 Therefore, the Australian Defence Honours & Awards system has recognised both the GSMs 1945-1975 and also issued the Australian Active Service Medal (AASM 45-

⁵ Australian Gulf War Veterans' Study 2003, Department of Veterans' Affairs website: <http://www.dva.gov.au/media/publicat/2003/gulfwarhs/html/ch2.htm>

⁶ Little, Mark (December 1991). "Operation Habitat: Humanitarian aid to the Kurdish refugees in northern Iraq". *The Medical Journal of Australia* **155**: 807–812

75), with Clasp of Country served as a result of recommendations from CIDA. This is seen as being suitable within the Honours & Awards system and it is not understood why the British Forces were awarded the GSM, when the ADF Contingent to the same operation were recognised by a lesser award of the ASM 75.

4. Diary Notes.

4.1 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 [wounded] and one killed today by mines within the secure zone of Northern Iraq.

May 25, 1991- Two US Marines injured [wounded] 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 [wounds] 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 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.

5. ADF Departure.

5.1 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.

6. Operational Similarities.

6.1 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.**

7. Allotted for Duty.

7.1 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.

7.2 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.

7.3 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.

7.4 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.

7.5 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.”*

8. Incurred Danger.

8.1 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 pairs⁷ 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;⁸ Pershmerga;⁹ Iraqi Army; Iraqi Police and Iraqi Secret Police.¹⁰ 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.”

8.2 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).¹¹

⁷ 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.

⁸ It is estimated that 15 million land mines were scattered within the Kurdish area of operations.

⁹ 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.

¹⁰ 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.

¹¹ *Veterans’ Entitlement Law*, Creyke, Sutherland and Ridge, The Federation Press and Softlaw Community Projects, 2000, p124.

8.3 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).¹²

8.4 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).

8.5 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)¹³

8.6 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.

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

9.1 Threats from not only the 15 Million land mines¹⁴, the Pershmerga and the Iraqi military and para-military police and secret police; would have emanated from countless chemical un-exploded 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.

¹² *Veterans' Entitlement Law*, Creyke, Sutherland and Ridge, The Federation Press and Softlaw Community Projects, 2000, p125.

¹³ *Ibid* p125.

¹⁴ 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.

9.2 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.

9.3 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.

9.4 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 the area of operations for OP HABITAT.

9.5 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.

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

9.7 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.

9.8 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.

10. Conflicting Instruments in Determination of Service – Gulf.

10.1 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)] therefore Warlike Service;

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)] therefore warlike service;

INST042 – Gulf. Not Specified Schedule 2 (Army), **Allotted for Duty**¹⁵ 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 Navy or allied naval 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.

¹⁵ Allotted for Duty within the context of the VEA Schedule 2 is warlike service.

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.

10.2 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.

10.3 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.

10.4 Interestingly, was 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 provide warlike service coverage under the VEA and subsequently awarded the

Australian Active Service Medal (AASM).

10.5 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.

10.6 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.

11. Medallie Recognition.

11.1 In terms of medallie recognition, it is consistent with the Regulations for the ASM 1975- Clasp “KUWAIT”¹⁶ 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 June 1991 onward.

11.2 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.”¹⁷ 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.

11.3 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)).

11.4 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

¹⁶ Commonwealth of Australia Gazette (CAG) S195 of 27 May 1997

¹⁷ CAG S64 of 28 Feb 2002.

War 1991). Within the CAG¹⁸ 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.

11.5 The qualifying service is recommended to be that of seven days, consistent with the Determination under the Iraq Medal Regulations 2004¹⁹ or that the determination of qualifying service is consistent with the warlike service period.

11.6 In the case above, it is strongly recommended that the Minister for Defence retrospectively recognises 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.

12. New Determinations for the AASM Clasp IRAQ.

12.1 A development has since been made toward the retrospective awarding of the AASM Clasp “IRAQ”, within the Commonwealth of Australia Gazette (CAG) S136 dated 10 Aug 2009. The following Operations and dates have been recently approved for the awarding of the AASM Clasp IRAQ:

12.1.1 OP JURAL 30 June 1991 to 12 January 2003;

12.1.2 **OP PROVIDE COMFORT** Air patrols of the No-Fly Zones, 11 August 1991 to 15 December 1996;

12.1.3 OP BOLTON, 31 August 1992 to 12 January 2003;

12.1.4 OP SOUTHERN WATCH, 31 August 1992 to 12 January 2003; and

12.1.5 OP NORTHERN WATCH, 1 January 1997 to 12 January 2003.

12.2 The above is consistent with the classification of the Nature of Service and Conditions of Service for warlike service within the context of Veteran Entitlements and subsequently, the awarding of the appropriate medals that are consistent with warlike service.

¹⁸ CAG S421 of 22 October 2004, Schedule Iraq Medal Regulations 2004.

¹⁹ CAG S125 of 6 July 2005, sub-para (b)(v)(A)(1).

12.3 Within CAG S136, the Prescribed Period is “*not less than one day*”²⁰ or “*not less than one sortie from a unit force assigned to the prescribed operation*”. It is noted that OP JURAL has eligible service for the AASM Clasp IRAQ on and from 30 June 1991 to 12 January 2003. The date of 30 June 1991 is significant in terms of recognising the ADF contingent to OP PROVIDE COMFORT (OP HABITAT).

12.4 Warlike service is recognised for the periods 7 May to 9 June 1991 and 30 June 1991 onward to 12 January 2003. Therefore, the ADF Contingent to OP PROVIDE COMFORT (OP HABITAT), holds eligibility toward warlike service and should therefore be recognised for such service.

13. Contention Summary.

13.1 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.

13.2 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.

13.3 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 mission.

13.4 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.

²⁰ CAG S136 Clauses (b) iv and v.

14. Recommendation:

14.1 That the ADF Contingent to OP HABITAT in 1991 be provided eligibility for warlike service, 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.

Note: The above is the recommendation for the Clarke Review. The recommendations from this point onward are those for the Defence Honours & Awards Tribunal (DHAT) Inquiry into the service of Peacekeeping Operations since 1947 onward.

14.2 In terms of medallic recognition, the ADF Contingent to OP HABITAT is retrospectively awarded the AASM Clasp IRAQ for the periods 7 May 1991 to 9 June 1991 and on 30 June 1991.

14.3 That the ASM Clasp IRAQ is awarded for the period 10 June to 29 June 1991.

14.4 That retrospective awarding of the Iraq Campaign Medal is made toward eligible ADF members of OP PROVIDE COMFORT (HABITAT); OP JURAL; OP BOLTON; OP SOUTHERN WATCH; and OP NORTHERN WATCH.

14.5 That retrospective awarding of the Iraq Campaign Medal is made to ADF members that served during OPERATION DESERT STORM, from Jan to Feb 1991.

14.6 That the removal of the following Clause (c) from CAG S136 dated 10 August 2009, is made:

- (c) *determine, for the purposes of this determination, that where an entitlement exists to the Australian Service Medal (ASM) with Clasp 'IRAQ', a person is not eligible for an award of the ASM where the entitlement to the ASM arises from the same rotation deployment as gave rise to the entitlement for the AASM with Clasp 'IRAQ', and includes the same posting or period of service with the prescribed operation.*

14.7 That the removal of the following Clause (d) from CAG S137 of 12 August 2009 is made:

- (d) **determine, for the purposes of this determination, that where an entitlement exists to the Australian Active Service Medal (AASM) with Clasp 'IRAQ', a person is not eligible for an award of the Medal where the entitlement to the Medal arises from the same rotation deployment as gave rise to the entitlement for the AASM with Clasp 'IRAQ', and includes the same posting or period of service with the prescribed operation.**