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Dear Mr Copeland

Thank you for your letter of 7 April 2011 to the Minister for Defence Science and Personnel, the Hon Warren Snowdon MP, in which you sought an update of the earlier request to have the nature of service of Operation ASTUTE reclassified from non-warlike to warlike for the period 12 May 2006 to 22 May 2008. As matters concerning the reclassification of the Nature of Service of Australian Defence Force operations fall within my responsibilities, the Minister for Defence Science and Personnel has authorised me to respond to your submission.

You originally made this submission, on behalf of the Australian Peacekeeper and Peacemaker Veterans' Association (APPVA), in March 2009. On 10 May 2011 the Parliamentary Secretary for Defence, Senator the Hon David Feeney, informed you that research into the reclassification of Operation ASTUTE was continuing. The purpose of this letter is to provide you with the results of this research.

Following receipt of your 2009 submission the Nature of Service Branch began an exhaustive review of the circumstances of Operation ASTUTE and the service of all ADF personnel involved in the operation. In the meantime, on 12 May 2010 the then Prime Minister, the Hon Kevin Rudd MP, directed that Ministerial Submissions seeking a reclassification of the Nature of Service (NOS) for past operations be considered by an inter-departmental process prior to consideration by the Expenditure Review Committee of Cabinet. The establishment and conduct of this process has caused further delays in considering your submission.

Notwithstanding these contributing factors, I very much regret the delay in responding to your representation.

It is Government policy to review all submissions seeking a review of a Nature of Service classification in the context of the legislation and policies that applied at the time of the operation under review. Consequently, service on Operation ASTUTE during the period 12 May 2006 to 22 May 2008 has been reviewed in relation to the repatriation legislation that was in force at the time, being the *Veterans' Entitlements Act 1986 (VEA)* and the *Military Rehabilitation and Compensation Act 2004 (MRCA)*.

In May 1993 Cabinet established a 'conditions of service' framework for ADF personnel deployed overseas and agreed to the terms 'warlike' and 'non-warlike' operations based on the level of force authorized for use and the associated risks expressed as the likelihood of casualties.

Warlike operations are those military activities where the application of force is authorised to pursue specific military objectives and there is an expectation of casualties. These operations include a state of declared war, conventional combat operations against an armed adversary and Peace Enforcement operations. Warlike service provides Qualifying Service under the VEA.

Non-warlike operations are defined as those military activities short of warlike operations where there is risk associated with the assigned task(s) and where the application of force is limited to self defence. Casualties could occur but are not expected. Non-warlike operations include *Hazardous* operations that expose individuals or units to a degree of hazard above and beyond that of normal peacetime duty such as mine avoidance and clearance, weapons inspections and destruction, Defence Force aid to civil power, Service protected or assisted evacuations and other operations requiring the application of minimum force to effect the protection of personnel or property, or other like activities; and *Peacekeeping*. Non-warlike service is not Qualifying Service under the VEA.

The determination of the NOS of an operational deployment is based on consideration of the mission, tasks, Rules of Engagement (ROE) and risks to ADF personnel as identified in the conduct of a Military Threat Assessment (MTA) for the operation. MTAs are generally made by the Defence Intelligence Organisation (DIO) or the operational planning staff and consist of two main components: the operational (or military) threat assessment and the environmental threat assessment. The operational threat is the threat which is expected from hostile forces or belligerent elements and it is this component of the MTA that is the key factor in determining the NOS.

The intent and application of repatriation legislation require that the service or duty performed must be sufficiently hazardous or at risk from activities of hostile forces or dissident elements. This is the basis of the notion of 'incurring danger', or what Defence now refers to as 'exposure to the risk of harm'. In the APPVA submission reference is made to the so-called 'Incurred Danger Test' seeking to apply it to Operation ASTUTE. The test is applied only to ADF service in World Wars I and II and it has no basis in legislation governing post-World War II service. However it remains a reliable and transparent reference point in considering what service should be eligible for Qualifying Service. Since 1993 Qualifying Service eligibility has been provided by a classification of Warlike. The underlying principle of Warlike service remains the level of danger to which our forces are exposed.

The mission of the ADF units and components assigned to Operation ASTUTE was to ensure the safety of Australian citizens and other foreign nationals, and to create a stable environment to enable a peaceful resolution of the civil unrest. The intent was to scale the ADF assistance according to the circumstances, to provide a restrained and measured approach to protect Australian and other foreign nationals and to provide a deterrent effect on the belligerents in support of the Government of East Timor.

It was not expected that deliberate and direct targeting of ADF personnel would occur. The most likely operational threat to ADF personnel indicated that casualties were likely to result from limited action by opposing forces, not necessarily directed at ADF personnel. While the ROE allowed for the use of up to and including lethal force in self defence, ADF personnel were only permitted to use the minimum and reasonable force necessary, but not lethal force, to ensure mission accomplishment.

By any measure, the ADF commitment to Operation ASTUTE was as a Peacekeeping force.

Based on the threats to ADF personnel, the approved ROE for the mission and the carriage of weapons by ADF personnel, the NOS Determination for Operation ASTUTE dated 25 May

2006 assessed the operation as Non-warlike. While it was expected that there would be risks and incidents of violence, this was not assessed as sufficiently hazardous for the operation to be classified as Warlike. The NOS Determination stated that deliberate and direct targeting of ADF personnel would necessitate an immediate NOS review, with the likelihood of a recommendation for service to be recognised as Warlike. In any event, ADF personnel were not directly and deliberately targeted by the opposing forces, and consequently Operation ASTUTE was not reclassified as Warlike. Subsequent events, MTAs and NOS Determinations for Operation ASTUTE have supported this assessment.

The anecdotal information regarding service on UNTAET (Operation TANAGER) and UNMISSET (Operation CITADEL) in the APPVA submission and other evidence available to me does not indicate that the ADF personnel on Operation ASTUTE during the period 12 May 2006 to 22 May 2008 were placed at a sufficient level of risk or incurred a sufficient level of danger for me to recommend to the Minister for Defence that their service be reclassified as Warlike. The missions, tasks, Rules of Engagement and threats to ADF personnel on Operation TANAGER and Operation CITADEL before 18 August 2003 were significantly different to that on Operation ASTUTE from 2006.

In summary, ADF service on Operation ASTUTE during the period 12 May 2006 to 22 May 2008 does not meet the essential criteria for classification as Warlike service and eligibility to the full range of repatriation benefits under the VEA. It is a Peacekeeping operation and is therefore appropriately classified as Non-warlike service.

Your submission also requested that the service of the Australian Federal Police (AFP) Contingent during the period be classified as Warlike. The service of the AFP officers in East Timor is currently determined to be Peacekeeping Service under Part IV of the VEA and is the responsibility of the Minister for Veterans' Affairs. The Warlike/Non-warlike framework applies only to ADF service and there is no provision for AFP service to be classified as Warlike or Non-warlike. In any event, my view is that as ADF service is correctly classified as Non-warlike service, it would be inappropriate for associated AFP service in East Timor to attract a higher classification.

I expect that you may be disappointed with this outcome, however I am sure all those who served on Operation ASTUTE during feel justifiably proud of their service in East Timor.

Yours sincerely



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