



## Australian Government

### Defence Honours and Awards Appeals Tribunal

#### **Murray and the Department of Defence [2023] DHAAT 7 (4 May 2023)**

File Number(s)	2021/014
Re	<b>Brigadier Allan Murray CSM (Retd)</b> Applicant
And	<b>The Department of Defence</b> Respondent
<b>Tribunal</b>	Mr Stephen Skehill (Presiding Member) Air Commodore Anthony Grady AM (Retd)
<b>Hearing Date</b>	12 December 2022
<b>Attendances</b>	Brigadier Allan Murray CSM (Retd) – Applicant  Mr Ian Heldon Director Honours and Awards Department of Defence – for the Respondent  Mr Kevin Lawson Director of Nature of Service Department of Defence – for the Respondent

#### **DECISION**

On 4 May 2023 the Tribunal decided:

- to affirm the decision dated 20 April 2021 by Mr Grant Robertson, Policy and Review Manager, Directorate of Honours and Awards of the Department of Defence, to refuse to recommend Brigadier Murray for the Australian Active Service Medal (AASM) with Clasp ‘MIDDLE EAST’ for his service with the United Nations Truce Supervision Organisation in Southern Lebanon from October 1992 to April 1993; and
- to not recommend that the eligibility criteria for the AASM with Clasp ‘MIDDLE EAST’ be amended to cover that service.

## **CATCHWORDS**

*DEFENCE AWARD – Australian Active Service Medal with Clasp ‘MIDDLE EAST’ – rendered assigned service – member of the Australian element for duty to the prescribed operation for a prescribed period – whether service was ‘warlike’ – United Nations Truce Supervision Organisation – Southern Lebanon*

## **LEGISLATION**

*Defence Act 1903 – Part VIIIC – Sections 110T, 110V(1), 110VB(2), 110VB(6)  
Defence Regulation 2016 Section 36*

### **Australian Active Service Medal with Clasp ‘MIDDLE EAST’**

*Australian Active Service Medal Regulations, Letters Patent, Commonwealth of Australia Gazette S335 dated 2 November 1988*

*Australian Active Service Medal Regulations, Governor General Declaration and Determination, Clasp ‘MIDDLE EAST’ Commonwealth of Australia Gazette S81, dated 19 May 2011*

*Australian Active Service Medal Regulations, Instrument of Delegation dated 23 September 2018*

### **Australian Service Medal with Clasp ‘MIDDLE EAST’**

*Australian Service Medal Regulations, Letters Patent, Commonwealth of Australia Gazette S336 dated 2 November 1988*

*Australian Service Medal Regulations, Governor General Declaration and Determination, Clasp ‘MIDDLE EAST’ Commonwealth of Australia Gazette S418, dated 4 November 2002*

*Australian Service Medal Regulations, Governor General Declaration and Determination, Clasp ‘MIDDLE EAST’ Commonwealth of Australia Gazette S80, dated 19 May 2011*

*Australian Service Medal Regulations, Instrument of Delegation, dated 23 September 2018*

## Introduction

1. The Applicant, Brigadier Allan Arthur Murray CSM (Retd), seeks review of a decision dated 20 April 2021 by Mr Grant Robertson, Policy and Review Manager, Directorate of Honours and Awards of the Department of Defence (the Directorate), to refuse to recommend him for the Australian Active Service Medal (AASM) with Clasp 'MIDDLE EAST' for his service with the United Nations Truce Supervision Organisation (UNTSO) in Southern Lebanon from October 1992 to April 1993. Brigadier Murray has been awarded the Australian Service Medal (ASM) with Clasp 'MIDDLE EAST' for this service.<sup>1</sup>

## Decision under review

2. On 24 February 2021, Brigadier Murray wrote to the Directorate seeking an 'upgrade' to the level of recognition afforded to his service in Lebanon from the ASM to the AASM.<sup>2</sup> In doing so, Brigadier Murray had regard to and cited departmental advice to applicants in preparing a submission for Defence to review decisions relating to honours and awards.<sup>3</sup>

3. On 20 April 2021, in response to Brigadier Murray's email, Mr Robertson stated that the award of the ASM with Clasp 'MIDDLE EAST' *'was regarded to be the appropriate level of recognition for service with UNTSO, Observer Group Lebanon, because it is non-warlike service'*.<sup>4</sup> On 17 July 2021, Brigadier Murray made application to the Tribunal seeking review of the above decision.<sup>5</sup>

## Tribunal jurisdiction

4. Pursuant to s110VB(2) of the *Defence Act 1903* (the Act) the Tribunal has jurisdiction to review a reviewable decision if an application is properly made to the Tribunal. The term *reviewable decision* is defined in s110V(1) and includes a decision made by a person within the Department of Defence to refuse to recommend a person for a defence award in response to an application. Regulation 36 of the *Defence Regulation 2016* lists the defence awards that may be the subject of a reviewable decision. Included in the defence awards listed in Regulation 36 is the AASM. Therefore, the Tribunal has jurisdiction to review decisions in relation to this award.

## Brigadier Murray's service

5. Brigadier Murray enlisted in the Army Reserve on 28 June 1978 before discharging on 16 January 1979 to enlist in the Australian Regular Army on 17 January 1979. He served in a full time capacity until he transferred to the Army Reserve on 22 January 2001, where he remained until his resignation on 26 January 2019.<sup>6</sup>

6. Brigadier Murray's records confirm that he was posted as a United Nations Military Observer (UNMO) with the UNTSO from 24 April 1992 until 25 April 1993.<sup>7</sup> Relevant to

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<sup>1</sup> Email from the Directorate to Brigadier Murray dated 20 April 2021.

<sup>2</sup> Email from Brigadier Murray to the Directorate dated 24 February 2021.

<sup>3</sup> *Guidance to applicants on preparing a submission for Defence to review honours and awards*, Directorate of Honours and Awards, March 2020, Version 5.0

<sup>4</sup> Email from the Directorate to Brigadier Murray dated 20 April 2021.

<sup>5</sup> Application for Review, Brigadier Murray, 17 July 2021.

<sup>6</sup> Department of Defence-ADO Service Record, Murray, Allan Arthur.

<sup>7</sup> Department of Defence-ARMEC Historical Record pre PMKeys, Murray, Allan Arthur.

this application, Brigadier Murray was an Australian Defence Force (ADF) member assigned to the Observers' Group Lebanon (OGL) in an 'Israeli Controlled Area' on the southern Lebanon border on the 'Armistice Demarcation Line', south of the Litani River, from 25 October 1992 until 23 April 1993.<sup>8 9</sup>

7. Brigadier Murray has received the following honours and awards for his service with the Australian Army:

- a. Conspicuous Service Medal;
- b. Australian Service Medal with Clasp 'MIDDLE EAST';
- c. Defence Long Service Medal with five Clasps;
- d. Australian Defence Medal; and
- e. United Nations Medal with Ribbon 'UNTSO'.

#### **The Australian Active Service Medal with Clasp 'MIDDLE EAST'**

8. The AASM was created by Letters Patent, signed by The Queen on 13 September 1988. As set out in the *Australian Active Service Medal Regulations 1988*, the Governor-General, on the recommendation of the Minister, may declare a warlike operation in which members of the Defence Force are, or have been on or after 14 February 1975, engaged, to be a prescribed operation for the purposes of those Regulations.<sup>10</sup>

9. The eligibility criteria for awarding the AASM with Clasp 'MIDDLE EAST', contained in the *Commonwealth of Australia Gazette S81 –Australian Active Service Medal Regulations, Determination and Declaration* dated 19 May 2011, state, relevantly:

[...]

(a) **declare**, under regulation 3 of the Regulations, warlike operations in which members of the Australian Defence Force were engaged, with the United Nations Truce Supervisory Organisation with the force known as:

*Operation PALADIN - Service as a member of the Australian Defence Force commencing on 12 July 2006 and ending on 14 August 2006, while in the area comprising Southern Lebanon bounded by 33° 12'N - 35° 12'E, 33° 10'N - 35° 20'E, 33° 19'N - 35° 25'E on the Litani River then along the Litani River to 33° 25'N - 35° 37'E, 33° 22'N - 35° 49'E on the Syria-Lebanon border then south to the junction of the Syria-Lebanon-Israel border then east along the Lebanon-Israel border to the coast then north along the coast to 33° 12'N - 35° 12'E;*

*to be a prescribed operation for the purposes of the Regulations;*

(b) **determine**, under regulation 4 of the Regulations, that the conditions for

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<sup>8</sup> Murray, Allan, *A Military Observer, Diary of a Middle East Peacekeeper*, The Family Murray Trust 2018-2021

<sup>9</sup> Ibid page 90.

<sup>10</sup> *Australian Active Service Medal Regulations, Letters Patent, Commonwealth of Australia Gazette, S335*, dated 2 November 1988.

*award of the Australian Active Service Medal with Clasp 'MIDDLE EAST' ("the Medal") for that prescribed operation are:*

- (i) the Medal may be awarded to a member of the Australian Defence Force who rendered assigned service as such a member of the Australian element for duty to the prescribed operation for a prescribed period;*
- (ii) the Medal may be awarded to a member of the Australian Defence Force who rendered assigned service as such a member for a prescribed period, as part of the contribution of a foreign Defence Force on an approved third country deployment to the prescribed operation while on secondment or exchange with the foreign Defence Force;*
- (iii) the Medal may be awarded to a person who rendered assigned service as part of the Australian element of the prescribed operation, and who completed a prescribed period and, in accordance with a determination made by the Minister under paragraph 4(4)(b) of the Regulations, is in a class of persons who may be awarded the Medal;*
- (iv) in this paragraph prescribed period for the prescribed operation at paragraph (a) means:*
  - (1) in relation to subparagraphs (b)(i), (b)(ii) and (b)(iii) a period of not less than one day; and*

*PROVIDED THAT where a member defined in subparagraphs (b)(i), (b)(ii) or (b)(iii) does not complete the prescribed period owing to his or her death, evacuation due to illness, injury or other disability due to service, the member will be deemed to have completed that prescribed period; and*

***determine,** for the purposes of this determination, that where an entitlement exists to the Medal for service on Operation PALADIN that commenced on 12 July 2006 and ended on 14 August 2006, a person is not eligible for an award of the Australian Service Medal (ASM) with Clasp 'MIDDLE EAST' where the entitlement to the ASM arises from the same rotation deployment as gave rise to the entitlement for the AASM with Clasp 'MIDDLE EAST'<sup>11</sup>*

### **The Australian Service Medal with Clasp 'MIDDLE EAST'**

10. The ASM was created by Letters Patent, signed by The Queen on 13 September 1988. As set out in the *Australian Service Medal Regulations 1988*, the Governor-General, on the recommendation of the Minister, may declare a non-warlike operation in which members of the Defence Force are, or have been on or after 14 February 1975, engaged, to be a prescribed operation for the purposes of those Regulations.

11. The eligibility criteria for awarding the ASM with Clasp 'MIDDLE EAST', set out in the *Australian Service Medal Regulations, Declaration and Determination, Commonwealth of Australia Gazette, S80*, dated 19 May 2011, state, relevantly:

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<sup>11</sup> Correspondence from Ms Petrina Cole to the Tribunal, dated 3 September 2021.

[...]

(b) **declare** under regulation 3 of the Regulations that the following non-warlike operations in which members of the Australian Defence Force were engaged in during the following periods to be a prescribed operation for the purpose of the Regulations:

(i) with the United Nations Truce Supervision Organisation during the period that commenced on 14 February 1975 to present; except for service as a member of the Australian Defence Force commencing on 12 July 2006 and ending on 14 August 2006, while in the area comprising Southern Lebanon bounded by 33° 12'N - 35° 12'E, 33° 10'N - 35° 20'E, 33° 19'N - 35° 25'E on the Litani River then along the Litani River to 33° 25'N - 35° 37'E, 33° 22'N - 35° 49'E on the Syria-Lebanon border then south to the junction of the Syria-Lebanon-Israel border then east along the Lebanon-Israel border to the coast then north along the coast to 33° 12'N - 35° 12'E;

(ii) with the United Nations Disengagement Observer Force during the period that commenced on 14 February 1975 to present;

(iii) with the Second United Nations Emergency Force during the period that commenced on 14 February 1975 to 31 July 1979;

(iv) with the United Nations Interim Force in Lebanon during the period that commenced on 1 March 1978 to present; or

(v) participation in naval operations in the North West Indian Ocean deployments in the area north of 10° North and west of 75° East, that is, the Arabian Sea including the Gulf of Aden, Gulf of Oman and Persian Gulf during the period that commenced 1 September 1980 and ended on 31 July 1986; and

(c) **determine**, under regulation 4 of the Regulations, that the conditions for award of the Australian Service Medal with Clasp 'MIDDLE EAST' ("the Medal") for that prescribed operation are:

(i) the Medal may be awarded to a member of the Australian Defence Force who rendered service as such a member while posted to or serving as a member of the Australian element for the prescribed operation for a prescribed period;

(ii) the Medal may be awarded to a member of the Australian Defence Force who rendered service as such a member for a prescribed period, as part of the contribution of a foreign Defence Force to the prescribed operation while on secondment or exchange with the foreign Defence Force;

(iii) the Medal may be awarded to a member of the Australian Defence Force who rendered service as such a member and who completed a prescribed number of sorties within the duration of the prescribed operation;

(iv) *the Medal may be awarded to a member of the Australian Defence Force who, before 18 March 2003, rendered service as such a member for a prescribed period, for official visits, inspections or other occurrences of a temporary nature with the military contribution in the prescribed operation;*

(v) *the Medal may be awarded to a person who rendered service as part of the Australian element of the prescribed operation for a prescribed period, and who, in accordance with a determination made by the Minister under paragraph 4(4)(b) of the Regulations, is in a class of persons who may be awarded the Medal; or*

(1) *in relation to subparagraph (c)(i), (c)(ii), (c)(iv) and (c)(v) a period of 30 days, or for periods amounting in the aggregate to 30 days; and*

(2) *in relation to subparagraph (c)(iii) a number of not less than 30 sorties conducted over a period of not less than an aggregate of 30 days at a rate of one sortie per day; and*

*PROVIDED THAT where a member defined in subparagraphs (c)(i), (c)(ii), (c)(iii) or (c)(v) does not complete the prescribed period or the prescribed number of sorties owing to his or her death, evacuation due to illness, injury or other disability due to service, the member will be deemed to have completed that prescribed period or the prescribed number of sorties; and*

(d) **determine**, for the purposes of this determination, that where an entitlement exists to the Australian Active Service Medal (AASM) with Clasp 'MIDDLE EAST' for service on Operation PALADIN that commenced on 12 July 2006 and ended on 14 August 2006, 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 'MIDDLE EAST'. [...] <sup>12</sup>

### **Brigadier Murray's application to the Tribunal**

12. Brigadier Murray's application to Defence and his application to the Tribunal effectively seeks a reclassification of part of his service in Southern Lebanon from 'non-warlike' to 'warlike' service, by way of a new Declaration and Determination under the AASM Regulations that would cover this service. While Brigadier Murray was a UNMO with the UNTSO from 24 April 1992 until 25 April 1993, it is only his service from 25 October 1992 until 23 April 1993 that he seeks to have classified as 'warlike'. The current AASM Declaration in relation to Southern Lebanon only covers service *commencing on 12 July 2006 and ending on 14 August 2006*, while the ASM declaration covers the full period of his service.

13. Medallion recognition of a past 'warlike' operation is usually established after a Nature of Service (NOS) classification of 'warlike' is assigned following consideration of that service by Defence's Nature of Service Directorate (NOSD). The NOSD is a specialist cell that reports to the Vice Chief of the Defence Force and is responsible for:

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<sup>12</sup> Correspondence to Tribunal from Ms Petrina Cole, Director Honours and Awards, dated 3 September 2021.

- providing advice to the Chief of the Defence Force and to the Minister for Defence on NOS classifications (peacetime, non-warlike and warlike) for all ADF operational deployments;
- monitoring all ADF operational deployments to ensure that the NOS classification remains appropriate;
- investigating claimed service in response to requests from the Department of Veterans' Affairs and providing advice to support the consideration of eligibility for repatriation benefits for current and former ADF personnel; and
- reviewing past service in response to representations seeking reclassification, but only as directed by Defence Ministers, CDF, VCDF or Chiefs of Service. Unlike an application for a medal to the Directorate or to the Tribunal, Defence will not undertake a NOS review on application by a veteran.

14. The NOSD research that supports a review of past service requires comprehensive examination of available records located in Defence and Government files and archives, the Australian War Memorial, the National Archives of Australia, Service history units, Hansard, published works, online, and news articles from the period. The NOSD also consult with relevant areas within Defence, such as the Service history units, and external agencies, such as the Department of Veterans' Affairs.

15. While the above describes the usual path followed for NOS reclassification, section 110VB of the Act does allow the Tribunal to make recommendations to the Minister that "arise out of, or relate to" a review by the Tribunal of a decision to refuse to recommend the award of a medal. Thus, if the Tribunal were to conclude that Brigadier Murray's service did not meet the current eligibility criteria for award of the AASM, it would nevertheless be open to it to recommend that the Minister should recommend to the Governor-General that the eligibility criteria for the AASM be amended to cover Brigadier Murray's service.

16. Brigadier Murray acknowledged at hearing that he is ineligible for the AASM under the current declaration, and confirmed that what he was seeking from the Tribunal was a recommendation that the declaration be amended to cover that part of his service that he argues should be classified as 'warlike'.

17. Brigadier Murray has argued that, while on posting to UNTSO, '*an Observer could have two different Natures of Service.*'<sup>13</sup>

18. Brigadier Murray first questioned the awarding of the ASM with Clasp 'MIDDLE EAST' in his submission to the Defence Honours and Awards Tribunal (the previous Tribunal) in relation to its *Inquiry into Recognition for Defence Force Personnel who served as Peacekeepers from 1947 onwards*. The report of that Inquiry was released on 1 November 2010. The inquiry report does not include any substantive discussion of Brigadier Murray's service or UNTSO service.<sup>14</sup>

19. Brigadier Murray stated that following the Inquiry, he was advised to await the outcome of the *Review of the Nature of Service Classification for ADF Service with the United*

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<sup>13</sup> Brigadier Murray's comments on the Defence Report dated 25 September 2021.

<sup>14</sup> Brigadier Murray's submission (No. 35) to DHAT *Inquiry into Recognition for Defence Force Personnel who served as Peacekeepers from 1947 onwards*.



*Nations Truce Supervision Organisation (UNTSO) 1956 to 2010, which was held between 2010 and 2016.*<sup>15</sup>

20. Brigadier Murray stated *'for a little over 10 years I waited, unable to obtain a copy of the report. In the period 2015-17, I published Military Observer, Diary of a Middle East Peacekeeper, in e-book and paperback formats.*<sup>16</sup> *Part of its thesis was to question the award of the ASM for my service in Southern Lebanon on the basis that the service was peace enforcement.*<sup>17</sup>

21. In his application to the Tribunal, Brigadier Murray described the process he has gone through to arrive at the Tribunal. *'On 24 February 2021, I formally submitted a request for review to Defence Honours and Awards. I presented a case based upon providing compelling new, reliable and authoritative evidence that was not available to the commanders or decision makers of the day.*<sup>18</sup> *A response was received in email format on 20 April 21. There is no mention of a Process or Merit Review having been conducted. The rejection of my request refers me to the now completed Nature of Service review, which has been accepted by the Government and, unknown to me, was first made public on 4 June 2018.*<sup>19</sup>

22. He further stated that *'having now read the Nature of Service review I have found it to be weighty in terms of the review of the Nature of Service for UNTSO over the extended period of Australia's participation yet weak on the specific period covered by my submission. There is little analysis of the actual conflict in southern Lebanon, little understanding of Israeli intent and operations, poor representation of the relationship between Observer Group Lebanon and the United Nations Interim Force in Lebanon and the integrated nature and purpose (peace enforcement) of their operations, and patchy description of the consequent engagement between the United Nations force and the conflict belligerents.'*

23. Brigadier Murray added *'after lengthy consideration, I have chosen to seek a review through the DHAAT.'*

## **Defence Report**

24. The Defence Report stated that *'In response to the appeal, Defence reviewed the original decision from 2021 and re-assessed Brigadier Murray's eligibility for the AASM 'MIDDLE EAST'. The re-assessment was endorsed by the Assistant Director, Veterans and Families, and supported the original decision that Brigadier Murray's UNTSO service was appropriately recognised with the ASM 'MIDDLE EAST'.*<sup>20</sup>

25. Defence stated that *'the period of Brigadier Murray's UNTSO posting falls within the qualifying period for the ASM with Clasp 'MIDDLE EAST' as outlined in paragraph (b)(i) of the Governor-General's Declaration and Determination for the ASM with Clasp 'MIDDLE*

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<sup>15</sup> Documents reporting the Defence review of Australian Defence Force service with UNTSO were published on the Defence Freedom of Information Disclosure Log 201718 and Statement of Reasons on 4 June 2018.

<sup>16</sup> Murray, *A Military Observer*.

<sup>17</sup> Brigadier Murray's application to the Directorate dated 24 February 2021.

<sup>18</sup> Ibid.

<sup>19</sup> Defence FOI Disclosure Log 201718.

<sup>20</sup> Correspondence from Ms Petrina Cole to the Tribunal dated 3 September 2021.

EAST’.<sup>21</sup> It is however, outside the period of the ‘exception clause’ of that paragraph which is the period of warlike service which attracts the AASM with Clasp ‘MIDDLE EAST’.<sup>22</sup>

26. Defence further stated that:

*‘In regard to the decision in 2010 to retrospectively reclassify the specified period from 12 July to 14 August 2006 in southern Lebanon from non-warlike to warlike service, a Defence Review confirms that this decision is not supported by the facts, in that the Defence advice was not consistent with legislation and policies which existed at the time. However, there is little to be gained by seeking to overturn this decision and so Defence will not be seeking this course of action with the Government. On 19 February 2017, Government accepted the findings of the Defence review of ADF service with UNTSO between 1956 and 2010.’<sup>23</sup>*

27. In relation to UNTSO service, Defence stated:

*‘UNTSO was established on 29 May 1948. The primary role of UNTSO is to observe and report acts of violence between Israel and its Arab neighbours. Observers are unarmed and operate with the consent of the parties involved. There is no element of enforcement in their function.*

*‘Australia first contributed to UNTSO in 1956. Since the early 1990s, the deployments have been named Operation PALADIN. Australia's commitment to UNTSO has varied over the period beginning in 1956 with the assignment of four military observers increasing to six per year in the mid-1960s, 10 in 1978 and 13 in 1982. Throughout the 1990s the numbers deployed has averaged around 11 ADF officers assigned to UNTSO per year. From 1974 until 2002 the deployment was recognised as an official accompanied posting.*

*‘The role of ADF members who were posted to UNTSO has varied over the years as a result of the changing UNTSO mission. Initially UNTSO was tasked to supervise the truce between Israel and Egypt, which came into effect on 1 June 1948, to an observation function in support of the Armistices that were established to help maintain peace between Israel and its Arab neighbours. ADF members, as part of UNTSO, were also deployed to support other UN peacekeeping forces established in the region, however, they remained in an unarmed observer role.*

*‘There have been occasions over the period of ADF commitment to UNTSO where Australian dependents have been removed from the Area of Operations (AO) and military observers relocated to safer locations for periods of time. There have been no dependents authorised to accompany ADF officers on service in UNTSO since 2002.’<sup>24</sup>*

*‘The dangers faced by military observers were recognised. The House Hansard on 10 June 1981 records the following on the matter of providing Repatriation and Defence Service Homes benefits to members of the UN Peacekeeping, Monitoring and Observer Forces:*

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<sup>21</sup> Australian Service Medal Regulations, with Clasp ‘MIDDLE EAST’ Commonwealth of Australia Gazette, S80 dated 19 May 2011.

<sup>22</sup> Correspondence from Ms Petrina Cole to the Tribunal, dated 3 September 2021.

<sup>23</sup> Email from Mr Grant Robertson to Brigadier Murray, dated 20 April 2021.

<sup>24</sup> Correspondence from Ms Petrina Cole to the Tribunal, dated 3 September 2021.

[...]

*Although it was recognised that they would be placed in a position where injury or death could occur in the course of their duties, they were not required to engage enemy forces in military operations and were not considered to be on 'special duty' in a 'special area' as defined in the Repatriation (Special Overseas Service) Act 1962.' [...]*<sup>25</sup>

#### *Clarke Review 2003*

*'In 2002, the Minister for Veterans' Affairs and Minister Assisting the Minister for Defence established an independent review of perceived anomalies in access to veterans' entitlements and levels of benefits available to disability pensioners (the Clarke Review). While the Clarke Review did not specifically consider whether UNTSO service should be reclassified as warlike service, it considered submissions that argued for the reclassification of peacekeeping service to be regarded as qualifying service (warlike service) under the VEA.*

*The Clarke Review found that, [...] "peacekeeping service can at times be hazardous and involve arduous conditions ... Peacekeepers encounter physical and emotional hardships. However, warlike service involves a mission to pursue a specific military objective in which the application of lethal force is authorised. Peacekeeping forces do not perform such service." [...]*<sup>26</sup>

#### *Defence Review 2016*

*The Defence Report states that the 'Nature of Service (NOS) classification for ADF service on UNTSO is:*

- a. peacekeeping from 1 June 1956 to 20 April 2003,*
- b. non-warlike from 21 April 2003 until today.*

*The only exception is a specified area of southern Lebanon during the period 12 July to 14 August 2006 which was retrospectively reclassified as warlike service in 2010.'*

28. Defence went on to state that the NOS Review found that there were no periods of time, including that over 12 July to 14 August 2006, which satisfied the legislation and policy provisions for warlike service. Nevertheless, the then Vice Chief of the Defence Force in January 2017 decided to maintain the status quo of this NOS classification as there was nothing to be gained in seeking to overturn this period of service. The review outcome was noted by the Minister for Defence in February 2017.

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<sup>25</sup> Ibid.

<sup>26</sup> Ibid.

29. Defence submitted that *'there is a popular misconception that merely being present in an area where combat activity is occurring translates to warlike service. The applicable definition for warlike service is that it involves a military combat activity to pursue a specific military objective in which the use of force is authorised.'*

30. Defence went on to state that *'Service which exposes personnel to a level of assessed risk which is above that expected in a peacetime environment is classified as non-warlike service ('peacekeeping' NOS at the time of Brigadier Murray's deployment). The extant peacekeeping and non-warlike service classifications recognise the inherent dangers involved in peacekeeping missions and appropriately recognises this service.'*

31. Defence noted that *'Only one hazard stated by Brigadier Murray in his submission involves hostile forces: land mines. They did indeed cause casualties; Captain Peter McCarthy, an Australian UNMO, was killed by a land mine on 12 January 1988 while driving in southern Lebanon on a routine patrol. His Canadian passenger sustained wounds from the incident.'*

32. Defence also stated that:

*'UNTSO service is acknowledged to be hazardous, but the mission is an unarmed observer role. Observers operate with the consent of the parties involved and are dependent on the cooperation of the parties for their effectiveness. There is no element of enforcement in their function.'*

*'The threat of land mines is acknowledged and was taken in to account in the Defence Review, other hazards listed by Brigadier Murray (driving conditions and other UNMOs having English as a second language, snow and cold weather) do not have relevance on the nature of service classification of UNTSO service.'*<sup>27</sup>

33. Concerning Brigadier Murray's contention that he worked with the United Nations Interim Force In Lebanon (UNIFIL) and that it 'failed as a Peacekeeping force', Defence submitted that *"UNIFIL's mission is an ongoing active Chapter VI peacekeeping mission, whether it can be claimed to be successful or not. While UNIFIL was providing security for UNTSO personnel, the two organisations have different missions. Brigadier Murray may have worked with UNIFIL, but his role was always as a UNMO as part of UNTSO."*<sup>28</sup>

34. Defence concluded that the review confirmed Brigadier Murray rendered 'peacekeeping' service on a declared non-warlike operation with UNTSO from 24 April 1992 to 25 April 1993, and that the award of the ASM with Clasp 'MIDDLE EAST' is regarded to be the appropriate level of recognition for service as part of the UNTSO, OGL, because it is non-warlike service.<sup>29</sup>

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<sup>27</sup> Ibid.

<sup>28</sup> Ibid.

<sup>29</sup> Ibid.

## Brigadier Murray's comments on the Defence report

35. On 7 September 2021, Brigadier Murray was provided with a copy of the Defence Report and asked to provide his comments on that report. His response, received on 25 September 2021, includes the following comments:

*'In my application of 24 February 2021, I proposed consideration of the period 1985 to 2000, the dates of the 'South Lebanon Conflict' (or Security Zone Conflict), as it made more sense than a narrow focus upon my service dates. My application encompassed:*

*a. the period 30 April 1985 to 25 May 2000 inclusive,*

*b. in the prescribed area of south Lebanon.'*

*'The Defence submission, and ref C, ranged across the entirety of Australia's service with UNTSO – over 60 years – and the various Stations of UNTSO. The implication was that there was a uniformity of the Nature of Service for over 60 years. I am challenging this only in relation to south Lebanon in the period 1985 to 2000. As such, parts of the Defence argument are not relevant to my application e.g., para 23.*

*'My application of 24 February 2021 argued, and provided evidence, of the marked difference in the Nature of Service between Observer Group Lebanon and the other UNTSO Stations in the period 1985 to 2000. I proposed in my 'Submission to the Process Review' document that within a posting to UNTSO, an Observer could have two different Natures of Service.*

*'DHAAT has the opportunity to affirm the principle that within a very long mission, the Nature of Service can change between hazardous, non-warlike and warlike.*

### *'Unarmed Observer*

*'The Defence submission (paras 19 and 36), it's Attachment A, and ref C<sup>30</sup>, describe UNTSO Observers as ... "unarmed Observers". Whilst correct, this is used to imply an exclusion from eligibility for the AASM. I am challenging this implication.*

*'Three members of my UNTSO Contingent served briefly as unarmed Observers in Bosnia in mid 1992 (see Chapter 10 at ref F)<sup>31</sup>. They were awarded the AASM. Other examples that undermine the Defence implication are:*

*a. the award of the AASM to the Logistic Support Element operating from Muscat, Oman, for Operation DAMASK.*

*b. the award of the AASM to the crew of HMAS Jervis Bay for its participation in the Naval Component for Operation SOLACE.*

*'DHAAT has the opportunity to affirm the principle that 'being personally*

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<sup>30</sup> Brigadier Murray refers to the Freedom of Information Disclosure Log of the Nature of Service Review.

<sup>31</sup> Murray, Allan *A Military Observer, Diary of a Middle East Peacekeeper*.

*armed’ is not a part of the eligibility criteria for award of the AASM as an extension of its finding in the DHAAT Somalia Inquiry, 2010 that ...*

*... “Rules of Engagement are not generally, or by themselves, used to determine medallic recognition.”<sup>32</sup>*

*‘Part of an armed force*

*‘the Defence submission (para 38), and ref C, portray UNTSO as a separate force. In relation to Observer Group Lebanon in the period 1985 to 2000, Defence (in ref C) concedes only that ... “Observer Group Lebanon supported the United Nations Interim Force in Lebanon (UNIFIL)”. I am challenging this interpretation of the relationship between the unarmed Observers of Observer Group Lebanon and the armed UNIFIL in the period 1985 to 2000.*

*‘My application of 24 February 2021 argued, and provided evidence, of the integrated nature of UNIFIL and Observer Group Lebanon i.e. the Observers were under Operational Control of UNIFIL when in the prescribed area. It was akin to the level of integration between the unarmed Australian Observers deployed to Sarajevo, Bosnia, in mid-1992 and the armed supporting force known as the United Nations Protection Force (UNPROFOR). For members of Observer Group Lebanon, the link back to Headquarters UNTSO was primarily administrative.’<sup>33</sup>*

36. Further in his comments on the Defence Report, Brigadier Murray provided a history of the UNIFIL and OGL in Southern Lebanon as seen from his own perspective.

37. Brigadier Murray went on to provide further claims and contentions as to why his service should be reclassified to warlike service, and thereby qualify for the AASM.

## **Hearing of 12 December 2022**

38. At the hearing of 12 December 2022 there was considerable discussion between Brigadier Murray, Defence representatives and the Tribunal about the claim made by Brigadier Murray for reclassification of part of his service in Southern Lebanon. That discussion extended beyond the matters detailed above to include the definition of ‘warlike’ service approved by the Cabinet in 1993, which is as follows:

*‘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 can encompass but are not limited to:*

*(a) A state of declared war;*

*(b) Conventional combat operations against an armed adversary; and*

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<sup>32</sup> Brigadier Murray’s comments on Defence Report dated 25 September 2021.

<sup>33</sup> Ibid.

(c) *Peace Enforcement operations which are military operations in support of diplomatic efforts to restore peace between belligerents who may not be consenting to intervention and may be engaged in combat activities. Normally but not necessarily always they will be conducted under Chapter VII of the UN Charter, where the application of all necessary force is authorised to restore peace and security or other like tasks.*<sup>34</sup>

39. That definition contrasts with the following definition of ‘non-warlike’ service approved at the same time:

*‘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. These operations encompass but are not limited to:*

(a) *‘Hazardous.’ Activities exposing 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.*

(b) *‘Peacekeeping’. Peacekeeping is an operation involving military personnel, without powers of enforcement, to help restore and maintain peace in an area of conflict with the consent but are not limited to:*

(1) *Activities short of Peace Enforcement where the authorisation of the application of force is normally limited to minimum force necessary for self defence;*

(2) *Activities, such as the enforcement of sanctions in a relatively benign environment with expose individuals or units to ‘hazards’ as described in sub-paragraph 2(a) ’*

(3) *Military observer activities with the tasks of monitoring ceasefires, re-directing and alleviating ceasefire tensions, providing ‘good offices’ for negotiations and impartial verification of assistance or ceasefire agreements, and other like activities; or*

(4) *Activities that would normally involve the provision of humanitarian relief.*<sup>35</sup>

40. As foreshadowed at the hearing, the Tribunal subsequently wrote to Defence seeking a supplementary submission on various issues. On receipt, those submissions were provided to Brigadier Murray and he provided comments on them.

41. Also as foreshadowed at the hearing, on 15 December 2022 Brigadier Murray provided additional information requested by the Tribunal. Furthermore, on 23 January 2023, Brigadier Murray provided a submission on the questions that the Tribunal requested Defence consider in its supplementary submission.

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<sup>34</sup> Cabinet Minute No. 169, dated 17 May 1993.

<sup>35</sup> Ibid.

## Further Defence Submission

42. Defence stated in its further submission that:

*‘Defence notes that the questions as posed by the Tribunal infer a relationship between nature of service classifications and the award of medals that is inconsistent with our position. The Defence position is that decisions relating to medallic recognition (the subject of this review) are separate from nature of service classifications and veterans’ entitlements.*

*‘Defence maintains that the definitions of “warlike”, “non-warlike” and “peacetime” service used for nature of service and veterans’ entitlements purposes do not apply to the terms in the regulations relating to Defence Honours and Awards. A decision on the classification of nature of service of an Australian Defence Force (ADF) operation does not necessarily mean the award of a medal would flow as a natural consequence or vice versa.’<sup>36</sup>*

43. Defence offered no legislative authority or Cabinet or ministerial decision in support of this bald proposition. Nor did it posit any alternative definitions of the terms ‘warlike’ and ‘non-warlike’ that are key to the application of the Regulations governing the AASM and the ASM respectively. In the absence of such, the Tribunal is not prepared to accept that proposition, especially as the relevant 1993 Cabinet decision specifically provided that common definitions of ‘warlike’ and ‘non-warlike’ were to be used for determining each of conditions of service, veterans’ entitlements and medallic recognition.

44. In response to Tribunal questions on the NOS classification of other periods or instances of potentially comparable service, Defence stated that:

*‘The Defence position and practice is that:*

- operations are not compared against each other to determine the nature of service;*
- nature of service assessments are not influenced by precedent; and*
- operations are assessed on their own merits.’<sup>37</sup>*

45. It is however unnecessary for the Tribunal to consider the validity or merit of that proposition in the present circumstances because Defence nevertheless provided the comparative information that the Tribunal sought.

## Brigadier Murray’s comments on the supplementary Defence submission

46. Brigadier Murray provided very detailed comments on the supplementary submission made by Defence. The thrust of his comments can however be gleaned from his stated conclusion:

*‘South Lebanon was a dangerous place for unarmed observers in the period 1985-2000. They were participants in the South Lebanon Conflict, serving under operational control of UNIFIL attempting to enforce peace. Numerous United*

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<sup>36</sup> Correspondence from Mr Ian Heldon to the Tribunal, dated 24 February 2023

<sup>37</sup> Ibid.



*Nations members lost their lives or were wounded during this time. The Lebanese Government may have been supportive of the presence of UNTSO in their country, but the Hezbollah and Amal – major parties in the South Lebanon Conflict – were not. And even the Israel Defence Forces could be a threat at the local level. A Determination for the award of the ‘Middle East’ Clasp to the AASM exists. A recommendation to amend this to encompass the period 1985-2000 would provide appropriate recognition for the less than 200 Australians who served in the South Lebanon Conflict.*<sup>38</sup>

### **Tribunal analysis**

47. There is no dispute that Brigadier Murray does not qualify for the AASM as things stand. The only question was whether or not the Tribunal should recommend that the currently applicable declaration in respect of the AASM with Clasp ‘MIDDLE EAST’ should be amended to extend eligibility to him.

48. Brigadier Murray has made extensive and very detailed submissions to the Tribunal during the course of this review. However, a deal of the material he has submitted, while interesting, has been general in nature and not targeted to the key question before the Tribunal – was his service in Southern Lebanon as an unarmed United Nations Military Observer during the period from 25 October 1992 to 23 April 1993 ‘warlike’ service?

49. In contrast, the Defence submissions, while much shorter and less detailed, have been far more targeted towards that question.

50. The Tribunal considers that the 1993 Cabinet-approved definition of ‘warlike’ service is the proper benchmark by which it must decide whether or not to recommend that the AASM declaration should be amended to cover relevant service by Brigadier Murray.

51. There is no doubt that Brigadier Murray’s service in Southern Lebanon was hazardous. Nor is there any doubt that during some periods of that service it was more hazardous than during other periods - for example, when roads were blocked by armed troops to prevent his entry into areas that were then or soon to be under active fire, or when he was warned against proceeding into areas for the same reasons. But those acts of road-blocking and warning appear on the evidence before us to be fully consistent with combatants recognising the status of UN Observers and acting to keep them safe rather than subjecting them to unnecessary risks.

52. While Brigadier Murray was an observer of a state of declared war, he was never a participant in that war. He was not armed or authorised to undertake conventional combat operations against an armed adversary. While he claims that in the period in question his role progressed beyond peacekeeping to the lower end of peace enforcement, the documentary evidence he has tendered in asserted support of that claim falls short of satisfying the Tribunal that this claim has been substantiated.

53. The Tribunal is not satisfied that the requirement of the ‘warlike’ definition, that there be authorisation for the application of force to pursue military objectives, has been met in Brigadier Murray’s case, even if it could ever be met in the case of an unarmed peacekeeping observer. The fact that the OGL of which he was a part was under the

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<sup>38</sup> Correspondence from Brigadier Murray to the Tribunal, dated 9 March 2023.

operational control of the UNIFIL did not, in the Tribunal's view, cloak Brigadier Murray with such authorisation.

54. Nor is there material before the Tribunal which illustrates that there was an expectation of casualties as required by the 'warlike' definition, as opposed to a recognition that casualties were possible although not expected as specified in the 'non-warlike' definition. The comparative statistics the Tribunal has seen for casualties suffered on various other peacekeeping missions, seem to reinforce that the lack of documented evidence of an expectation of casualties was not unreasonable.

55. The Tribunal is grateful to Defence for the information provided and the explanation as to how and why specified other service was recognised as 'warlike' or 'non-warlike', and has carefully considered Brigadier Murray's comments in that regard. The Tribunal is not convinced that any of the other instances of service for which the AASM has been awarded were directly comparable to the service for which Brigadier Murray has sought recognition, with the possible exception of service in Southern Lebanon commencing on 12 July 2006 and ending on 14 August 2006. Defence has submitted that the declaration rendering that service 'warlike' was made in error. Brigadier Murray has not convinced us that that is not so. While the Tribunal does not condone leaving erroneous awards on foot (as Defence appears to have done), it is also of the view that "two wrongs don't make a right" and that the grant of the AASM in those circumstances does not lend any support to Brigadier Murray's case.

### **Tribunal Decision**

56. In light of the above, the Tribunal has decided:

- to affirm the decision dated 20 April 2021 by Mr Grant Robertson, Policy & Review Manager, Directorate of Honours and Awards of the Department of Defence, to refuse to recommend Brigadier Murray for the Australian Active Service Medal with Clasp 'MIDDLE EAST' for his service with the United Nations Truce Supervision Organisation in Southern Lebanon from October 1992 to April 1993; and
- to not recommend that the eligibility criteria for the Australian Active Service Medal with Clasp 'MIDDLE EAST' be amended to cover that service.