Sykes and the Department of Defence [2025] DHAAT 10 (1 August 2025)

File Number	2024/010
Re	**Squadron Leader Paul Vincent Sykes (Retd)**
	Applicant
And	**The Department of Defence**
	Respondent

Lardner and the Department of Defence [2025] DHAAT 11 (1 August 2025)

File Number	2024/012
Re	**Squadron Leader John Edward Lardner (Retd)**
	Applicant
And	**The Department of Defence**
	Respondent

Tribunal	Mr Stephen Skehill (Presiding Member) Air Commodore Anthony Grady AM (Retd) Mr Jonathan Hyde
Hearing Date	29 May 2025
Appearances	**Squadron Leader Paul Sykes (Retd)** – Applicant
	Squadron Leader John Lardner (Retd) – Applicant
For Defence:	**Mrs Catherine Morris**
	Assistant Director, Defence Honours and Awards Policy
	Ms Jo Callaghan
	Assistant Director, Service Awards and Medal Management

Commander Frazer Stephenson RAN

Deputy Director, Navy Honours and Awards

Ms Roz Turner

Executive Officer, Historical Research and Reviews, Air Force History and Heritage

Squadron Leader Geoffrey Thomas

Senior Researcher, Air Force History and Heritage

Squadron Leader Leonard Partridge

Research Officer, Air Force History and Heritage

Mr Kevin Lawson

Director, Nature of Service

DECISION

On 1 August 2025 the Tribunal decided:

(a) to affirm the various decisions of Defence to the effect that Squadron Leader Sykes and Squadron Leader Lardner are not eligible to be awarded the Vietnam Logistic and Support Medal under the currently applicable eligibility criteria; but

(b) to recommend to the Minister, for the reasons detailed below, that action should be taken, either by declaration of a new area of operations of Vietnam under Regulation 3 of the *Vietnam Logistic and Support Regulations* or by amendment of the Regulations themselves, so that Squadron Leaders Lardner and Sykes (and other aircrew who flew Operation TRIMDON flights from Lae) can be awarded the Vietnam Logistic and Support Medal.

CATCHWORDS

DEFENCE AWARD – Vietnam Logistic and Support Medal – Operation TRIMDON – No. 11 Squadron RAAF – Lae Detachment – whether operating in support of Australian Armed Forces - incorrect application of historic legislation – recommended amendment to eligibility criteria – amendment of area of operations

LEGISLATION

Defence Act 1903 – Part VIIIC – Sections 110T, 110V(1), 110VB(2), 110VB(3), 110VB(6).

Commonwealth of Australia Gazette S79 of 10 March 1993, Vietnam Logistic and Support Medal, Letters Patent and Regulations dated 24 February 1993

Commonwealth of Australia Gazette S251 of 13 August 1993, Vietnam Logistic and Support Medal, Governor-General Declaration and Determination dated 2 August 1993.

Commonwealth of Australia Gazette G00261 of 18 January 2013, Vietnam Logistic and Support Medal, Amendment Regulations 2013 dated 18 January 2013.

Introduction

1. Squadron Leader Paul Vincent Sykes (Retd) and Squadron Leader John Edward Lardner (Retd) seek award of the Vietnam Logistic and Support Medal (VLSM) in recognition of their service on long range maritime surveillance flights they undertook from Lae, Papua New Guinea in 1965 as part of Operation TRIMDON.

2. Operation TRIMDON was conducted from May to June 1965 and involved the deployment of the 1st Battalion of the Royal Australian Regiment to Vietnam in the troop transport HMAS *Sydney*, accompanied by HMA Ships *Duchess* and *Parramatta*. To ensure its safe passage, RAAF Neptune aircraft escorted the convoy by conducting long-range maritime surveillance from Vitiaz Strait[1] to Cap St Jacques.[2] This involved flights from Lae in Papua New Guinea and from Sangley Point in the Philippines. A total of five flights were undertaken by three crews operating out of Lae, and a total of fifteen flights were undertaken by seven crews operating out of Sangley Point. Depending upon the equipment fitted to the different variants of Neptune aircraft, these flights would typically operate between 50 and 200 nautical miles (nm) ahead of the convoy,[3] searching for both surface and sub-surface vessels.[4] Altogether, approximately 111 RAAF aircrew were involved in Operation TRIMDON.[5] Further details, including the conferral or refusal of the VLSM for these aircrew, are discussed in the analysis set out later in these reasons.

Tribunal jurisdiction

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

[1] East of Lae, Papua New Guinea.
[2] In the vicinity of Vung Tau, South Vietnam.
[3] Submission, Squadron Leader Paul Sykes (Retd), 4 April 2025.
[4] At the time, No 10 Squadron operated the significantly more advanced SP-2H Neptune, capable of conducting electronic searches out to 200nm, whilst 11 Squadron operated the P-2E. The Lae detachment comprised both 10 and 11 Squadron aircraft and crews.
[5] Minute, Review of Operation TRIMDON by Nature of Service Review Board, Attachment 1, 25 July 2011.

4. As required by s110VB(6) of the Act, in reviewing a reviewable decision, the Tribunal is bound by the eligibility criteria that governed the making of the reviewable decision. Section 110VB(3) of the Act allows the Tribunal to make any recommendation to the Minister that the Tribunal considers appropriate that arises out of, or relates to, the Tribunal's review of a reviewable decision.

The Vietnam Logistic and Support Medal

5. The VLSM was created by Royal Warrant on 24 February 1993, nearly 21 years after the end of Australia's involvement in the Vietnam War, for the stated purpose of *according recognition to certain members of the Australian Armed Forces and certain other persons who rendered service in support of the Australian Armed Forces in operations in Vietnam*.

6. In a press release of 23 August 1992 the then Minister for Defence Science and Personnel, the Hon Gordon Bilney MP, said:[6]

"The new awards will provide long-overdue official recognition to those Australian men and women who played a vital role in supporting the Vietnam campaign in difficult or potentially dangerous situations, but who did not qualify for the Vietnam Medal," Mr Bilney said. "In particular, service in units previously not recognised by the existing Vietnam Medal, such as Navy support ships, will be recognised by the new award. It is estimated that some 20,000 Australians will receive recognition in this way."

7. The *Vietnam Logistic and Support Medal Regulations* (the VLSM Regulations) were established under the Letters Patent and published in *Commonwealth of Australia Gazette S79*, dated 10 March 1993.[7] Regulation 4 provided that:

> ***Conditions for the award of the Medal***
>
> *4. (1) The Medal may be awarded for service of one day or more in the area of operations of Vietnam during the relevant period*
>
> > *(a) as a member of the crew of a ship or aircraft operating in support of the Australian Armed Forces; or*
> >
> > *(b) while attached to a unit or organisation operating in support of the Australian Armed Forces; or*
> >
> > *(c) while attached to, or serving with, a unit of the Australian Armed Forces or allied forces as an observer.*
>
> *(2) The Medal may be awarded to persons who at the time of their service:*

[6] Media Release, *Queen Approves New Vietnam Support Medal*, the Hon Gordon Bilney MP, 23 August 1992.

[7] *Commonwealth of Australia Gazette S79* of 10 March 1993, *Vietnam Logistic and Support Medal, Letters Patent and Regulations* dated 24 February 1993.

(a) were members of the Australian Armed Forces; or

(b) were integrated with the Australian Armed Forces.

(3) A person who has been awarded the Vietnam Medal, or who is eligible for the award of the Vietnam Medal, is not eligible for the award of the Vietnam Logistic and Support Medal.

(4) The Medal may be awarded posthumously.

8. Regulation 3 allowed for the declaration of the 'area of operations' referred to in Regulation 4, in the following terms:

Declaration of area of operations of Vietnam

3. The Governor-General, on the recommendation of the Minister, may declare:

(a) an area of land and waters forming part of the territory of Vietnam; and
(b) an area of waters off the coast of Vietnam; and
(c) the airspace above the areas referred to in paragraphs (a) and (b);to be the area of operations of Vietnam.

9. The current area of operations for eligibility to the VLSM is detailed in a Declaration under Regulation 3 dated 11 August 1993,[8] which states:

(b) under regulation 3 of those regulations declare the area for operations for eligibility for Vietnam Logistic and Support Medal are:

(i) all land and inland waters of the territory of Vietnam south of the parallel 21 degrees 30 minutes north latitude;

(ii) all that area of land and waters (other than land and waters forming part of the territory of Cambodia or China) bounded by a line commencing at the intersection of the boundary between Cambodia and Vietnam with the shore of- Vietnam at high-water mark; thence proceeding in a straight line to a point 185.2 kilometres west (true) of that intersection; thence proceeding along an imaginary line parallel to, and at a distance of 185.2 kilometres from the shore of Vietnam at high-water mark to its intersection with the parallel 21 degrees 30 minutes north latitude; and

(iii) the airspace above the area preferred to in paragraphs (b)(i) and b(ii). […]

10. Although not applicable to the present applications, as will later appear it is pertinent to note that further eligibility criteria for awarding the VLSM were added by the *Vietnam Logistic and Support Medal Amendment Regulations 2013*, dated 18 January 2013 published in the Commonwealth of Australia Gazette G00261[9]. The amendments added the following new Regulation:

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[8] *Commonwealth of Australia Gazette S251 of 13 August 1993, Vietnam Logistic and Support Medal, Governor-General Declaration and Determination* dated 2 August 1993.
[9] *Commonwealth of Australia Gazette G00261 of 18 January 2013, Vietnam Logistic and Support Medal, Amendment Regulations 2013,* dated 18 January 2013.

4A Conditions for the award of the Medal—service in Thailand

(1) The Medal may be awarded for service of one day or more:

(a) *as a member of the Royal Australian Air Force; and*

(b) while posted, or attached, for service in the area of Ubon Air Base in Thailand; and

(c) during the period beginning on 25 June 1965 and ending on 31 August 1968.

A person who has been awarded the Vietnam Medal, or who is eligible for the award of the Vietnam Medal, is not eligible for the award of the Vietnam Logistic and Support Medal.
[…]

11. That amendment followed recommendations of the Tribunal in its 18 February 2011 report of the Government-directed *Inquiry into Unresolved Issues for Royal Australian Air Force Personnel who served at Ubon between 1965 and 1968.* The Tribunal, in the report of that inquiry, concluded that RAAF personnel at Ubon, Thailand, made a significant contribution to the air campaign directed against North Vietnam by providing protection of an important base on behalf of the United States Air Force and that their service equated to the type of service for which the VLSM had been created.

Squadron Leader Sykes' service

12. As per the Defence report, Squadron Leader Sykes' service history reveals that he had two periods of RAAF service, 7 September 1961 to 30 November 1969 and 2 August 1976 to 20 February 1996. At the time of Operation TRIMDON in 1965, Squadron Leader Sykes was posted to No. 11 Squadron at RAAF Richmond. During that time, he was flying the Lockheed P-2E Neptune maritime patrol aircraft.

13. Squadron Leader Sykes has been issued with following awards for his service with the RAAF:

a. Australian Service Medal with Clasp 'SE ASIA';

b. Defence Force Service Medal with First and Second Clasps; and

c. Australian Defence Medal.[10]

Squadron Leader Lardner's service

14. As per the Defence report, Squadron Leader Lardner's service history reveals that he enlisted on 21 February 1955 for a period of 15 years in the permanent Air Force. At the time of Operation TRIMDON in 1965, Squadron Leader Lardner was posted to No. 11 Squadron at RAAF Richmond. On 29 May 1965, Squadron Leader Lardner was a crew member on the Lockheed P-2E Neptune (A89-310) flown by Flight Lieutenant W Cape.[11]

[10] Defence Report, Squadron Leader Sykes, 16 July 2024.
[11] Defence Report, Squadron Leader Lardner, 16 July 2024.

15. Squadron Leader Lardner has been issued with following awards for his service with the RAAF:

a. Australian Service Medal 1945-1975 with Clasp 'SE ASIA';

b. Defence Force Service Medal with First and Second Clasps;

c. National Medal with First Clasp; and

d. Australian Defence Medal.[12]

Background

16. Squadron Leaders Sykes and Lardner have each been pursuing conferral of the VLSM for many years – certainly since 2003 in the case of Squadron Leader Lardner, and from at least 2012 in the case of Squadron Leader Sykes, and each has made multiple approaches to Defence. Additionally, representations have been made on their individual behalf, or on behalf of relevant aircrew generally, by Members of Parliament and by the Air Force Association. As a result, a considerable volume of relevant correspondence and documentation has been generated over the years.

17. The documentation provided to the Tribunal by Squadron Leaders Sykes and Lardner and by Defence was compiled into a consolidated hearing pack that comprised some 984 pages. Even so, it was apparent from references in some of those documents that there are, or have been, other documents created over time but not provided to the Tribunal (although the Tribunal did not consider it necessary to seek access to those additional documents in order for it to properly undertake its review functions).

18. The available documentation records interactions between the applicants and Defence on multiple issues and not all of those were relevant to the applications made to the Tribunal – for example, issues related to veterans' entitlements and eligibility for the Australian Active Service Medal.

19. This statement of reasons:

- references only those documents that the Tribunal considered to be of greatest relevance to the matters now under consideration;

- details the Tribunal's consideration on only those issues that the Tribunal found to be of relevance to the issue of conferral or refusal of the VLSM; and

- in that regard, seeks to deal only with those arguments put forward in the documentation that the Tribunal regarded as directly pertinent to determining the issue of conferral or refusal of the VLSM.

[12] Ibid.

Squadron Leader Sykes' applications to and correspondence with Defence

20. Squadron Leader Sykes lodged an application for the VLSM with Defence on 11 May 2012. This application related to a flight which was contended to have entered Vietnamese airspace on 26 May 1966 as part of Exercise SEA IMP.

21. On 4 April 2013, Defence refused to recommend him for the VLSM on the grounds that that flight was not in support of Australian Armed Forces operations in Vietnam.[13]

22. On 24 July 2016 Squadron Leader Sykes lodged another application with Defence which, among other things, *sought medal recognition for all Trimdon aircrew who flew operational sorties from both Lae and Sangley Point*.

23. On 23 October 2016 the Vice Chief of the Defence Force replied to Squadron Leader Sykes, stating that the flights from Lae had not entered the declared area of operations and rejecting a proposal from Squadron Leader Sykes that an expanded area of operations should be declared to cover those flights.[14] The reasons advanced in this letter are discussed in detail later in these reasons.

24. On 22 March 2017 Squadron Leader Sykes wrote to the Parliamentary Secretary to the Minister for Defence and to the Minister for Defence[15] seeking an independent inquiry into the matters covered in the letter from the Vice Chief of the Defence Force with a view to achieving VLSM recognition for all aircrew who flew on Operation TRIMDON flights from Lae. The Tribunal is not aware of any response to that correspondence.

25. On 26 August 2021 the Directorate of Honours and Awards wrote to Squadron Leader Sykes[16] in response to more recent correspondence from him. This letter referred to previous consideration by Defence and stated, so far as the VLSM was concerned, that "*I do not see any further evidence suggesting that the Royal Australian Air Force personnel who flew Operation TRIMDON sorties from Lae in Papua New Guinea in the period 28 May 1965 to 4 June 1965, could have entered the area of operations of Vietnam during the conduct of those sorties*", thereby effectively refusing to recommend the issue of the VLSM.

[13] Letter, Defence to Squadron Leader Sykes, AF13447087, 4 April 2013.
[14] Letter, Vice Chief of the Defence Force to Squadron Leader Sykes, VCDF/OUT/2016/345, 23 October 2016.
[15] Letter, Squadron Leader Sykes to Ministers for Defence, 22 March 2017.
[16] Letter, Defence to Squadron Leader Sykes, BN33178229, 26 August 2021.

Squadron Leader Lardner's applications to and correspondence with Defence

26. Squadron Leader Lardner applied to Defence on 23 July 2003 for 'entitlements' that he may have had arising from his service on Operation TRIMDON.[17]

27. On 11 March 2005 Defence responded to that correspondence.[18] So far as the VLSM was concerned, Defence advised that he was not eligible because HMAS *Sydney* had only entered the area of operations of Vietnam on 8 June 1965 and his Operation TRIMDON service had concluded before that date.

28. Following further correspondence from Squadron Leader Lardner, Defence wrote again on 20 July 2005 and reiterated its previous advice that his Operation TRIMDON flights did not meet the eligibility criteria for the VLSM.[19]

Group Captain Schiller's correspondence with Defence

29. On 17 July 2022, Group Captain Carl Schiller OAM CSM (Retd), National President of the Air Force Association, wrote to the Minister for Defence, providing a brief headed "REVIEW OF NATURE OF SERVICE – OPERATION TRIMDON".[20] This stated that:

> *The purpose of the brief is to seek the Minister's approval for an investigation into the nature service for RAAF crew who flew operations out of Lae, New Guinea taking part in Trimdon with a view to categorising the mission as warlike.*
>
> *…*
>
> *The Association does not dispute the Lae-based aircrew do not meet the existing criteria* [for the award of the Australian Active Service Medal or the VLSM] *but believes that several past reviews have contained out of context statements and inaccurate assessments regarding the nature of operations that necessitate a variation to the existing criteria.*
>
> *…*
>
> *Lae-based Neptune aircrew did not enter the Vietnam Area of Operations nor did Australian military personnel who served in Ubon Thailand who were awarded VLSM for their direct support of the war in Vietnam and heightened state of readiness against retaliatory attacks from sympathetic Communist groups.*
>
> *This submission does in no way attempt to demean the award to Ubon personnel but to draw the comparison that Lae-based Neptune aircrew participating in Trimdon*

[17] Letter, Squadron Leader Lardner to Defence, 23 July 2003.
[18] Letter, Defence To Squadron Leader Lardner, MS – AF/O216989, 11 March 2005
[19] Letter, Defence to Squadron Leader Lardner, DHA/O216989, 20 July 2005.
[20] Letter, Group Captain Carl Schiller to the Minister for Defence, 17 July 2022.

also made what was considered an essential and direct military contribution in Australia's war in Vietnam by ensuring the safe passage of Australian troops to the war zone. Drafters of the Vietnam Logistic and Support Medal (VLSM) understandably did not envisage the need for a wider criterion for the Award to cover military action in direct support of the war beyond the designated Area of Operations, hence the reason for the amendment to the Award's criteria that enabled it to be awarded to Ubon-based personnel.

The Government's acceptance that the nature of the service of the aircrew involved in Trimdon was warlike would provide a cogent case to amend the VLSM's eligibility criteria.

30. That Group Captain Schiller sought to argue the case for VLSM recognition of the Lae flights through the lens of generic nature of service rather than by analysis of those flights as being in support of ADF operations in Vietnam (and that Squadron Leaders Sykes and Lardner similarly did the same), is entirely understandable given that Defence had consistently rejected claims for VLSM recognition of those flights on the basis that they were peacetime service and not warlike service. As will later appear, the Tribunal concluded that those arguments by Defence were both irrelevant and wrong.

31. The then Vice Chief of the Defence Force replied to Group Captain Schiller on the Minister's behalf on 22 August 2022.[21] This letter referred to previous consideration of recognition for Operation TRIMDON and concluded by saying that the documents provided by Group Captain Schiller did not warrant a further review.

Reviewable decisions

32. The Tribunal concluded that various documentation referred to in the preceding sections in relation to Squadron Leaders Sykes and Lardner set out a number of Defence decisions, each in response to an application seeking the conferral of the VLSM, and each refusing to recommend conferral of the VLSM. As such, each of the decisions set out in the following were a "reviewable decision" capable of being made the subject of an application to review by the Tribunal under sections 110V and 110VA of the Act by Squadron Leader Lardner or Squadron Leader Sykes (as appropriate):

- the letter of 11 March 2005 to Squadron Leader Lardner;
- the letter of 4 April 2013 to Squadron Leader Sykes; and
- the letter of 23 October 2016 to Squadron Leader Sykes.

[21] Letter, Defence to Group Captain Schiller, MC22-001839, 22 August 22.

33. The Tribunal also considered that the letters of 20 July 2005 to Squadron Leader Lardner and 26 October 2021 to Squadron Leader Sykes might also have arguably set out reviewable decisions – while they might be thought to simply refer to previous decisions rather than reflect new decisions, they also might be construed as a refusal to change those previous decisions and thus be new decisions in their own right. However, because there were clearly other reviewable decisions in respect of both Squadron Leaders Sykes and Lardner, the Tribunal found it unnecessary to come to a final view on this issue.

34. The Tribunal also gave consideration to whether the 22 August 2022 letter from the Vice Chief of the Defence Force to Group Captain Schiller also set out a 'reviewable decision'. To meet that description, a decision has to be 'made in response to an application' and be 'a refusal to recommend a person or group of persons for … a defence award'.

35. As noted above, Group Captain Schiller couched his submission to the Minister as a request for an independent investigation to review the nature of service of Lae-based aircrew on Operation TRIMDON who, he conceded, did not meet the current eligibility criteria for the VLSM. He did not describe his submission as an 'application' for the issue of the VLSM under the current eligibility criteria. Viewed in this way, a response refusing to agree to or to support a change in the eligibility criteria might be argued to not be a 'reviewable decision'.

36. At the same time, it is clear that the eventual outcome that Group Captain Schiller was seeking was the conferral of the VLSM on the group of persons who were aircrew on Operation TRIMDON flights from Lae – he clearly foresaw categorisation of those flights as 'warlike' and a change to the declared area of operations as a means to that end. He may well have been understandably induced to do so by the reasons previously given by Defence for opposing declaration of an expanded area of operations that would cover the Lae flights.

37. The Act does not define an 'application', nor does it prescribe the form in which an application must be made, which would suggest that any submission seeking in effect the grant of a defence honour or award can properly be regarded as an application in response to which a reviewable decision may be made. And, a decision that refuses to support a change to the eligibility criteria that would have the effect of allowing award of the VLSM may arguably be categorised as a refusal to recommend affected persons for a defence honour or award.

38. Group Captain Schiller has not lodged an application for Tribunal review of the decision conveyed by the 22 August 2022 letter from the Vice Chief of the Defence Force. Had he done so, it would have been incumbent of the Tribunal to reach a concluded view on these issues.

39. But, as will appear from the following sections:

- Squadron Leader Lardner lodged an application for Tribunal review which specified 22 August 2022 as the date of the decision he was appealing and which attached a copy of the letter of that date from the Vice Chief of the Defence Force to Group Captain Schiller; and

- Squadron Leader Sykes lodged an application for Tribunal review which did not specify any date of the decision he challenged but similarly attached that letter.

40. Accordingly, it was necessary for the Tribunal to conclude whether or not their applications were confined to challenging the decision set out in the letter of 22 August 2022 or were broader in scope.

41. If the former, a separate issue would arise because section 110VA of the Act provides that an application for review can only be lodged by 'the person, or one or more of the persons, who made the application to Defence that led to the reviewable decision'. Even if Group Captain Schiller's letter to the Minister was 'an application', and while it was clearly seeking the VLSM for all aircrew who operated the Lae flights, it was not stated to be made by those persons and it reads more as being made on their behalf. The question would thus be whether or not an application made on behalf of a person or group of persons could be said to be 'made' by that person or any one of those persons. Of relevance to that question might be the further questions of whether the application was made solely on Group Captain Schiller's own initiative (which appeared to be unlikely as he stated in his 'brief' for the Minister that the Association 'has been asked' to seek the review requested by him),[22] whether it was made with the knowledge and consent of anyone else, or whether it was made at the express consent of either or both of Squadron Leaders Sykes and Lardner. For reasons set out below, the Tribunal decided that it did not need to come to a final conclusion on this issue.

Squadron Leader Sykes' applications to the Tribunal

42. Squadron Leader Sykes has lodged two applications for review with the Tribunal.

43. The first was lodged on 17 April 2013 and sought review of the Defence decision of 4 April 2013. As noted above, that decision was confined to the question of whether the VLSM could be issued for his flight from Sangley Point as part of Exercise SEA IMP. Notwithstanding that that decision did not relate to Operation TRIMDON flights from Lae, the Tribunal did consider those flights and found that they did not qualify him for the VLSM because he did not enter the declared area of operations. The Tribunal decision on 16 April 2014 stated that it affirmed 'the decision' that he was not eligible for the award of the VLSM, without distinguishing between the SEA IMP and the TRIMDON flights.

[22] Letter, Group Captain Carl Schiller to the Minister for Defence, 17 July 2022.

44. As noted above there are various reviewable decisions relating to the Operation TRIMDON flights in respect of which Squadron Leader Sykes can lodge an application for review. The Chair of the Tribunal has the power under section 110VC of the Act to dismiss an application for review on the basis that the question of whether a person should be recommended for a defence award 'has already been adequately reviewed (whether by the Tribunal or otherwise)'. However, the Chair decided not to exercise that power when Squadron Leader Sykes lodged his second application for review on 24 May 2024 which in effect sought a decision contrary to that previously reached by the Tribunal in relation to the Lae flights. This was because:

- there were various inconsistencies between the facts set out in the Tribunal reasons for its decision of 16 April 2014, and the facts as they now appear; and

- the Tribunal on that earlier occasion apparently did not turn its mind to whether or not it should exercise its power under section 110VB(3) of the Act to make any recommendation on matters arising out of or relating to the review it then undertook.

45. Squadron Leader Sykes' current application to the Tribunal of 20 May 2024 specified that he was seeking the VLSM through this review process, but the form he submitted did not specify the date of the Defence decision he was challenging.[23] Attached to his application were more than 70 pages of materials. While these included the 22 August 2022 letter to Group Captain Schiller (on which Squadron Leader Sykes made detailed comments), they also included the 23 October 2016 letter, which the Tribunal found above to contain a reviewable decision.

46. In light of this, the Tribunal concluded that Squadron Leader Sykes' application of 20 May 2024 was validly made, and reached that conclusion without the need for it to come to a definitive view as to whether or not the letter of 22 August 2022 constituted a reviewable decision.

47. In his current application, Squadron Leader Sykes stated that:

> *In its response to Group Captain Schiller's submission, Defence classifies the flights out of Lae PNG as peacetime service. This is clearly not in line with the Tribunal's recent findings relating to The Rifle Company Butterworth. Following that decision it is now clear that the flights out Lae cannot be classified as peacetime service. To this end and on behalf of all those who flew from Lae, I request that the Tribunal review, in total, the submission by Group Captain Schiller along with the decision handed down by Defence and that the review be conducted with the following general information as background.*
>
> *The Australian military personnel who served in Ubon Thailand were awarded the VLSM for their direct support of the war in Vietnam, even though they did not enter the Vietnam area of operations. Defence deemed that all crews flying out of Sangley Point had entered the Vietnam Operations Area even though in the past they had proved that some crews had not entered the area. Defence now acknowledges that six crews flew into the operational area (how they arrived at this conclusion is*

[23] Application for Review, Squadron Leader Sykes, 20 May 2024.

unknown) when in fact there were seven crews located in Sangley Point. To overcome this problem Defence deemed that all crews had entered the area.

All RAAF aircrew that flew in support of Operation TRIMDON out of Sangley Point were subsequently awarded the AASM and the VLSM even though some did not enter the operational area. It appears that Defence, for some unknown reason, does not want to delve into the Lae Operation in any way whatsoever. This has been evident by their responses over the years to any new responses put to them. Even the response to Group Captain Schiller's submission is just a rehash of past responses and does not look any further into the problem. It appears more and more likely the reason for this is geopolitical. If that is the case then Defence should find a way to recognise the efforts of the crews who flew from Lae, just as it found a way to reward the personnel serving in Ubon and the crews flying out of Sangley Point. The fact is that there was absolutely no difference in the briefings to the crews flying out of Lae and those flying out of Sangley Point, the task was exactly the same ie to protect the convoy from attack.

Many aircrew that flew from Lae on Operation Trimdon were awarded the VLSM and the AASM. Others had their applications rejected. When questioned the standard response from Defence was that 'only those who were entitled to medals were awarded medals.' In some cases members of the same crew received medals, whilst others did not. The medals must have been lawfully issued otherwise they would have been recalled. The questions are, why did some members receive medals and some did not? When did the rules change, why did they change and who recommended the change?

It seems wrong that Defence briefed the crews 'that a wartime situation was to be assumed throughout the operation and to later downgrade that to peacetime service because there was no contact with the enemy. This decision to downgrade the Operation was made some time after Sukano was replaced as President of Indonesia and was made in retrospect. The situation that was briefed to the crews should be used to determine the classification of the Operation and not changed in retrospect many months/ years later. Just because no contacts were prosecuted does not mean that there were no contacts there.

In a response from Air Vice Marshall Binskin, VCDF dated 30 September 2011 to the question 'that consideration be made to find if the declaration of a new operational area for the voyage route for HMAS Sydney is warranted', he stated that "taken in isolation these documents could indeed indicate a potentially hostile environment during the voyage."

The three reasons the VCDF gave for not approving the request were, that the convoy took the northern safer route around the Philippines, that the aircraft were not armed and that there was no state of disturbance in the area. All three reasons have no basis in truth. The convoy actually took the southern more dangerous route around The Philippines (the reason for this is unknown), the aircraft that flew out of Lae were armed with live weapons and had authority to release them and there was a state of disturbance, Confrontation/Konfrontasia was still in force with Indonesia. It must be remembered that the threat to the convoy was not from Vietnam but from Indonesian submarines and surface vessels along with forces from supporting communist countries such as China, North Korea etc.

Finally, I would like to point out that on those flights a disappearing radar contact was reported. The contact was prosecuted but was not regained. Had it been regained weapons would have been launched, resulting in the loss of many lives. This is not peacetime service.[24]

[24] Application for Review, Squadron Leader Sykes, 20 May 2024.

Squadron Leader Lardner's application to the Tribunal

48. On 24 May 2024, Squadron Leader Lardner made application to the Tribunal. In the form he completed for that purpose, he stated that the date of the decision he sought to challenge was 22 August 2022 and did not list any of the other decisions which the Tribunal has found above to be reviewable on application by him.

49. However, in the submission supporting his application, he canvassed not only the reasons set out in the letter to Group Captain Schiller but also, at least inferentially, the reasons set out in other correspondence to him from Defence conveying what the Tribunal considered to be a reviewable decision.

50. In these circumstances, the Tribunal concluded that his application should be construed as relating to each of the reviewable decisions conveyed in the correspondence to him, and similarly reached that conclusion without the need for it to come to a definitive view as to whether or not the letter of 22 August 2022 constituted a reviewable decision. Of course, had it considered that his application was not validly made because it specified the 22 August 2022 decision, Squadron Leader Lardner would have been able to simply lodge a new form specifying a different reviewable decision.

51. In his application, Squadron Leader Lardner stated that:

> *As part of recent research for Operation Trimdon I found the definition of "Security Operation" in the Defence Honours and Awards report on the inquiry into recognition of service with Operation Gateway. In previous research for Trimdon I had come across the term "Security Operation" but at that time I had no idea of the meaning of a Security Operation and could not find a definition. I have gone back through my previous research material and found the attached document titled-*
>
> *"DEPLOYMENT OF AUSTRALIAN FORCES TO SOUTH VIETNAM" "REPORT BY THE DEFENCE COMMITTEE"*
>
> *Paragraph 15 states:*
>
> *1 "HMAS Sydney is scheduled to leave Australia about 27 May on a 12/13 passage to the area with appropriate sea and air protection." And*
>
> *2 "The movement of the forces will be a security operation."*
>
> *I believe on the basis of the above document, which clearly shows Trimdon was a "Security Operation" and was not "Peacetime Service", that Defence Honours and Awards Appeals Tribunal should consider an inquiry into the recognition of service with Operation Trimdon.*[25]

[25] Application for Review, Squadron Leader Lardner, 24 May 2024.

The decisions under review

52. The Tribunal therefore concluded that each of the applications for review lodged by Squadron Leaders Sykes and Lardner were validly made and that it was incumbent on it to review each of the decisions which it had categorised above as reviewable.

53. The Tribunal further concluded that, in reviewing those decisions, it should have regard to the content of the letter of 22 August 2022, whether or not it was itself a reviewable decision. This was because, however it might be categorised, it clearly set out reasons for Defence opposing the recognition of the Lae flights by award of the VLSM.

Conduct of the reviews

54. In accordance with its Procedural Rules, on 20 June 2024 the Tribunal wrote to the Secretary of the Department of Defence informing him of Squadron Leader Sykes' application for review, and on 21 June 2024 similarly advised the Secretary of the application by Squadron Leader Lardner. In each case, the Tribunal requested a report regarding the applicant's service against the eligibility criteria for the VLSM, and a report on the material questions of fact and reasons for the decision to refuse the original application. The Tribunal also requested that the Secretary provide copies of documentation relied upon in reaching the decision and any other relevant documents. [26]

55. On 16 July 2024, the Acting Director of Honours and Awards in the Department of Defence provided the requested reports on behalf of Defence.[27] The Defence submissions included several relevant documents, including a copy of 11 Squadron RAAF Personal Occurrence Report during Operation TRIMDON in 1965. The reports also included sections of Squadron Leader Sykes' service records and those of Squadron Leader Lardner, and extracts of HMAS *Sydney*'s Reports of Proceedings for the relevant period.[28]

56. The Defence submissions were provided by the Tribunal to Squadron Leader Sykes and Squadron Leader Lardner for comment on 18 July 2024.[29] Squadron Leader Sykes responded with his comments on 25 July 2024.[30] Squadron Leader Lardner responded with his comments on 1 August 2024.[31]

[26] Letter, Mr Stephen Skehill to Mr Greg Moriarty, dated 20 June 2024, and letter, Mr Stephen Skehill to Mr Greg Moriarty, dated 21 June 2024
[27] Letter, Defence to Mr Skehill, dated 16 July 2024
[28] Defence report.
[29] Letter, Tribunal to Squadron Leader Sykes,18 July 2024
[30] Email, Squadron Leader Sykes to the Tribunal, dated 25 July 2024.
[31] Email, Squadron Leader Lardner to the Tribunal, dated 1 August 2024.

57. Because the two applications raised common issues concerning the same service by each applicant, with the consent of the applicants, the Tribunal decided to convene one hearing and, for that purpose, generated a consolidated pack of documents, which was provided to each applicant and to Defence.

58. The documentation provided to the Tribunal in respect of each application raised not only the question of eligibility for the VLSM against the currently applicable VLSM Regulations, but also the question of whether or not the current eligibility criteria should be amended by the declaration of an expanded area of operations under those Regulations. Because of this, on 11 December 2024 the Tribunal advised Defence that it intended to consider both those questions when the hearing was convened and requested that Defence respond to a series of questions posed by the Tribunal.[32]

59. Defence responded to those questions on 17 March 2025[33] and its responses were provided to each of the applicants for comment on 19 March 2025. Squadron Leader Sykes responded with his comments on 4 April 2025[34] and Squadron Leader Lardner responded on 8 April 2025.[35]

60. The Tribunal held the joint hearing on 29 May 2025, with the applicants and Defence each appearing remotely. During the hearing, the Tribunal asked Defence to take on notice a number of additional questions and Defence provided its response to these on 27 June 2025. These responses were provided to Squadron Leaders Sykes and Lardner for any comment they might wish to make. On 4 July Squadron Leader Sykes advised that there was no additional comment he wished to make, and Squadron Leader Lardner advised to the same effect on 7 July 2025.

61. The Tribunal takes this opportunity to express its appreciation to Defence for the effort that it expended in responding to the questions asked by the Tribunal, and in locating the additional historical records that it provided with its response.

62. On 1 July 2025, the Tribunal sought the views of Defence on Operations HARDIHOOD and HARDIHOOD II, which bore some similarities to Operation TRIMDON. Defence responded on 18 July and its response was copied to Squadron Leaders Sykes and Lardner for any comments they might wish to make. Squadron Leader Sykes provided his comments on 18 July, and Squadron Leader Lardner provided his comments on 21 July 2025.

The Defence report in relation to Squadron Leader Sykes

63. This Defence report was provided under copy of a letter to the Tribunal from the Acting Director of Honours and Awards. In response to Squadron Leader Sykes' application, Defence

[32] Letter, Mr Skehill to Defence, DHAAT/OUT/2024/155.
[33] Letter, Defence to the Tribunal, BN97131115, 17 March 2024.
[34] Submission, Squadron Leader Sykes, 4 April 2025.
[35] Submission, Squadron Leader Lardner, 8 April 2025.

stated that it had undertaken a review of material questions of fact, including Squadron Leader Sykes' service records, previous Tribunal Inquiries and other relevant Government Inquiries; the Regulations and eligibility criteria, and its own assessment working papers.

64. The Defence report outlined the history of Squadron Leader Sykes' applications for the VLSM (and the Australian Active Service Medal 1945-1975), covering applications made in 2013, the Tribunal's 2014 decision, a subsequent application in 2021 (which was refused), and another 2024 application that was still under Defence consideration at that stage.

65. The crux of the Defence position over time, and indeed the Tribunal's 2014 decision, was that Neptune aircraft flying from Lae did not enter the Vietnam area of operations for the purposes of the VLSM. In its report, Defence confirmed that it had since reviewed the information supplied by Squadron Leader Sykes and stated that it did not identify any new evidence to support his claim to the VLSM.

66. As to Squadron Leader Sykes' movements during the period, Defence submitted that the No 11 SQN Personnel Occurrence Report (POR) 30/65 dated 29 June 1965 showed that Squadron Leader (then Flight Sergeant) Sykes departed Australia on 28 May 1965 by service aircraft on temporary duty to Lae, Papua New Guinea and returned on 4 June 1965 on completion of duty.

67. Defence submitted that the HMAS *Sydney* Reports of Proceedings (ROP) for June 1965 showed that HMAS *Sydney* entered the Vietnam area of operations on 8 June 1965, by which time Squadron Leader Sykes was back at RAAF Base Richmond.

68. Defence noted that no evidence was found to place Squadron Leader Sykes rendering service within the Vietnam area of operations, or at the Ubon Air Base in Thailand, and recommended that the decision to not recommend Squadron Leader Lardner for the VLSM be affirmed.

Squadron Leader Sykes' comments on the Defence report

69. In his comments on the Defence report, Squadron Leader Sykes focused on the nature of service on Operation TRIMDON rather than whether he met the current eligibility criteria, citing historical evidence that the movement of Australian forces would be a 'security operation'.[36]

[36] Report by Defence Committee on the Deployment of Australian Forces to Vietnam, May 1965, extracts contained in Squadron Leader Sykes Tribunal Application.

The Defence report in relation to Squadron Leader Lardner

70. This Defence report was similarly provided under copy of a letter to the Tribunal from the Acting Director of Honours and Awards. In response to Squadron Leader Lardner's application, Defence stated that it had undertaken a review of material questions of fact, including Squadron Leader Lardner's service records, previous Tribunal Inquiries and other relevant Government Inquiries; the Regulations and eligibility criteria, and its own assessment working papers.

71. The Defence report stated that Defence had reviewed the original decision of 2005 and re-assessed Squadron Leader Lardner's eligibility for the VLSM (and the Australian Active Service Medal 1945-1975). The re-assessment was endorsed by the Assistant Director, Service Awards and Medal Management, in the Directorate, and supported the decision to not recommend Squadron Leader Lardner for the VLSM.

72. The Defence report provided a summary of Squadron Leader Lardner's VLSM application history, and stated that that the most recent review confirmed that Squadron Leader Lardner did not render any service within the area of operations specified for the purpose of qualifying service toward the VLSM Defence recommended that the decision to not recommend Squadron Leader Lardner for the VLSM be affirmed.

Squadron Leader Lardner's comments on the Defence report

73. On 1 August 2024, Squadron Leader Lardner stated:

> *The Defence Report dated 21/06/2024 by the Directorate of Honours and Awards' decision not to recommend me for Vietnam Logistic and Support Medal based on extant Regulations for the medal was expected and I have no comments on that aspect of the decision.*
>
> *However, Paragraph 3 of the Executive Summary states that my appeal submission relates to a Nature of Service (NOS) decision and that Defence has reviewed my NOS correspondence. Will this NOS review be available for comment.*

74. After further contact between the Tribunal Secretariat and the Directorate, on 31 October 2024 Defence provided a further submission stating that no additional nature of service review was conducted in relation to Squadron Leader Lardner's service.

Tribunal analysis

75. The current VLSM Regulations and Declaration provide that the only persons eligible for the VLSM are those who entered the declared area of operations extending 100nm from the coast of Vietnam, or those who served at Ubon during a specified period.

76. Squadron Leaders Lardner and Sykes acknowledged that they were not eligible under those current criteria and the Tribunal concluded that, on their service records, that acknowledgement was correctly made.

77. Notwithstanding that acknowledgement, in arguing that they should be issued with the VLSM, Squadron Leaders Lardner and Sykes claimed that:

- some members of crews that flew out of Lae had been awarded the VLSM although they had not entered the declared area of operations; and

- some members of crews that flew out of Sangley Point had been 'deemed' to have entered the declared area of operations, even though they had in fact not done so, and had been awarded the VLSM.

78. The Tribunal noted that the documents available to it disclosed that:

- three members of crews that flew out of Lae had been awarded the VLSM although they had clearly not entered the declared area of operations;[37]

- Defence had advised that:

> *Air Force has previously indicated the records that detail the tracks flown by each aircraft cannot be located and most likely no longer exist. Therefore, it is not possible to say how close the long range maritime patrol flights originating from Sangley Point came to the Vietnamese coast*[38]

- of the seven crews that flew from 15 sorties from Sangley Point, the best that Defence could say was that only the last six flights (flown by five of those crews) "probably" had entered the declared area of operations.[39]

79. In response to a request taken on notice at the hearing in relation to whether or not the VLSM had been awarded to the members of the two remaining crews who had apparently not entered the area of operations, Defence advised as follows:

> *Defence examined the medals issued to the crews based at Sangley Point for the aircrew of Royal Australian Air Force aircraft A89-271 and A89-274 (referenced at pages 58, 71, 78, 704, 710, 878 and 884 of the Tribunal hearing pack)*
> .
> *Each aircraft had a compliment of ten crew, a total of 20 crew across the two aircraft.*

[37] Letter, Defence to the Tribunal, BN97131115, 17 March 2024.
[38] Ibid.
[39] Ibid.

Six of the aircrew have been awarded the Vietnam Logistic and Support Medal, with two of these aircrew awarded for eligible service separate to the Operation TRIMDON flights.

Defence has established that four crew may have been awarded in respect of their Operation TRIMDON flights from Sangley Point, noting two were awarded in 1993, in the period between when the medal was established and the declaration which defined the area of operations.

Further, there are two crew that have seemingly been awarded the Vietnam Logistic and Support Medal for service on Operation TRIMDON. There is little decision making evidence available to Defence that identify the reasoning or decision making process that led to the awarding of these recipients. Defence considers that the awarding of the Vietnam Logistic and Support Medal was done in good faith based on information available to the assessor at the time of the assessment of their application.

Nine of the aircrew are not eligible for the Vietnam Logistic and Support Medal because they were issued with the Vietnam Medal, having rendered other service in Vietnam. The Vietnam Medal was instituted in 1968. The Vietnam Logistic and Support Medal was instituted in 1993 and under Regulation 4(3) of the Vietnam Logistic and Support Medal Regulations, "[a] person who has been awarded the Vietnam Medal, or who is eligible for the award of the Vietnam Medal, is not eligible for the Vietnam Logistic and Support Medal."

There are two aircrew who have not been awarded the Vietnam Logistic and Support Medal, while three others have not applied for medallic recognition.

80. It was thus apparent that there had indeed been conferral of the VLSM on a number of aircrew members who did not meet the eligibility criteria for that award.

81. The Tribunal appreciated that these errors and inconsistencies in Defence administration of the VLSM gave rise to a not-unreasonable sense of injustice on the part of Squadron Leaders Lardner and Sykes because they had not been treated in the same way. The Tribunal also appreciated their argument that extending similar treatment to all RAAF aircrew that participated in Operation TRIMDON would only require awarding the VLSM to the two of them and a handful of additional members of the Lae Detachment.

82. Nevertheless, in accordance with the traditional adage that 'two wrongs do not make a right' and the requirement in section 110VB(6) of the Act that the Tribunal must apply the eligibility criteria that governed the making of the reviewable decision, the Tribunal could not recommend that the VLSM should also be wrongly issued to Squadron Lardner and Sykes.

83. Accordingly, it was incumbent on the Tribunal to affirm the Defence decisions refusing to recommend them for the VLSM in accordance with section 110VB(2)(a) of the Act.

84. However, both Squadron Leader Lardner and Squadron Leader Sykes have long argued that the declared area of operations should be extended to cover the flights they undertook from

Lae as part of Operation TRIMDON. This is a question that Defence itself has addressed on multiple occasions since at least 2011, including at the behest of the Chief of the Air Force. Defence has on those occasions given various reasons for not extending the area of operations to cover flights from Lae. It is an issue clearly raised by Squadron Leader Lardner and Sykes in their applications to the Tribunal and in the Defence decisions to which their applications relate.

85. Section 110VB(3) of the Act empowers the Tribunal to make any recommendation that it considers appropriate and that arises out of or relates to a Tribunal review of a decision relating to a defence award such as the VLSM.

86. Accordingly, prior to the hearing, the Tribunal requested that Defence respond to a series of questions that appeared to it to be of relevance to the question of whether or not the area of operations should have been expanded. As noted above, the Tribunal extends its appreciation to Defence for the effort it expended in addressing those questions and for retrieving the historical records of relevance that it provided.

87. That material and the discussions held with Squadron Leaders Lardner and Sykes and with Defence at the hearing enabled the Tribunal to give very detailed consideration to the question of possible expansion of the area of operations beyond the current 100nm limit.

88. In the passages that follow, the Tribunal sets out the conclusions it reached in relation to:

- the validity of the reasons given by Defence over the years for not extending the area of operations; and

- whether the area of operations should nevertheless be expanded.

Reasons advanced in Historical Documentation

89. The Tribunal turned first to examining the historical records of relevance.

90. The following passages set out the Tribunal's analysis of the reasons given by Defence for not expanding the area of operations in four key documents. These were each signed by a very senior Defence officer. The Tribunal's analysis was highly critical of the reasons given in each of these documents. In the experience of the Tribunal, the text of these documents would almost certainly not have been prepared by those senior officers, but by other more junior officers or staff on whose advice it would have been reasonable for the signatories to rely for the provision of thorough, accurate and legally sound advice. As the analysis that follows demonstrates, that advice was unfortunately unsound in almost all respects. Accordingly, what follows should not be taken to imply any personal criticism of the signatories themselves.

VCDF Advice of 30 September 2011

91. On 25 July 2011 the then Chief of the Air Force, Air Marshal Brown, wrote to the then Vice Chief of the Defence Force.[40] Noting that research by the RAAF Historian *had uncovered documents that suggest that war-like conditions existed along the entire route of HMAS Sydney on her voyages to Vietnam in 1965 and later years*, he said that he *would appreciate careful consideration of these documents to see if the declaration of a new operational area in regard to Operation TRIMDON is warranted*.

92. The attached research notes[41] listed various documents that were said to suggest that Operation TRIMDON was 'warlike' in nature, asserted that *the threat to Sydney and its cargo was not limited to the area within 100 nautical miles of South Vietnam, but existed along the route from Vitiaz Strait to South Vietnam*, and argued that *the aircrew members who flew Operation TRIMDON operational sorties out of Lae … should be considered as rendering the same service as the aircrew members of the Sangley Point detachment*.

93. The then-Vice Chief of the Defence Force, Air Marshal Binskin, replied on 30 September 2011 to advise that *there are no grounds to justify the declaration of a new operational area in relation to Operation TRIMDON in relation to the first voyage of HMAS Sydney to Vung Tau and all subsequent voyages*.[42] His response included a number of statements that necessitate comment by the Tribunal as set out in the following paragraphs.

94. Air Marshal Binskin stated, in respect of the first voyage of HMAS Sydney to South Vietnam, that *The route was from Vitiaz Strait, Papua New Guinea, north-west to the north of Luzon Island, Philippines, then south west to Vung Tau, South Vietnam*. This was incorrect. Rather than following that northerly route, HMAS *Sydney* followed a southerly route as confirmed in maps provided to the Tribunal in response to a request from the Tribunal.[43]

95. Air Marshal Binskin then stated that *Government has directed that all reviews of the nature of service of past operations must be made in accordance with the legislation in place at that time*.

96. This statement is of fundamental significance to all subsequent Defence consideration of whether or not a new area of operations should be declared. That assertion has been repeated by Defence on many occasions over the years, not only in the present but also in other contexts.

97. Accordingly, the Tribunal requested Defence as follows:

> *Please provide a copy of documentary evidence of the Government direction referred to by the then Vice Chief of the Defence Force, Air Marshal Binskin, on 30 September 2011 that all reviews of nature of service of past operations must be made in accordance with the legislation in place at the time.*[44]

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[40] Minute, Review of Operation TRIMDON by Nature of Service Review Board, 25 July 2011.
[41] Ibid, Attachment 1.
[42] Minute, Operation TRIMDON, Nature of Service, VCDF/OUT/2011/500, 30 September 2011.
[43] Letter, Defence to the Tribunal, BN97131115, Attachment 12 17 March 2024.
[44] Letter, Tribunal to Defence, DHAAT/OUT/2024/155, 11 December 2024.

98. The written Defence response was:

> *The Government direction referred to as made by the Vice Chief of the Defence Force on 30 September 2011 was contained in a minute from the then Chief of the Defence Force (General Cosgrove) to the then Minister for Veterans' Affairs and Minister Assisting the Minister for Defence, the Hon Danna Vale MP.*
>
> *The minute advised Minister Vale on matters of retrospectivity. The Chiefs of Service Committee did not support the concept of applying today's standards and values in determining the nature of service of military operations to past conflicts and operations. Minister Vale noted the Chief of the Defence Force's advice on 13 March 2003.*[45]

99. A more appropriate answer to the Tribunal's question would have been that there was no evidence of any such Government direction and that the assertion made by Air Marshal Binskin was simply incorrect.

100. Research conducted by the Tribunal in the context of the *Inquiry into medallic recognition for service with Rifle Company Butterworth* identified the situation as follows:

- On 4 March 2003 the then Chief of the Defence Force, General Cosgrove, provided a submission to then Minister Vale in which he advised the Minister of decisions taken by the Chiefs of Service Committee on 19 February 2003 relating to recommendations of the Clarke Review. He advised the Minister that:
    - *2. The COSC had an overriding concern with the approach taken by the Clarke Committee, which led it to recommending retrospectivity. The COSC did not support the concept of applying today's standards and values ('current best practice' as stated by Clarke) in determining the nature of service of military operations to past conflicts and operations.*
    - *3. The COSC took the view that military authorities made decisions and recommendations to Government about the operations for which they were responsible in good faith and drawing on the best intelligence and knowledge available at the time. In the opinion of the COSC, it would be confusing for personnel deployed on operations if decisions based on the Chief of the Defence Force could be overturned for no other reason than the emergence of different standards and values over time. As the Clarke outcome shows, retrospectivity comes with a significant cost. This is not to suggest, however, that genuine anomalies should not be dealt with through the appropriate processes, such as by the Repatriation Commission and the courts.*

- The COSC meeting to which the CDF referred appears to be the genesis of what later came to be referred to as the policy that *all nature of service reviews are conducted in the context of the legislation and policies that applied at the time of the activity or operation under review*.

[45] Letter, Defence to the Tribunal, BN97131115, 17 March 2024.

- While the CDF advised the Minister of this policy, he did not ask the Minister to approve it – he simply asked that the Minister note it, which the Minister did some months later.

- The Chiefs of Staff Committee policy was contrary to the advice previously provided to Cabinet by Ministers on two prior occasions:

    - On 17 April 1997**,** the Expenditure Review Committee of Cabinet decided that: any past service entitlement anomalies not addressed in the Submission before it should be reviewed by Defence *against the principles established by the present Defence Review* [which, it is apparent from the Submission, involved assessing past service by reference to the 1993 definitions of 'warlike' and 'non-warlike']. The Ministers' submission leading to that ERC decision specifically noted that *it was appropriate for the Defence Review to be based on modern criteria*, that it was *appropriate to implement the Defence Review findings* [for ADF service in Vietnam after the formal withdrawal] *by applying the modern Defence classification of 'warlike service'* and that it was proposed that *the new Defence classification system be adopted formally in the VEA for all deployments after 11 January 1973*.

    - On 17 March 2000 the Minister Assisting the Minister for Defence, the Hon. Bruce Scott MP brought forward a Cabinet submission seeking agreement to a Government response to the Mohr Review. The Minister stated: *The review concludes that there are a considerable number of deployments of ADF personnel to SE Asia 1955-75 where the determination of entitlements to medals and repatriation benefits is anomalous. On the basis of the new information provided in the Mohr Report, the Department of Defence has reassessed each deployment against the criteria of 'warlike' and 'non-warlike' as directed by Cabinet on 22 April 1997 in Cabinet Minute JH/0057/CAB/2. The results are in most cases identical to the recommendations of the Mohr Report. While extending these entitlements, I propose to reject the Mohr Review's policy analysis which could have significant flow-on effects under the Veterans' Entitlements Act 1986. I propose instead to affirm the current set of objective criteria for assessment of 'warlike' and 'non-warlike' service and thereby provide the framework against which any further historic claims and all future service can be assessed.*

- That policy was also contrary to the approach adopted in reviews of medallic eligibility up to August 2007, which had taken the approach of applying the definitions or *warlike* and *non-warlike* service to operations that were conducted prior to those definitions being agreed by Cabinet in 1993.

- In August 2007 the then Vice Chief of the Defence Force advised the Minister that the Chiefs of Service Committee was not comfortable with that approach and that, on its advice, the Chief of the Defence Force had directed that anomalies should instead be reviewed against the legislation and policy that was extant at the time of the operation. However, there was no material provided to the Tribunal that would

suggest that any Minister, provided with a properly informed brief, ever endorsed this position.

101. Quite apart from the fact that there had been no such Government direction, the Tribunal considered that such a policy would be fundamentally flawed because it could not operate consistently with and would be contrary to most Regulations creating defence honours and awards, which do provide for retrospective effect. The VLSM Regulations are but one example of Regulations that make provision for retrospectivity, but there are many others. Such a policy could not have been applied consistently with law applicable at the time of the decision that was required to be made but which had not been in force at the time of the service under consideration for recognition.

102. Air Marshal Binskin then stated that, applying the purported Government direction, the relevant legislation applicable at the time of Operation TRIMDON was the *Repatriation (Special Overseas Service) Act 1962* (the R(SOS) Act).

103. In this regard, the Tribunal posed the following question to Defence:

> *Assuming that there was such a direction of Government (as opposed to simply a policy adopted by Defence), please advise whether Defence still maintains that the Repatriation (Special Overseas Service) Act 1962 was relevant or determinative and, if so, please advise why does Defence take that position given that:*
>
> - *that Act related only to repatriation entitlements and made no provision in relation to medallic recognition;*
> - *that Act provided for repatriation entitlements where there was a declaration of service related to 'warlike operations, or a state of disturbance'; and*
> - *the VLSM Royal Warrant and associated Regulations does not refer to such service.*[46]

104. Defence replied in the following terms:

> *There has historically been a broad but essentially coincidental correlation between eligibility for a certain level of veterans' entitlements for a given period and type of service and separately being entitled to a particular medal, but veterans' entitlements and medallic recognition have always been provided under separate legislative and administrative arrangements, and there is no formal connection between the two.*
>
> *However, even though the purpose of the Special Overseas Service Act 1962 (SOS Act) was to provide entitlements for service in certain designated conflicts, it is not surprising that personnel who rendered service covered by the SOS Act tend to also have this service now separately recognised with the issue of campaign medals, the Australian Active Service Medal or the Australian Service Medal.*

[46] Letter, Tribunal to Defence, DHAAT/OUT/2024/155, 11 December 2024.

The terms 'warlike operations' and 'non-warlike operations' as appears in medals regulations is used only for the purposes of those regulations, and has no connection with (and does not confer the entitlements associated with) warlike or non-warlike service under the Veterans' Entitlements Act 1986 (VEA), which require a separate determination of warlike or non-warlike service to be made under that Act.

The SOS Act was in force during Operation TRIMDON. In 1986, the VEA repealed the SOS Act. Schedule 2 [Operational Areas] to the VEA are in effect the 'special areas' required in the SOS Act for special duty.

The term 'special area' in the SOS Act has the same meaning as the term 'operational area' used in the VEA. What essentially happened was the transfer of what was in the SOS Act to the VEA. In effect, prior to the VEA, there was actually a collection of Repatriation-related legislation which applied to different periods of service and conflicts which were intended to come under the veterans' entitlements system, rather than the Commonwealth compensation Acts which applied to Defence Force service rendered under peacetime conditions. For example, before the introduction of the VEA in 1986, there were separate Acts granting Repatriation coverage to veterans who had enlisted for service with the Interim Forces in the immediate post-Second World War period, another Act covering service with the Far East Strategic Reserve, and a further Act relating to service on designated special overseas service (this latter, of course, being the SOS Act). When the VEA was introduced, it effectively encompassed within itself entitlements equivalent to those which had been established under the various earlier Acts, and repealed the earlier legislation along with the Repatriation Act 1920 itself. A full list of the legislation repealed by and incorporated into the VEA is included at Schedule 1 of the Act.

The area where long range maritime patrol surveillance was conducted from Lae, Papua New Guinea, was not declared as a 'special area'. This infers that long range maritime patrol service from Lae was not service related to 'warlike operations or a state of disturbance'.

The Plan TRIMDON Security Plan revised the threat assessment to: 'it is unlikely that hostile forces will attack the force in transit from Australia but the possibility cannot be excluded'.

In 1965, Cabinet endorsed 'that the Services be directed that allotment for "special duty" should only be made at a time when the personnel are exposed to potential risk by reason of the fact that there is a continuing danger from activities of hostile forces or dissident.

Defence's conclusion is that the threat assessment of unlikely attack and the fact that no hostile activity was detected – much less attacks – means that long range maritime patrol duty from Lae remains peacetime service.

The establishment of the Vietnam Logistic and Support Medal (VLSM) was announced on 23 August 1992 in a News Release issued by the then Minister for Defence Science and Personnel. The VLSM was established to recognise Australian personnel who served in support roles in the Vietnam area of operations between 20 May 1964 and 27 January 1973. The medal was introduced after extensive lobbying

by groups and individuals who had served in Vietnam for short periods but did not qualify for the Vietnam Medal. The groups were principally crew members of HMAS Sydney and other Royal Australian Navy ships that escorted HMAS Sydney or transporting personnel and equipment to Vietnam, and Citizen Military Forces members who visited Vietnam as observers. The VLSM was also extended to certain categories of civilians such as surgical teams, QANTAS aircrew and entertainers.

The following instruments are used to determine eligibility to the VLSM:

- *Letters Patent and Vietnam Logistic and Support Medal Regulations approved by Her Majesty Queen Elizabeth II on 24 February 1993, Commonwealth of Australia Gazette No. S 79, dated 10 March 1993.*

- *Declaration by the Governor General under Regulation 3 of the Vietnam Logistic and Support Medal Regulations, on 2 August 1993, declaring the area of operations for eligibility for the VLSM, Commonwealth of Australia Gazette No. S 251, dated 13 August 1993.*

- *Letters Patent and Amendments of the Vietnam Logistic and Support Medal Regulations approved by Her Majesty Queen Elizabeth II on 18 January 2013.*

The above instruments to not refer to the VEA or the former SOS Act. Eligibility to the VLSM is determined on the basis of eligible service during the relevant period in the "area of operations of Vietnam", that was declared by the Governor-General on 2 August 1993; and at Ubon Air Base in Thailand as a member of the Royal Australian Air Force. The latter arose from a Government accepted recommendation of the Defence Honours and Awards Appeals Tribunal Inquiry into unresolved recognition issues for Royal Australian Air Force personnel who served at Ubon between 1965 and 1968.[47]

105. The Tribunal considered that this response failed to address the substance of the issue raised by the Tribunal's question. The simple position is that, while that R(SOS) Act may have been applicable in determining repatriation entitlements at the time of Operation TRIMDON, it was completely irrelevant in determining medallic recognition, in respect of which it made no provision whatsoever. Even if the Government had directed that regard be had to legislation applicable at the time of service, that would not have required regard being had to the R(SOS) Act because it was irrelevant.

106. Not only was the R(SOS) Act irrelevant, the purported application of it had the effect of impermissibly superimposing on the VLSM Regulations a more onerous pre-condition than had been specified by the Sovereign or the Prime Minister in creating the VLSM. Entitlements under that Act arose only where service was rendered in *warlike operations or a state of disturbance*. While Operation TRIMDON may not have been performed in circumstances that had been or warranted declaration under the R(SOS) Act, the VLSM Regulations are completely silent on the characterisation of the service to which they apply – the Royal Warrant and the Regulations only require service in support of Australian Armed Forces operations in

[47] Letter, Defence to the Tribunal, BN97131115, 17 March 2024.

Vietnam. Seeking to require that such service must have been in *warlike operations or a state of disturbance* in order to be recognised under the VLSM Regulations would significantly distort the eligibility criteria established by those Regulations.

107. The Tribunal next noted that Air Marshal Binskin's advice included the following:

> *The specific guidance for the determination of a special area is provided in Section 4 of the SOS, which requires that for a 'special area' to be declared, the operational environment must be affected by 'warlike operations or a state of disturbance'. Such a declaration would, under specified conditions, allow the allotment of ADF units and personnel for 'special duty' that would provide eligibility for full repatriation benefits – that is the 'Gold Card', under the VEA, The consideration of the nature of service of TRIMDOM is made against these criteria.*[48]

108. This paragraph in Air Marshal Binskin's advice suggested that:

> (a) extending the area of operations under the VLSM Regulations might also extend VEA benefits; and
>
> (b) that this was a relevant criterion in considering the scope of the area of operations.

109. The Tribunal noted that suggestion (a) was not correct as a matter of law. Defence itself has repeatedly maintained over the years that nature of service, veterans' entitlements and medallic recognition are three completely separate matters, and that is correct as a matter of law (even though classification of service may be a common issue in all three matters in some cases – e.g., eligibility for the ASM or AASM). Indeed, even in the present case Defence made this same point when it advised Squadron Leader Sykes on 4 April 2013 that:

> *It should be noted that the granting of qualifying service is related to veterans' benefits and has no connection to qualifying criteria for medals. Qualifying criteria for medals is in the relevant Regulations and Determinations for each medal.*

110. More importantly, as to suggestion (b), the Tribunal considered that it would have been improper to have regard to potential veterans' entitlements in deciding whether or not the area of operations should extend to cover flights from Lae. That issue of VLSM eligibility should have been considered on its individual merits, and without regard to any consequential effects that might, or might not, be separately decided under separate repatriation legislation.

111. After recounting a chronology of the evolution of Operation TRIMDON, Air Marshal Binskin then concluded that, *particularly in light of the advice of CINCPAC* [Commander-in-Chief, United States Pacific Command] *and the Government decision that the Neptunes would not be armed*, there were no grounds to justify a new area of operations for the first or any other voyage of HMAS *Sydney*.[49]

112. The Tribunal considered there were significant issues with these particularised matters:

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[48] Minute, Operation TRIMDON, Nature of Service, VCDF/OUT/2011/500 30 September 2011.
[49] Ibid.

- first, the CINCPAC advice related only to arming aircraft operating out of Sangley Point and not elsewhere, and was based on a false premise that *"'Sydney' would be able to defend herself with her own aircraft"*; and

- second, the Government decision to not arm the Neptunes only applied to those operating out of Sangley Point, and those that operated out of Lae were indeed armed.

113. In view of the above analysis, the Tribunal concluded that Air Marshal Binskin's advice to Chief of Air Force Air Marshal Brown did not provide any sound reasoning against the declaration of a wider area of operations to cover all Operation TRIMDON flights because of its factual inaccuracies and its consideration of and reliance upon irrelevant matters.

CAF letter to Squadron Leader Lardner of 30 April 2012

114. Air Marshal Brown subsequently wrote to Squadron Leader Lardner on 30 April 2012[50] in reliance on that advice and stated that *no grounds exist to justify the establishment of a new special area*. This terminology and the text of Air Marshal Brown's letter make it clear that he was addressing eligibility for repatriation entitlements under the R(SOS) Act, and not the eligibility criteria under the Warrant and Regulations VLSM.

115. Accordingly, the Tribunal similarly concluded that Air Marshal Brown's letter to Squadron Leader Lardner provided no cogent reason against declaring an expanded area of operations to cover the Operation TRIMDON flights from Lae because it was fundamentally based on an analysis by reference to the irrelevant R(SOS) Act.

116. However, it is notable that Air Marshal Brown:

- acknowledged Squadron Leader Lardner's advice about the route actually followed by HMAS *Sydney* (but said that was irrelevant to the matter);

- accepted that there was a security threat and agreed that the fact that planning had included a high level of security measures implied that the escort forces were to operate at a high level of readiness (but said that a threat, irrespective of level, does not constitute physical hostile activity); and

- referred to a Repatriation Commission determination 'deeming' all Sangley Point aircrew to have qualifying service (but said that was irrelevant because VLSM recognition and Veterans Entitlement Act entitlements are completely separate).

VCDF letter to Squadron Leader Sykes of 23 October 2016

117. On 23 October 2016 the then Vice Chief of the Defence Force, Vice Admiral Griggs, wrote to Squadron Leader Sykes.[51]

118. He noted that *Aircrew members who operated out of Sangley Point in support of Operation TRIMDON … are deemed to have entered the Vietnam area of operations* and were

[50] Letter, Defence to Squadron Leader Lardner, OCAF/OUT/212/AB7979938, 30 April 2012.
[51] Letter, Defence to Squadron Leader Sykes, VCDF/OUT/2016/343, 23 October 2016.

therefore eligible full repatriation entitlements and either the Australian Active Service Medal 1945-1975 with clasp 'VIETNAM' or the VLSM. This 'deeming' could have had the effect of conferring the VLSM on various Sangley Point aircrew who did not enter the declared area of operations and who therefore did not meet the eligibility criteria for the VLSM.

119. He further stated that Squadron Leader Sykes already had full veterans' entitlements because of other service he had rendered and that the Tribunal had decided in 2014 that Squadron Leader Sykes was not eligible for either the Australian Active Service Medal 1945-1975 with clasp 'VIETNAM' or the VLSM. The Tribunal noted that that 2014 decision turned solely on the current eligibility criteria for the VLSM and did not consider whether or not there should be a declaration of an expanded area of operations.

120. Vice Admiral Griggs then said that, in considering whether the route followed by HMAS *Sydney* should be considered a *warlike operation,* Defence and Government had concluded at the time that the risk of any attack on the convoy was *minimal* and that the rules of engagement were for self-defence only. The Tribunal noted that the use of the word *minimal* to describe the risk of an attack on the convoy was incorrect and potentially misleading. The actual wording used prior to the voyage was that an enemy attack was *unlikely ... but the possibility cannot be excluded*. The Tribunal took this particularly vague assessment to mean that in reality the likelihood of attack lay somewhere between *Unlikely* and *Possible,* and that, *in extremis*, the likelihood of attack could in fact be as high as *Possible*. Regardless of whether the likelihood of attack lay between *Unlikely* and *Possible*, or was *Possible*, the risk/s to the convoy could not, in the Tribunal's opinion, be described as *minimal*. The Tribunal further noted that, while it had seen Defence documentation recording that risk rating, it had not seen any documentation to suggest that the *Government* had reached or adopted the same conclusion.

121. Vice Admiral Griggs concluded by saying *Accordingly, there is no evidence to justify the retrospective declaration of a new 'warlike' AO for Sydney's route.*

122. The terminology used in Vice Admiral Griggs' letter strongly suggested to the Tribunal that he was viewing the matter of VLSM eligibility through the lens of the tests for repatriation entitlements laid down in the R(SOS) Act (and the comparable tests which had been carried over into the replacement Veterans' Entitlements Act). As discussed above, that legislation was irrelevant in determining eligibility for the VLSM, and rejecting eligibility by reference to a requirement that service be rendered in *warlike operations* impermissibly superimposed a more onerous pre-condition than that which had been specified by the Sovereign or the Prime Minister in creating the VLSM.

123. The Tribunal therefore concluded that this letter similarly did not provide any sound reasoning against the declaration of a wider area of operations to cover all Operation TRIMDON flights because of its consideration of and reliance upon irrelevant matters.

VCDF letter to Group Captain Schiller of 22 August 2022

124. On 22 August 2022 the then Vice Chief of the Defence Force, Vice Admiral Johnston, wrote to the National President of the Air Force Association, Group Captain Schiller[52] in response to representations the Association had made on behalf of members of the RAAF Detachment at Lae.

125. This letter again asserted that the applicable legislation at the time was the R(SOS) Act, and referred to its requirements for a prescribed special area and allotment for special duty on warlike operations within that area (and the comparable over provisions of the Veterans Entitlements Act).

126. It then stated that:

> *Aerial surveillance in support of Operation TRIMDON, outside of the Vietnam War zone, does not meet the continuing danger from activities of hostile forces criteria necessary for declaration as a special area. Therefore, the service of aircrew members of RAAF Detachment Lae who were not subsequently re-assigned to RAAF Detachment Sangley Point, and who therefore did not enter the Vietnam operational area \as defined in the VEA, is correctly defined as peacetime service.*
>
> *The carriage of weapons on the Neptune aircraft operating from RAAF Detachment Lae does not alter the nature of service. The carriage of weapons indicates that Neptune aircrew were authorised to provide mutual defence for the Sydney convoy in the unlikely event it was required.*
>
> *The Security Plan initially indicated a possible threat to the convoy (as noted above 'possible' was changed to 'unlikely') and the Joint Directive established the Rules of Engagement were for self-defence only. These and the other fore mentioned do not establish a physical environment that could be described as either 'warlike operations5' or 'a state of disturbance', required to merit the establishment of a discrete 'special area' that would relate to Operation TRIMDON outside the declared Vietnam 'special area'.*
>
> *While the RAAF Operation Order in May 1965 stated that 'Wartime situation will be assumed throughout', this does not indicate a special area can be justified outside the Vietnam War zone where it was unlikely any threat would eventuate. Operating at a high readiness level does not constitute hostile activity necessitating a 'special area' being declared.*
>
> *Closer examination of the pre-deployment shows that even within weeks of sailing, the location of the Army within Vietnam was not decided, and political and diplomatic activities were attempting to finalise agreed deployment arrangements. Being the first such transit, it was prudent to consider all scenarios and take a cautious approach.*

127. This letter not only repeated the error of claiming that only service eligible under the R(SOS) Act could be recognised by the VLSM, but it is significant that it also asserted that Operation TRIMDON service from Lae was *peacetime* service.

[52] Letter, Defence to Group Captain Schiller, MC22-001839, dated 22 August 22.

128. There is nothing in the VLSM Regulations that excludes peacetime service from recognition by the VLSM; nor is there anything that requires that service be warlike or non-warlike to warrant such recognition. The Regulations relevantly require only that service be rendered between 29 May 1964 and 27 January 1973 as a member of the crew of an aircraft operating in support of the Australian Armed Forces within a declared area off the coast of Vietnam. Nothing in the Regulations specifies that such service must additionally be of any particular nature.

129. Defence acknowledged this in its written response to questions put to it by the Tribunal in which it said that *The classification of service as either 'warlike', 'non-warlike' or 'peacetime' is not relevant.*[53]

130. Squadron Leaders Lardner and Sykes, in their correspondence over the years, have maintained that their service was *warlike* and, despite its acknowledgement that classification of service was not relevant, Defence nevertheless continued to maintain before the Tribunal that Operation TRIMDON service from Lae was *peacetime* service.[54]

131. Accordingly, while it may not be strictly relevant, the Tribunal did consider the classification of that service because Defence had consistently raised the nature of service in its reasons for rejecting an expansion of the declared area of operations, and to provide assurance to Squadron Leaders Lardner and Sykes that their arguments had been fully considered.

132. Any ADF service at any point of time falls into one of three mutually exclusive classifications of "peacetime", "non-warlike" or "warlike". The relevantly applicable definitions are those approved by the Cabinet on 17 May 1993, which are in the following terms:

> ***Warlike***
>
> *1. 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*
>
> *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.*

[53] Letter, Defence to the Tribunal, BN97131115, 17 March 2024.
[54] Ibid.

Non-Warlike

2. 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 the 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 of all parties. These operations can encompass 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 which 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 the impartial verification of assistance or ceasefire agreements, and other like activities; or*
> >
> > *(4) activities that would normally involve the provision of humanitarian relief.*

NOTES:

1. Humanitarian relief in the above context does not include normal peacetime operations such as cyclone or earthquake relief flights or assistance.

2. Peacemaking is frequently used colloquially in place of peace enforcement. However, in the developing doctrine of peace operations, Peacemaking is considered as the diplomatic process of seeking a solution to a dispute through negotiation, inquiry, mediation, conciliation or other peaceful means.

133. While the 1993 Cabinet decision did not approve an express definition of ‘peacetime’, it is implicit within the approved definitions that service that meets the definition of ‘non-warlike’ cannot be classified as ‘peacetime’ service. This is because the definition of

'non-warlike' stated that 'non-warlike service exposes *individuals or units to a degree of hazard above and beyond that of normal peacetime duty.*

134. Revised definitions subsequently approved by the Minister for Defence on 27 February 2018 are inapplicable for present purposes because they were expressly stated to apply only to future ADF operations and then only to conditions of service and veterans' entitlements, leaving the 1993 definitions to apply to medallic recognition of service at any time.

135. The Tribunal posed the following question to Defence:

> *Please advise whether Defence maintains that service from Lae is properly classified as 'peacetime service' and, if so, please advise how Defence seeks to justify that classification having regard to the 1993 Cabinet-approved definitions of 'warlike', 'non-warlike' and (inferentially) 'peacetime' service and given that:*
>
> - *contemporary records disclose that 'wartime situation' was to be 'assumed throughout' the relevant movement of troops from Australia to Vietnam;*
> - *contemporary records also disclose the assessment that, while an attack from hostile forces was 'unlikely', the possibility could not be excluded;*
> - *LRMP[55] flights from Lae were armed; and*
> - *those flights were authorised to use force for self or mutual defence.*

136. The written response from Defence was as follows:

> *The nature of service for long range maritime patrol surveillance sorties out of Lae is peacetime service; the aircraft were at all times outside the areas declared for special service under the Special Overseas Service Act 1962 or operational area under Veterans' Entitlements Act 1986, Schedule 2. Being armed is not in itself evidence of a warlike scenario; for example, HMA Ships deploy with weapons on peacetime service as a matter of routine.*
>
> *The Rules of Engagement for Operation TRIMDON were defensive in nature, with priority to avoid foreign naval and air units. All Australian Defence Force units are able to exercise the right of self-defence.*
>
> *The assessment that attacks from hostile forces were 'unlikely', which was borne out with no contact with and certainly no attacks by hostile forces, indicates these flights were of little or no risk to long range maritime patrol aircrew flying from Lae.*
>
> *Defence as a general rule doesn't issue threat assessments which state there is absolutely no threat at all to any operation or activity. A threat assessment of VERY LOW doesn't rule out unconditionally that a threat isn't there.*
>
> *To put context around the deployment, the primary conflict was the Vietnam War which was conducted within the confines and near region of North and South*

[55] Long Range Maritime Patrol

Vietnam. There was no credible threat of it spreading to the region north of Lae. North Vietnam had no credible naval vessels to deploy and fight such a distance from Vietnam, and had shown no inclination to do so.

In the context of the Cold War at the time, there is no information to suggest that North Vietnam's major supporters, the then Soviet Union and the People's Republic of China, had any credible intention to attack Australian (or United States) forces outside the near area of North and South Vietnam.

The reasoning that the possibility of attacks couldn't be excluded would appear to be the Australian Government being cautious on the first voyage of HMA Ships to Vietnam carrying Army personnel and equipment. This in itself does not justify declaring long range maritime patrol sorties from Lae, at such a distance from North and South Vietnam, as anything other than peacetime service.

The lack of incidents during the Operation TRIMDON voyage would reasonably appear to have influenced the threat assessment for subsequent voyages. The September 1965 voyage of HMAS Sydney to Vietnam had a threat assessment that attack in transit was improbable.

It is worth restating words from the Official History of Australia's Involvement in Southeast Asian Conflicts 1948-1975, The RAAF in Vietnam: Australian Air Involvement in the Vietnam War 1962-1975 by Dr Chris Coulthard-Clark. In Chapter 4, "The expanding RAAF presence", Dr Coulthard-Clark outlined protective measures put in place for Operation TRIMDON and observed (emphasis added), "… HMAS Sydney's voyage northwards became the occasion for a major RAN and RAAF undertaking to ensure its safety under what was called Plan Trimdon. This was, somewhat incredibly, because 'the possibility of enemy intervention could not be discounted'.".

Following HMAS Sydney's first voyage to Vietnam under Operation TRIMDON, no other voyages by that ship to Vietnam had long range maritime patrol support.

In 1965, Cabinet endorsed 'that the Services be directed that allotment for "special duty" should only be made at a time when the personnel are exposed to potential risk by reason of the fact that there is a continuing danger from activities of hostile forces or dissident elements'.

The risk of harm to aircrew operating from Lae was LOW (unlikely attack, no continuing danger from hostile forces). There was a direction to avoid contact with any possible adversary encountered, with use of force by long range maritime patrol aircraft or naval assets only an action of last resort in a mutual defence scenario.

The long range maritime patrol surveillance was not hazardous above normal peacetime duty. The risks associated with maritime patrols, such as weather, long hours, aircraft maintenance issues, are associated with peacetime service.

Australian Defence Force personnel were not exposed to a direct risk of harm from hostile forces. Long range maritime patrol surveillance sorties from Lae cannot reasonably be considered qualifying or warlike service.

Australian Defence Force personnel were not exposed to an indirect risk of harm from hostile forces. The aerial maritime surveillance was to detect shipping that could cause a risk to the HMAS Sydney convoy, and vector the ships away to avoid possible contact. The risk to the aircrew was at peacetime levels.

There always is an element of risk flying for multiple hours over the ocean conducting maritime surveillance. Long range maritime patrol crews were appropriately trained for this military occupation. There were no hostile forces in the areas patrolled by the aircraft flying out of Lae.

Defence concludes that the threat assessment of unlikely attack and the fact that no hostile activity was detected - much less attacks - means that long range maritime patrol duty from Lae remains peacetime service.

137. The Tribunal was unable to accept this explanation, which it considered contained a number of factual errors and irrelevancies. For example:

- the first paragraph is completely irrelevant – classification of service for the purposes of repatriation legislation is not determinative of the nature of service for other purposes and, even if it were, the fact that service is not warlike under repatriation legislation does not make it peacetime;

- the fact that there might be a right of self-defence in peacetime service does not mean that service that meets the Government-approved definition of 'non-warlike' can nevertheless be classified as peacetime service;

- the fact that Operation TRIMDON flights from Lae may have had 'no contact with and certainly no attacks by hostile forces' does not indicate that these flights were of 'little or no risk', but simply that the risks identified during the planning processes were not realised on that voyage. In any event:

    - the same situation applied in respect of flights from Sangley Point which, based on the Defence argument that the VLSM should only be issued for service to which the R(SOS) Act applied, would logically have been classified by Defence as 'warlike' rather than 'peacetime' in order to justify the grant of the VLSM to those aircrew; and

    - Squadron Leaders Lardner and Sykes gave evidence to the Tribunal that a contact with a presumed hostile vessel was in fact made on a flight on which they were present, and that the aircraft's bomb doors were opened in anticipation of a possible engagement;

- the fact that North Vietnam may have had *no credible naval vessels to deploy and fight such a distance from Vietnam, and had shown no inclination to do so* is irrelevant when the identified threat was from third party nations;

- the fact that there may have been *no information to suggest that North Vietnam's major supporters, the then Soviet Union and the People's Republic of China, had any credible intention to attack Australian (or United States) forces outside the near area*

of North and South Vietnam ignores the risk to the voyage posed by passing through or close to Indonesian waters during the period of *Konfrontasi*;

- the fact that there may have been no such credible information of an intention of supporters to attack outside that area is only of any persuasive force if there was credible evidence of such an intention to attack within that area (the Tribunal discusses this issue further below);

- any *ex post facto* rationale that the Australian Government of the time may have been overly cautious in assessing threats to and risks of the voyage is irrelevant given that classification under the definitions is necessarily prospective, not retrospective – the Tribunal noted that, despite this more recent assessment of caution, the Foreign Affairs and Defence Committee of Cabinet apparently thought it necessary to seek, and received, *an assurance that the air and sea escort protective arrangements contemplated for HMAS Sydney were considered to be adequate and satisfactory*;[56]

- similarly, the fact that as it transpired no ADF personnel were in fact exposed to a hostile force is irrelevant to the prospective classification of service that is required to be made under the both the Cabinet-approved and the Minister-endorsed definitions;

- the *ex post facto* opinion of a military historian should not, of itself, override the considered view of the top levels of the ADF who were required to assess threats and risks in the circumstances in which they found themselves at the time;

- the statement that *Following HMAS Sydney's first voyage to Vietnam under Operation TRIMDON, no other voyages by that ship to Vietnam had long range maritime patrol support* is incorrect – two of the next three voyages by *Sydney* were provided with long range maritime patrol support (discussed further below); the second voyage was provided with surveillance support by Gannet and Wessex aircraft off the accompanying carrier HMAS *Melbourne*, and all later voyages had some form of airborne anti-submarine warfare (ASW) support;

- the 1965 Cabinet decision on when ADF personnel should be 'allotted' is irrelevant as the VLSM Regulations, unlike those for some other defence awards, do not require allotment as an eligibility criterion;

- the fact that the Rules of Engagement directed that hostile contact be avoided other than as a last resort does not change the fact that those rules permitted contact for self-defence and were thus of the type referred to in the definition of 'non-warlike';

- because of the risk of a need for engagement with a hostile force, Operation TRIMDON flights were necessarily more hazardous than peacetime flights as that risk was over and above the risks from weather, long hours and aircraft maintenance issues that they shared with any flight, whether peacetime, non-warlike or warlike; and

[56] Cabinet Decision No. 975 (Foreign Affairs and Defence), 18 May 1965, NAA:A5827, Volume 24/Agendum 786.

- the statement that *There were no hostile forces in the areas patrolled by the aircraft flying out of Lae* is purely speculative and, in the absence of proof to the contrary, the same might equally be said in respect of flights from Sangley Point.

138. Accordingly, the Tribunal considered that the arguments advanced by Defence that flights from Lae were peacetime service lacked any persuasive force.

139. However, contrary to the view advanced by Squadron Leaders Lardner and Sykes, the Tribunal considered that, by reference to the 1993 definitions, no Operation TRIMDON service could be classified as 'warlike'. This is because the Rules Of Engagement did not authorise the proactive pursuit of a specific military objective in the absence of a demonstration of hostile intent, inferred from a failure to respond to procedures set out in the Rules of Engagement, and because there was no evidence of any expectation of casualties.

140. Rather, in the view of the Tribunal, that service at most fell within the definition of 'non-warlike'. That definition requires that there be 'risk associated with the assigned tasks' without specifying that the identified risk must be rated as being of any particular severity. Here, there was an identified risk of attack, albeit one rated as *unlikely ... but the possibility cannot be excluded*. As discussed earlier, the Tribunal took this to mean that the assessed likelihood of attack clearly lay somewhere between 'unlikely' and 'possible', and potentially up to 'possible'. And, consistent with the definition, there were Rules Of Engagement that were limited to self-defence and it was quite apparent that, had such a risk eventuated and a Neptune had been required to engage a hostile force in accordance with those Rules, there had to have been a possibility of casualties.

141. The essence of the Cabinet-approved definitions, read in context, is that authorisation of engagement against a hostile force in self-defence where there is a possibility but not an expectation of casualties must be classified as 'non-warlike'. The fact that there might be a right of self-defence in circumstances that do not meet that definition does not mean that service that does meet the definition can be classified as peacetime service. And the fact that Rules of Engagement might be issued where there is no contemplation of engagement with a hostile force similarly does not mean that service that does meet the definition of non-warlike can nevertheless be properly classified as peacetime service.

142. In the view of the Tribunal, the Defence arguments reinforced its view that the definitions would be rendered clearer if they contained greater granularity. The Tribunal noted that, in the report of the *Inquiry into medallic recognition for service with Rifle Company Butterworth,* it had recommended *a fundamental 'root and branch' review of the definitions of the terms 'warlike', 'non-warlike' and 'peacekeeping' should be undertaken to make them each more meaningful and more readily understood.*

143. Accordingly, the Tribunal reached a firm conclusion that Operation TRIMDON service from Lae was not 'peacetime' or 'warlike' service, but was clearly 'non-warlike'. That conclusion, while not legally relevant in terms of the VLSM Regulations, was nevertheless pertinent in considering how service on flights from Lae compared to service on flights from Sangley Point. Importantly, while the latter operated under the same Rules of Engagement,

because they were unarmed they would have been unable to engage with a hostile force had one been detected and it may have been the case that there was therefore no possibility of casualties. This issue is discussed in more detail below.

144. In light of the above, the Tribunal concluded that the letter from then Vice Chief of the Defence Force to Group Captain Schiller, like the earlier correspondence analysed above, did not provide any sound reasoning against the declaration of a wider area of operations to cover all Operation TRIMDON flights because of its consideration of and reliance upon irrelevant matters.

Should an expanded area of operations nevertheless be declared?

145. While the Tribunal was unconvinced by any of the arguments against expanding the area of operations set out in historical documentation (or more recently put by Defence in the course of the consideration of the present applications for review), that of itself was insufficient to induce the Tribunal to recommend that an expanded declaration should now be made. Instead, the Tribunal considered that such a declaration should only be recommended to be made if there were cogent reasons to positively support such action.

146. As noted above, the purpose of the VLSM is to recognise service rendered between 29 May 1964 and 27 January 1973 'in support of' the Australian Armed Forces within a declared area off the coast of Vietnam. It appeared to the Tribunal to be incontrovertible that the RAAF flights from Sangley Point and the RAAF flights from Lae were equally 'in support of' the Australian Armed Forces.

147. As a result, the Tribunal considered that the starting point for resolving this issue should be the nature of the activities within the 100nm boundary and beyond it. If there were substantive and material differences, these might provide a sufficient basis to reject the call for an expanded area. Conversely, if there were no substantive differences, that would *prima facie* provide a strong reason to support an expanded area in order to confer VLSM eligibility on the Lae aircrew.

148. In approaching this question, the Tribunal asked Defence how service within the 100nm area differed from service outside that area from a military operational perspective. Prior to the hearing, it posed the following question:

> *Please advise on what basis does Defence consider that RAAF LRMP patrols from Sangley Point are relevantly different from similar flights from Lae, given that:*
>
> - *each shared a common purpose;*
> - *each operated under common authorisation for the use of force;*
> - *each was required because a common perceived risk of attack by hostile forces;*
> - *flights from Lae were armed and thus is a stronger position to respond to hostile activity than unarmed flights from Sangley Point; and*

- *there appears to be no reason why relevant circumstances changed at an arbitrary distance from South Vietnam.*

149. The Defence response was as follows:

> *Both Detachments Lae and Sangley Point were tasked to provide long range maritime patrol coverage of HMAS Sydney's voyage to Vung Tau.*
>
> *Defence accepts that some of the later Sangley Point sorties flew into the area of operations of Vietnam as HMAS Sydney approached the end of its voyage. The sorties flown from Lae did not fly into the area of operations of Vietnam, nor did the aircraft have the range to do so.*
>
> *Only those aircrew who flew from Sangley Point in support of HMAS Sydney were determined to have flown into the area of operations Vietnam and thus had operational and qualifying service for the VLSM.*

150. This response totally failed to answer the question asked by the Tribunal. It effectively said that the only difference between Lae flights and Sangley Point flights was that the former did not enter the declared area of operations. If that were the end of the matter, it would provide a strong rationale for expanding the area of operations.

151. Accordingly, at the hearing the Tribunal pressed Defence on the issue of the military operational rationale for adopting a 100nm boundary for the declared area of operations and how service within 100nm differed from service beyond 100nm.

152. At that time Defence appeared to suggest that the "gun line" off the coast of Vietnam might have been of some relevance in setting the boundary at 100nm. That line marked the point at which Australian and US naval ships employed naval gunfire support (NGS) against onshore enemy positions. But RAN ships were not engaged in any such action at the time of Operation TRIMDON and only commenced doing so in March 1967[57]– that is, well after the voyage under Operation TRIMDON. And, while US Navy ships might have been engaged in such activity at the time of Operation TRIMDON, that would not have posed any threat to HMAS *Sydney.* In any event, it seems that the distance from the coast required for Naval Gun Support by ships of that era would have been no more than 20nm and thus it is difficult to see how the 100nm boundary could have been logically set by reference to any gun line.

153. As the Defence representatives at the hearing put this rationale forward as a possibility but appeared to be less than certain, the Tribunal asked Defence to take on notice a request to provide any further explanation of why the boundary of the area of operations was set at 100nm and not at any other distance off the coast of Vietnam.

154. Defence subsequently advised as follows:

[57] Website, *On the Gun Line in Vietnam*, https://www.navy.gov.au/about-navy/history/history-milestones/gun-line-vietnam, accessed c. 30 June 2025.

An amendment of the Repatriation (Special Areas) Regulations declared Vietnamese waters to be a new special area for the purpose of the Repatriation (Special Overseas Service) Act 1962. The area was deemed to have become a special area on 1 March 1967 and in effect was an area extending out to a distance of 100 nautical miles from the shore of Vietnam at high-water mark.

Our submission of 17 March 2025, specifically the response to Question 17 therein, noted:

> *"The effective date coincided closely with the late March 1967 arrival into Vietnamese waters of the guided missile destroyer HMAS Hobart that deployed to support the operations of the United States Seventh Fleet."*

Further investigation identified two photocopied documents showing that in 1967, the Department of the Navy sought to have a new area prescribed under the Repatriation (Special Areas) Regulations. …

On 13 January 1967, the Secretary of the Department of the Navy recommended to the Secretary of the Department of Defence that approval be sought:

> *"for waters adjacent to Vietnam in which RAN ships might be required to operate while serving as a unit of the US Seventh Fleet during operations off Vietnam, to be prescribed a special area under the Repatriation (Special Areas) Regulations and taxation legislation. It would seem that the precedent set in the case of the Korean campaign, i.e. 100 miles to seaward would be appropriate. As present intentions are that HMAS HOBART will commence operations off the Vietnam coast at the end of March, 1967, it is proposed that the effective date of the declaration be 1st March, 1967."*

Covering remarks by the Head of the Personnel Branch in the Department of the Navy noted:

> *"It is considered that the declaration of an area 100 miles to seaward would cover most if not all of the operation envisaged for HOBART."*

HMAS Hobart was to be employed primarily in a bombardment (naval gunfire support) role off the Vietnam coast, with periods in support of United States Navy aircraft carrier operations offshore, and also on patrol.

United States Navy aircraft carrier operations were conducted from an area called Yankee Point, commonly referred to as Yankee Station. From April 1966 this position was at 17 degrees 30 minutes North, 108 degrees 30 minutes East. This is approximately 145 kilometres (~78 nautical miles) off the coast of North Vietnam and comfortably within a boundary of 100 nautical miles.

155. It was thus apparent to the Tribunal that the area of operations declared for the purposes of the VLSM Regulations was simply "borrowed" from the area that had been specified for the separate and distinct purpose of ensuring that crew aboard HMAS *Hobart* from 1967 had

repatriation coverage under the R(SOS) Act. Those crew were active participants in the Vietnam war, rather than providers of support to others who were the combatants.

156. This meant that the 100nm boundary was not adopted having regard to any process for identifying the area in which support to operations of the Australian Armed Forces in Vietnam was actually provided.

157. In light of the above, the Tribunal concluded that the 100nm boundary was completely arbitrary and had no foundation in military operations of the period during which Operation TRIMDON (and other activities prior to 1967) was conducted.

158. The Tribunal next noted that the historical documents clearly reflected a concern that the Soviet Union or the People's Republic of China, as major supporters of North Vietnam, might attack the convoy. Those documents also recognised the risks associated with *Konfrontasi*.

159. Noting that Defence claimed that *there is no information to suggest that North Vietnam's major supporters, the then Soviet Union and the People's Republic of China, had any credible intention to attack Australian (or United States) forces outside the near area of North and South Vietnam,* the Tribunal asked Defence whether there was any information to suggest that a foreign power had any credible intention to mount such an attack within the near area of North and South Vietnam. Defence could not answer that question at the hearing, so the Tribunal asked it to take it on notice.

160. Defence subsequently advised that:

> *Defence has been unable to locate specific documents pertaining to a direct threat to the Australian Defence Force or United States Armed Forces by major supporters of North Vietnam in relation to the period of Operation TRIMDON.*

161. In providing that advice, Defence did refer to documents that indicated the extent of foreign assistance provided to North Vietnam, but also stated that:

> *The documents indicate that support was for the immediate area of operation with no contra-indication there was any intent or desire of either Government to widen the conflict.*

162. At the hearing, Defence suggested that the risk of a hostile attack became greater the closer the convoy got to Vietnam.

163. But the Tribunal noted that the original Defence requirement was that surveillance flights were to be provided from Vitiaz Strait to Cap St Jacques and that *a wartime situation is to be assumed throughout the operation,*[58] thus suggesting that there was no variation in the risk across the entirety of that very long distance. [59]

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[58] Operation Order 2/65, 10 Squadron, RAAF Townsville, 210400 May 65.

[59] The Tribunal noted, however, that the minutes of a conference held at Headquarters Operation Command on 6 May 1965 stated that *There will be no support during mid ocean passage of the convoy from MANUS IS*

164. The Tribunal also noted the following advice from Defence:

> *On 29 April 1965, the Defence Committee met to consider, without Agendum, the draft Security Annex to Plan TRIMDON and the comments by the Joint Intelligence Committee.*
>
> *The Defence Committee endorsed the Security Annex subject to two amendments. One of these amendments deleted paragraph 7 of the draft Security Annex, that read "It is possible that hostile forces may attack the force in transit from Australia", and substituting it with "It is unlikely that hostile forces will attack the force in transit from Australia but the possibility cannot be excluded".*
>
> *It is noted that the words "but the possibility cannot be excluded" are a hand written addition on the page of comments made by the Chair of the Joint Intelligence Committee.*
>
> but also that:
>
> *Defence is unable to locate risk or threat assessments that led to the conclusions that a 'wartime situation' should be assumed and that the risk of a hostile attack, while 'unlikely' could not be excluded.*

165. The Defence Committee variation to the Security Annex may have downgraded the previously perceived risk, but again it did not suggest any variation in the risk across the entirety of that route from Vitiaz Strait to Cap St Jacques.

166. Further, as discussed below, two later voyages by HMAS *Sydney* were provided with long range maritime surveillance but only from Vitiaz Strait *to a position approximately 100nm beyond Manus Island*. Given that these voyages were only a few months after Operation TRIMDON and there appeared to have been no significant change in the geo-political environment, this seemed to the Tribunal to directly rebut the Defence proposition that the threat or risk increased as one came closer to the coast of Vietnam.

167. The Tribunal also posed the following question to Defence:

> *Noting that it was stated to be the United States view that the risk of attack in the area to be covered by LRMP flights from Sangley Point was 'minimal', please provide any risk or threat assessment provided by the US in support of that view.*

168. The Defence response was as follows:

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to south of the PHILIPPINES unless intelligence demands it (See Minutes of 6 May Conference to discuss LRMP support to HMAS Sydney, HQOC RAAF 11 May 1965). It seems that the long range maritime surveillance actually provided did not cover the entire route from Vitiaz Strait to Cap St Jaques, because the last Lae flight was on 2 June and the first Sangley Point flight was on 4 June, a situation that led the Captain of HMAS *Sydney* to report that he was left with the not very comforting thought of aircraft available at Guam, about 8 hours flying time from the Task Force (See HMAS Sydney Report of Proceedings for June 1965).

The reference to the risk of attack being minimal is in a 27 May 1965 cablegram from the Australian Embassy in Washington (Attachment 26). The cablegram refers to advice from the Commander-in-Chief, United States Pacific Command (CINCPAC).

Discussions culminating in the decision to not arm the long range maritime patrol aircraft deployed to Sangley Point in the Philippines are contained in a series of cablegrams provided at Attachments 27 to 31 inclusive.

169. Analysis of the documents to which Defence referred shows that they related only to the diplomatic/political sensitivities in relation to armed operations from a Filipino base and contained no reference to any risk or threat assessment.

170. Accordingly, the Tribunal concluded that there was no record of any historical risk or threat assessment that would justify setting the boundary of the area of operations at 100nm as opposed to further out from the coast to the point at which Defence had seen fit to commence long range maritime surveillance of the convoy.

171. The Tribunal asked Defence:

Please advise whether Defence considers that the fact that 'no incidents' occurred during RAAF LRMP flights from Lae is relevant to whether or not service should be recognised by the VLSM and, if so, why.

172. In its written response, Defence stated as follows:

The Australian Government took an exceptionally cautious approach on the first voyage of HMAS Sydney to Vietnam carrying large numbers of Army personnel and equipment. This included the provision of escorting surface warships and Royal Australian Air Force long range maritime patrol aircraft for aerial surveillance.

As it was unlikely that hostile forces would attack HMAS Sydney and the escorting ships in transit from Australia, the fact that 'no incidents' occurred reinforces that fact that the threat to the Royal Australian Air Force personnel flying from Lae was VERY LOW. Flying long range maritime patrol sorties from Lae could not be described as relating to warlike operations or a state of disturbance, nor continuing danger from activities of hostile forces or dissident elements.

By the time of the next voyage transporting Australian service personnel and equipment to Vietnam, in September 1965 under PLAN TANTON, HMAS Sydney was supported by two surface escorts, HMA Ships Duchess and Vendetta, but not by long range maritime patrol aircraft. The threat assessment for PLAN TANTON was "Attack by hostile forces while in transit improbable".

No threat to HMAS Sydney and the escorting warships materialised. There was no risk to the long range maritime patrol aircraft and aircrew flying from Lae of a 'continuing danger from activities of hostile forces or dissident elements'.

With regards to the Vietnam Logistic and Support Medal, the fact that there were no incidents is not relevant as the award recognises those who served in the area of operations of Vietnam.

173. In this response, Defence referenced the concepts of *warlike operations or a state of disturbance* and *continuing danger from activities of hostile forces or dissident elements.* Those concepts are respectively drawn from the R(SOS) Act and from the Cabinet decision on "allotment" and, as discussed above, each is irrelevant in determining eligibility under the VLSM Regulations.

174. In stating that Operation TRIMDON represented a very cautious approach by the Australian Government, Defence stated that:

By the time of the next voyage transporting Australian service personnel and equipment to Vietnam, in September 1965 under PLAN TANTON, HMAS Sydney was supported by two surface escorts, HMA Ships Duchess and Vendetta, but not by long range maritime patrol aircraft. The threat assessment for PLAN TANTON was "Attack by hostile forces while in transit improbable".

175. Additionally, in a submission to the Tribunal prior to the hearing, Defence stated that:

Following HMAS Sydney's first voyage to Vietnam under Operation TRIMDON, no other voyages by that ship to Vietnam had long range maritime patrol support.[60]

176. On both occasions, this advice from Defence was considered by the Tribunal to be at best misleading, if not incorrect.

177. The next voyage by HMAS *Sydney* in September 1965 was under PLAN TANTON[61] and organic airborne maritime surveillance and ASW support was provided by fixed-and rotary-wing aircraft from the carrier HMAS *Melbourne* which accompanied HMAS *Sydney.*

178. And the following two voyages of *HMAS Sydney*, in April 1966 and May 1966, were protected by Neptune long range maritime patrol aircraft provided under Operations HARDIHOOD and HARDIHOOD II. Notably, both of these deployments were based in Port Moresby and were tasked specifically to provide anti-submarine support through the *Vitiaz Strait to a position approximately 100nm beyond Manus Island*. Unlike Operation TRIMDON where the threat was not identified in the operational orders, the orders for HARDIHOOD identified the "enemy forces" as *Submarines of Communist Bloc countries and Indonesia, or submarines of unidentified nationality…'.* The Rules of Engagement was unchanged from Operation TRIMDON and each of the aircraft deployed was armed. Operation HARDIHOOD II was completed on 31 May 1966, just a couple of months before the end of the *Konfrontasi*.

[60] Letter, Defence to the Tribunal, BN97131115, 17 March 2024.
[61] Movement Aust troops to Vietnam-plan Trimdon-NAA A1209 1965-6436-BC-3053826.

179. The Tribunal noted that, under these two later operations, no long range maritime patrol support was provided from a point 100nm north-west of Manus Island to the coast of Vietnam - in other words, the principal area of concern was immediately to the north of Papua New Guinea. In the absence of any threat assessment to suggest that the situation had significantly changed within a matter of months from Operation TRIMDON, as noted above this seems to run counter to the suggestion by Defence at the hearing that the threat to the convoy in Operation TRIMDON increased the closer one got to Vietnam.[62]

180. While the Tribunal considered that Defence was correct in saying that *With regards to the Vietnam Logistic and Support Medal, the fact that there were no incidents is not relevant*, the Tribunal noted that Defence had apparently contradicted itself at the hearing to argue against an expanded area of operations because there had been no such incidents.

181. In looking at the comparison of Operation TRIMDON service within the declared area of operations and outside it, the Tribunal had regard to the Rules of Engagement for the operation which were contained in a joint directive that was agreed by the Department of Air and the Department of the Navy. The salient points were:

> *Avoidance of Foreign Naval Units and Military Aircraft*
>
> *If intelligence indicates that the passage of HMA Ships is likely to bring them in the close proximity of naval units (including submarines) or military aircraft of Communist bloc countries, Indonesia, or of unidentified nationality, course is to be altered so that any form of contact with such vessels or aircraft is avoided as far as possible …*
>
> *Surveillance of Foreign Naval Units and Military Aircraft*
>
> *Where it becomes apparent that close contact with naval units or military aircraft … cannot reasonable* [sic] *be avoided, action is to be initiated to track such vessels, including submarines on the surface, or aircraft, in an attempt to ascertain their interest in the passage of HMA Ships.*
>
> *At all times our forces are to remain at the maximum range from the vessels aircraft* [sic] *being tracked, consistent with the efficient execution of their task. In particular RAAF and RAN aircraft are not to be flown in close proximity to foreign naval vessels or military aircraft in a manner which could provoke an unfavourable reaction from such vessels or aircraft.*
>
> *Submerged Submarines*
>
> *If detection is made by RAAF aircraft, HMA ship, or RAN aircraft of a submerged submarine in a position to approach the force every effort is to be made to surface the*

[62] Notwithstanding the focus on the provision of airborne ASW, it is worth noting that every voyage undertaken by HMAS *Sydney* to Vietnam was supported by at least one escort that *'provided a measure of protection against potential hostile forces.'* The ship had up to four escorts in 1965 and 1966, including at times the flagship HMAS *Melbourne*. Other escorts included HMA Ships *Anzac, Derwent, Duchess, Parramatta, Stuart, Swan, Torrens, Vampire, Vendetta* and *Yarra*. (see Naval Operations in Vietnam | Sea Power Centre)

submarine in order to establish its identify as soon as possible. This may be achieved by adopting the current allied exercise surfacing procedures (Action is for the aircraft to drop five explosive charges, which means surface) ... Submerged submarines which do not respond to these procedures are to be tracked, and the OTC is to take all necessary steps to ensure the safety of the force.

Opening Fire

Where, after all practicable measures have been taken to avoid it, an incident occurs on or over the high seas, HMA Ships and RAAF aircraft may, in self defence or for mutual defence, open fire if one or the other is fired at first by hostile naval vessels (including submarines) or aircraft.

182. The aircraft that flew from Sangley Point were unarmed. This meant that they were unable to drop explosive charges in an attempt to get a detected submarine to surface or to open fire in accordance with these Rules of Engagement. In contrast, flights from Lae were armed and could take all action permitted under the Rules.

183. Thus, while all Operation TRIMDON flights had a common purpose of conducting surveillance patrols to detect possible hostile shipping or aircraft, only the Lae flights could engage with a hostile force. As a result, the Lae flights carried potentially greater danger for their aircrew than the Sangley Point flights. The latter, if they detected a hostile force, could not engage but could only alert the convoy and remain at a safe distance to allow ongoing observation. In these circumstances, there would seem to have been little if any possibility of casualties for Sangley Point aircrew. Thus, while the Tribunal considered that the Lae flights were classifiable as 'non-warlike', there was some doubt whether the same could be said of the Sangley Point flights.

184. But, whatever the situation in this regard, it appeared to the Tribunal to be incongruous that flights carrying a higher degree of danger for the aircrew should be denied recognition by the VLSM, while other less dangerous flights for the same purpose were recognised by that medal.

185. Finally, the Tribunal noted that Squadron Leader Sykes argued at the hearing that not only Lae aircrew but also Lae ground crew should receive the VLSM. The Tribunal did not agree with this argument. It noted that the VLSM Royal Warrant states that the purpose of the award is to recognise "certain members of the Australian Armed Forces … who rendered service in support of the Australian Armed Forces in operations in Vietnam" and that the Regulations conferred eligibility "for service … in the area of operations … as a member of the crew of a ship or aircraft". Ground crew may have facilitated the provision of support, but they did not themselves provide support, and they clearly did not enter the area of operations.

186. In light of all the above, the Tribunal concluded that:

- the only material difference between the flights from Lae and those from Sangley Point suggested that those from Lae were equally, if not more, deserving of recognition by the VLSM;

- no reason advanced by Defence against declaring an expanded area of operations withstood critical analysis:

- the setting of a 100nm boundary to the current declared area of operations was completely arbitrary, reflected no military operational perspective, and was "borrowed" from an irrelevant declaration made under the R(SOS) Act for a completely separate and distinct purpose;

- the service rendered on Operation TRIMDON flights from Lae was, in all respects but one, of an identical purpose and nature to that rendered on the flights from Sangley Point which had been recognised by award of the VLSM;

- the one point of difference was that flights from Lae were potentially more dangerous than flights from Sangley Point because they were armed and could have engaged with a hostile force had one been detected, while the latter could not have done so;

- it was therefore anomalous and unjust that aircrew who flew from Sangley Point were awarded the VLSM while those who flew from Lae received no such recognition for their more notable service;

- this difference was incompatible with the principle enunciated by the Committee of Inquiry into Defence and Defence Related Awards that *To maintain the inherent fairness and integrity of the Australian system of honours and awards care must be taken that, in recognising service by some, the comparable service of others is not overlooked or degraded*;[63] and

- it was therefore incumbent on the Tribunal to recommend to the Minister that steps be taken to ensure that aircrew who flew Operation TRIMDON flights from Lae could be awarded the VLSM.

187. The VLSM Regulations currently allow declaration of 'an area of operations of Vietnam' that comprises:

> *(a) an area of land and waters forming part of the territory of Vietnam;*
> *(b) an area of waters off the coast of Vietnam;*
> (c) *the airspace above the areas referred to in paragraphs (a) and (b).*

[63] Report, Committee of Inquiry into Defence Awards, Australian Government, April 1994.

188. A new area of operations that covered the area patrolled by the Lae flights could not be declared under paragraphs (a) and (c). Whether that area could be declared under paragraphs (b) and (c) depends on the meaning of 'waters off the coast of Vietnam'. The map at **Attachment A** depicting the route followed by the HMAS *Sydney*[64] shows that the path from Lae to Vung Tau is almost a straight line, and certainly travelling that path did not require circumnavigation of any significant intervening land mass.

189. But, could a point approximately 4,800 kilometres from Vung Tau be said to be "off the coast of Vietnam"? That is a question which would need to be considered if the Minister agreed that the VLSM should be able to be awarded to the aircrew who served on the Operation TRIMDON flights from Lae.

190. However, even if it was concluded that this more distant area could not be declared under the current VLSM Regulations, effect could be given to the Tribunal's recommendation by a specific amendment of the Regulations to provide for such eligibility (as was done in 2013 in respect of the Ubon Air Base in Thailand).

191. Noting that, if required, this latter course would take longer to achieve, the Tribunal would urge that such action be taken expeditiously having regard to the now-advanced age of Squadron Leaders Lardner and Sykes and their similarly placed colleagues who might have been awarded the VLSM as long as 20 years ago had their claims and arguments then been correctly analysed.

Tribunal Decision

192. In light of the above, the Tribunal decided:

(a) to affirm the various decisions of Defence to the effect that Squadron Leader Sykes and Squadron Leader Lardner are not eligible to be awarded the Vietnam Logistic and Support Medal under the currently applicable eligibility criteria; but

(b) to recommend to the Minister, for the reasons detailed above, that action should be taken, either by declaration of a new area of operations of Vietnam under Regulation 3 of the *Vietnam Logistic and Support Regulations* or by amendment of the Regulations themselves, so that Squadron Leaders Lardner and Sykes (and other aircrew who flew Operation TRIMDON flights from Lae) can be awarded the Vietnam Logistic and Support Medal.

[64] Letter, Defence to the Tribunal, BN97131115, 17 March 2024, Attachment 1.

ATTACHMENT A

Australian Government
Department of Defence
Defence Intelligence Group

SOUTH EAST ASIA, AUSTRALIA
HISTORICAL COURSE PLOT

HISTORICAL COURSE PLOT OF HMAS *SYDNEY (III)*

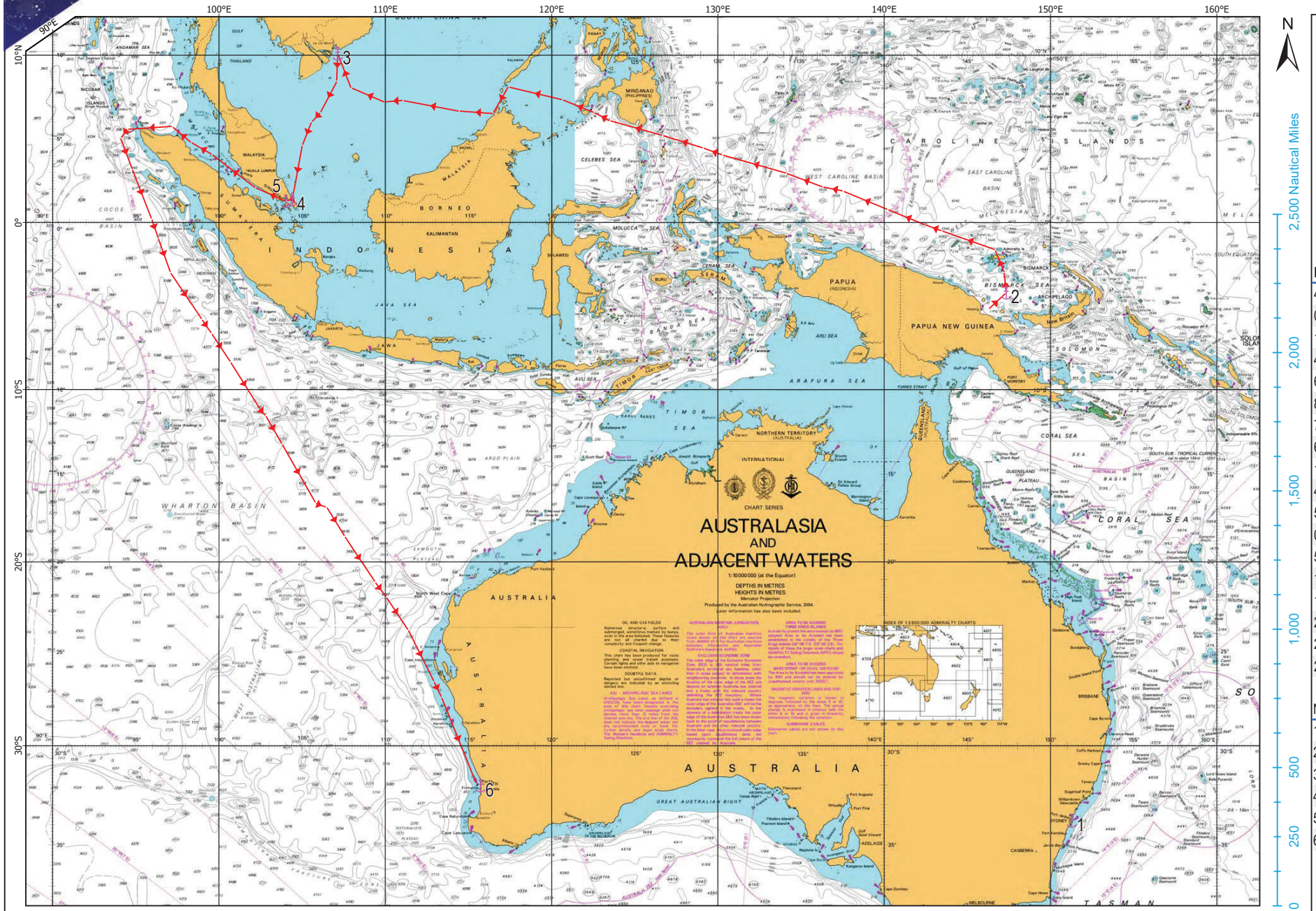
briefing purposes only and should not be used for targeting or navigation. Boundaries and place names are not necessarily authoritative.

MG Branch
maritime.geoint@defence.gov.au

Datum: WGS 1984 | Sources: Charts British Admiralty (UKHO), Digitised historical course plot of HMAS Sydney(III) 1965.

February 2025 | AGO-20138-01-25

AGO



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LAT	LONG	Date
4° 13' 00" S	147° 20' 30" E	1 June 1965
00° 30' 00" S	143° 26' 00" E	2 June 1965
1° 53' 30" N	137° 30' 00" E	3 June 1965
4° 3 ' 30" N	130° 14' 30" E	4 June 1965
6° 7' 00" N	123° 28' 30" E	5 June 1965
8° 7' 00" N	117° 23' 30" E	6 June 1965
7° 19' 00" N	111° 2' 00" E	7 June 1965
6° 33' 30" N	106° 5' 00" E	12 June 1965
1° 24' 00" N	104° 25' 00" E	14 June 1965
4° 6' 00" N	99° 33' 00" E	18 June 1965
5° 35' 00" N	94° 28' 30" E	19 June 1965
0° 10' 00 N	95° 58' 00" E	20 June 1965
5° 51' 12" S	99° 0' 00 E	21 June 1965
11° 12' 00" S	102° 30' 00" E	22 June 1965
16° 40' 00" S	105° 50' 00" E	23 June 1965
21° 10' 00" S	109° 25' 00" E	24 June 1965
26° 38' 00" S	112° 57' 00" E	25 June 1965
26° 32' 30" S	114° 34' 00" E	26 June 1965

HMAS Sydney(III) position at 0800 in transit

No.	Event	Field
1	Depart Sydney	27 May 1965
2	TG transits "Vitiaz Strait"	01 June 1965
3	Anchor IVO Vung Tau	08 June 1965
4	Anchor IVO Pilau Tioman	13 June 1965
5	Alongside Singapore	15 June 1965
6	Arrive Fremantle	26 June 1965

Legend

Additional information

Course plotted

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