Australian Government
Department of Defence
Defence People Group

First Assistant Secretary
People Services
Department of Defence
R1-1-C009
PO Box 7902
CANBERRA BC ACT 2610

EC22-004607

Mr Jay Kopplemann
Executive Officer
Defence Honours and Awards Appeals Tribunal
Locked Bag 7765
CANBERRA BC ACT 2610

Dear Mr Kopplemann

INQUIRY INTO RECOGNITION FOR SERVICE WITH RIFLE COMPANY BUTTERWORTH

Thank you for your letter of 18 October 2022 referring four questions from the Tribunal in relation to the above named inquiry.

I am pleased to convey answers to the four questions posed by the Tribunal, with supporting documents where they are available.

This response reflects a Defence view and does not purport to reflect ministerial submissions, correspondence or decisions that may have been made by the Department of Veterans' Affairs, or any view that department may have in relation to these questions.

My point of contact for this matter is the Director Honours and Awards, Mr Ian Heldon, on telephone (02) 5109 7560 or email: ian.heldon@defence.gov.au.

Yours sincerely

Dr Paul Robards AM
Acting First Assistant Secretary People Services
Defence People Group

16 November 2022

Enclosure:
1. Responses to questions.

Question 1

Has there been any Cabinet or ministerial decision since 17 May 1993 that amends, revokes or otherwise affects Decision 1691 of that date; if so, please provide a copy of any such other decision and any associated Cabinet or Ministerial Submission.

Defence is unaware of any Cabinet decision since 17 May 1993 that amends, revokes or otherwise affects Decision 1691 of that date.

The *Veterans' Entitlements Act 1986* itself was amended in 1997[1] to add the definitions of warlike and non-warlike service, to mean service in the Defence Force of a kind determined in writing by the Defence Minister to be warlike (or non-warlike) service.[2]

On 27 February 2018, the then Minister for Defence agreed updated nature of service definitions following the Chiefs of Service Committee consideration of this topic in June 2017. The Nature of Service Directorate provided the updated definitions to the Tribunal Secretariat by email on 17 October 2022.

Question 2

On 18 September 2007 then Minister Billson signed instruments under the Veterans' Entitlements Act 1986 declaring service with Rifle Company Butterworth to be either non-warlike service or hazardous service. Has any submission been made to any Minister concerning the non-registration of those instruments on the Federal Register of Legislation or otherwise concerning the amendment, variation or revocation of those instruments; if so, please provide a copy of any such submission and of the ministerial decision made in response to any such submission.

The 23 June 2010 Defence submission to the then Defence Honour and Awards Tribunal Inquiry into recognition for members of Rifle Company Butterworth for service in Malaysia between 1970 and 1989, briefly mentioned this aspect (paragraphs 40-46 of that submission refer). A copy of the 23 June 2010 Defence submission is attached to the Defence submission to the present Inquiry.

Those paragraphs describe actions by the Rifle Company Butterworth Review Group writing to the then Minister for Defence Science and Personnel, followed by a review by the then Nature of Service Branch which found the instruments were inaccurate and invalid. It was discovered that the Instruments of Determination signed by former Minister Billson inadvertently omitted the Royal Australian Air Force Airfield Defence Guards, Police and Security Guards; did not cover all the appropriate dates; and had not been registered on the Federal Register of Legislative Instruments.

Ministerial Submission MA11-001151 to the then Parliamentary Secretary for Defence sought agreement that Australian Defence Force service at Butterworth from 1970 to 1989 remains classified as peacetime, and provided a letter for the Parliamentary Secretary to sign to the Hon Bruce Billson MP advising of the decision.

[1] Amended by the *Veterans' Affairs Legislation Amendment (Budget and Compensation Measures) Act 1997.*

[2] *Veterans' Entitlements Act 1986*, section 5C *Eligibility* related definitions.

On 21 March 2012, the Parliamentary Secretary for Defence agreed that Australian Defence Force service at Butterworth from 1970 to 1989 does not meet the essential criteria for classification as special duty (under the *Repatriation (Special Overseas Services) Act 1962*), nor warlike or non-warlike service (under the *Veterans' Entitlements Act 1986*).

A copy of Ministerial Submission MA11-001151 is provided at Attachment A. A copy of the 2011 Nature of Service Branch review of Australian Defence Force service at Butterworth from 1970 to 1989 was provided to the Tribunal Secretariat by email from the Directorate of Honours and Awards on 15 September 2022.

In December 2018, the then Minister for Defence Personnel requested information on the decision by the Hon Bruce Billson MP to sign Hazardous and Non-warlike Instruments of Determination on 18 September 2007, and the subsequent decision by the former Parliamentary Secretary on 21 March 2012, that Australian Defence Force service at Butterworth from 1970 to 1989 should remain classified as peacetime service.

The Vice Chief of the Defence Force briefed the then Minister for Defence Personnel under Ministerial Submission MS19-000009 dated 1 February 2019. A copy of the Ministerial Submission is provided at Attachment B. The details of the contact officer and consulted parties have been redacted for privacy reasons.

Question 3

In respect of each independent or ministerially directed inquiry or report that concerned service with Rifle Company Butterworth, please provide copies of:

- ***Each submission made to any Minister concerning the acceptance or rejection of the findings or recommendations of the inquiry or report;***
- ***Each decision made by the Minister in response to that submission; and***
- ***Any media release or public announcement advising of that decision.***

[alternatively, if such documents have already been provided to the Tribunal by the Department, please advise where they may be found]

Committee of Inquiry into Defence and Defence Related Awards (March 1994)

No Defence ministerial submissions can be identified. A search of the National Archives of Australia database *RecordSearch*, though, suggests the recommendations of the Committee were put to Cabinet in March 1994.[3]

RecordSearch also lists a number of files related to this Committee, primarily in record series A463 and A1209. These records are controlled by the Department of the Prime Minister and Cabinet, and few appear to have been examined and opened for public access.

[3] See NAA: A14217, 1585, 'Cabinet Submission 1585 - Report of the Committee of Inquiry into Defence Awards [CIDA] - Decision 2686'. This series is controlled by Cabinet. The access status of this record is 'Not yet examined'.

On 19 April 1994, the then Minister for Defence Science and Personnel, and Minister for Administrative Services, the Hon Gary Punch MP and the Hon Frank Walker QC MP respectively, announced the Government's response to the Report of the Committee of Inquiry into Defence and Defence Related Awards (Attachment C).

The Committee "did not consider that service at Butterworth was clearly and markedly more demanding than normal peacetime service". As it did not recommend that this service be recognised through a medal, the joint medal release is silent on this matter.

Review of Service Entitlement Anomalies in Respect of South-East Asian Service 1955-1975 (February 2000) (the Mohr Review)

In March 2000, Cabinet considered the recommendations of the Mohr Review. A digitised copy of the Cabinet submission and decision can be obtained from the National Archives of Australia.[4]

On 19 July 2000, the Acting Chief of the Defence Force signed a Ministerial Submission to the then Minister Assisting the Minister for Defence, the Hon Bruce Scott MP, requesting he approve several things connected to the implementation of the Mohr Review's recommendations. This included agreement to implement the Australian Service Medal 1945-1975 with Clasp 'SE ASIA' for land service in the period 1955 to 1975 rather than an extension of the Australian Service Medal 1945-1975 with Clasp 'FESR'; and that service in South East Asia be recognised beyond 1971 to at least 1975, with consideration of Butterworth to 1989.

Minister Scott approved these recommendations on 9 August 2000 and announced them in Media Release 339/00 of 30 August 2000. The submission to Minister Scott and the Media Release were included in the 23 June 2010 Defence submission to the Inquiry into recognition for members of Rifle Company Butterworth for service in Malaysia between 1970 and 1989, which is attached to the Defence submission to the present Inquiry.

Defence Review of Service Entitlement in Respect of the Royal Australian Air Force and Army Rifle Company Butterworth Service 1971-1989 (2001)

In accordance with then Minister Scott's agreement, Defence conducted a follow-on review of service in respect of the Royal Australian Air Force and Army Rifle Company Butterworth service from 1971 to 1989.

On 10 April 2001, the Chief of the Defence Force signed a ministerial submission to Minister Scott, recommending the Minister approve awards of the Australian Service Medal 1945-1975 with Clasp 'SE ASIA' and Australian Service Medal with Clasp 'SE ASIA' for certain service in South East Asia from 31 October 1971 to 31 December 1989.

Minister Scott approved this recommendation on 18 April 2001 and issued a Media Release on 9 May 2001. Separately, an internal Defence DEFGRAM (No 233/2001) was released on 2 July 2001 explaining the eligibility criteria and policy background to the awards of the Australian Service Medal 1945-1975 with Clasp 'SE ASIA' and Australian Service Medal with Clasp 'SE ASIA' for service in South East Asia between 1955 and 1989.

[4] NAA: A14370, JH2000/88, 'Cabinet Submission JH00/0088 - Review of Service Entitlement Anomalies in Respect of South-East Asian Service 1955-1975 - Decision JH00/0088/CAB'.

The ministerial submission and DEFGRAM No 233/2001 were included in the 23 June 2010 Defence submission to the Inquiry into recognition for members of Rifle Company Butterworth for service in Malaysia between 1970 and 1989, which is attached to the Defence submission to the present Inquiry. A copy of the Minister's Media Release of 9 May 2001 is provided at Attachment D.

Review of Veterans' Entitlements (2003) (the Clarke Review)

No Defence ministerial submissions can be identified in relation to accepting or rejecting the recommendations made by the Clarke Review in relation to Rifle Company Butterworth. It is noted that the Clarke Review recommended that "No further action should be taken in respect of peacetime service at Butterworth after the cessation of Confrontation and with ANZUK after the cessation of Confrontation."

On 2 March 2004, the then Prime Minister, the Hon John Howard MP, announced the Australian Government's response to the Clarke Committee's report on veterans' entitlements (Attachment E). On the same day, the then Minister for Veterans' Affairs, the Hon Danna Vale MP, gave a speech titled 'Response to the Clarke Committee Report on Veterans' Entitlements' (Attachment F). These announcements reflected the Government's response to the Clarke Review. Neither statement mentioned the Clarke Review's recommendation that no further action be taken in respect of peacetime service at Butterworth after the cessation of Confrontation.

The Prime Minister and Minister for Veterans' Affairs both rejected the Clarke Review's view that the 'incurred danger test' has been interpreted too narrowly by courts and administrators. The Minister also said in her speech that:

> *"Public support and confidence in the generosity of our Repatriation System depends on the 'incurred danger test' remaining objective. We would create anomalies if we were to confuse a state of readiness, or presence in a former enemy's territory, with the real and tangible risks of facing an armed and hostile enemy.'*

Inquiry into recognition for members of Rifle Company Butterworth for service in Malaysia between 1970 and 1989 (Defence Honours and Awards Appeals Tribunal)

On 9 May 2011, the Acting Chief of the Defence Force signed Ministerial Brief 031807 to the then Parliamentary Secretary for Defence, Senator the Hon David Feeney, recommending that he note the Tribunal's recommendations, agree that the Government accept the Tribunal's findings, and to agree to a media release (Attachment G).

On 17 May 2011, the Parliamentary Secretary agreed to the Acting Chief of the Defence Force's recommendations. On 26 July 2011, Defence issued a departmental media release in lieu of a ministerial media release, announcing the Government had accepted the Tribunal's recommendations (Attachment H).

Question 4

Please provide a response to Attachment F to Submission 65b from Rifle Company Butterworth Review Group and Rifle Company Butterworth Veterans' Group (copy attached).

Defence offers the following observations in response to Attachment F to Submission 65b from the Rifle Company Butterworth Review Group and Rifle Company Butterworth Veterans' Group:

- Defence does not consider that the comparison table should be relied upon as an authoritative document as it contains some incorrect assumptions and information about Australian Defence Force service and its recognition.
- Operations are not compared against each other to determine the nature of service.
- Nature of service assessments are not influenced by precedent. Operations are assessed on their own merits.
- Rifle Company Butterworth service is recognised with the two versions of the Australian Service Medal with Clasp 'SE ASIA', stemming from a decision by then Minister Bruce Scott MP on 18 April 2001 on recommendations from the Chief of the Defence Force.
- Intelligence Threat Assessments: Assessments are generally produced for all Australian Defence Force activities including peacetime operations, Australian Defence Force exercises, and Defence interests in Australia. Of note is that the current terrorist threat level in Australia is 'PROBABLE'.[5] It is also routine to provide threat assessments for peacetime naval port visits and other Australian Defence Force activities and visits. The production of a threat assessment in itself does not differentiate between types of deployments.
- Threat Assessments for Air Base Butterworth over the period 1971 to 1989 were continually assessed as LOW.
- Rifle Company Butterworth was not authorised to conduct operations or any patrols outside of Butterworth Air Base. Rifle Company Butterworth was not authorised to be involved in internal Malaysian / local civil affairs or disturbances, or to be employed in security operations outside the gazetted area of the Butterworth Air Base.[6]
- Activities of communist terrorists in Malaysia through the period is acknowledged, but it did not characterise Australian Defence Force service in Butterworth. At no time was consideration given to removing Royal Australian Air Force families from

[5] See www.nationalsecurity.gov.au

[6] Paragraph 19 of the Report of the Inquiry into recognition for members of Rifle Company Butterworth for service in Malaysia between 1970 and 1989 (February 2011) states, "Companies from Australia have continued the rotational presence at Butterworth since 1973. At all times, their role has been defensive, limited to within the Butterworth Air Base, and their rules of engagement have been restrictive. After 1970, Chin Peng's insurgency campaign waxed and waned until he signed a peace treaty with the Malaysian Government in 1989, but no attack on the Butterworth Air Base ever eventuated."

Malaysia due to any threat. Rifle Company Butterworth and Royal Australian Air Force members travelled freely (unarmed) in civilian clothing when off duty.

- Incurred Danger: in accordance with section 7A(1)(a)(i) of the *Veterans' Entitlements Act*, the incurred danger test is relevant to claims for qualifying service by Australian Defence Force members in regard to service during World War One and World War Two only.

- The question of 'what is incurred danger' has been tested in a number of Federal Court decisions. Following these decisions, the Department of Veterans' Affairs holds the view that danger is not incurred by merely perceiving or fearing danger. It is incurred when a person is exposed to, or in peril of, actual physical or mental injury or harm from hostile forces.[7]

- Expectation of casualties: There was no expectation of casualties from Rifle Company Butterworth. Non-battle fatalities (for example: traffic accidents, misadventure) do not factor into nature of service assessments.

- No 4 Hospital, Royal Australian Air Force at Butterworth was not established because of a communist threat. The hospital was established because the British hospital at Taiping was closing in 1965, and Australia found it necessary to provide alternative hospital facilities for Royal Australian Air Force, Royal Air Force, Australian and British Army personnel and their dependants (Attachment I).

- Middle East operations since 2014: These operations are recognised by the Australian Operational Service Medal - Greater Middle East Operation, irrespective of the nature of service classification attached to each declared operation. Some of these operations are warlike while others are non-warlike.

- The Australian Operational Service Medal was instituted in 2012, to replace the Australian Active Service Medal and Australian Service Medal as the means of providing medallic recognition for future operations.

- The Australian Operational Service Medal does not differentiate between nature of service classification. This removes any nexus between the nature of service classification and the type of medal awarded, which characterised awards of the Australian Active Service Medal and the Australian Service Medal. Australian Defence Force personnel deployed into Afghanistan also received a North Atlantic Treaty Organization medal which in part acknowledges the additional risks of serving in that country.

- Submarine Special Operations: Eligibility for benefits under section 6DB of the *Veterans' Entitlements Act* relies on a person having been awarded the Australian Service Medal with Clasp 'SPECIAL OPS' or being eligible to be awarded it. Extending 'operational service' to this category of service did not upgrade the medallic entitlement to the Australian Active Service Medal.

[7] https://clik.dva.gov.au/compensation-and-support-policy-library/part-1-service-requirements/12-service-types/121-qualifying-service/incurred-danger.

Attachments

A. Ministerial Submission MA11-001151: 'Nature of Service (NOS) Classification - Australian Defence Force Service at Butterworth from 1970 to 1989', 21 March 2012
B. Ministerial Submission MS19-000009: 'Review of the Decision Regarding the 2007 Hazardous and Non-Warlike Determinations for Rifle Company Butterworth (RCB) Service 1970-1989', 22 February 2019
C. Media Release: 'New Awards for Forgotten Veterans and Civilians', 19 April 1994
D. Media Release: '15000 New Medal Entitlements for South East Asian Service', 9 May 2001
E. Media Release: 'Additional Benefits for Veterans, Government Response to Clarke Report', 2 March 2004
F. Media Speech: 'Response to the Clarke Committee Report on Veterans' Entitlements, Statement by the Minister for Veterans' Affairs, the Hon Danna Vale, MP', 2 March 2004
G. Ministerial Submission 031807: 'Defence response to the Defence Honours and Awards Appeals Tribunal Report into recognition for members of Rifle Company Butterworth for service in Malaysia between 1970 and 1989', 17 May 2011
H. Media Release: 'Defence Honours and Awards Appeals Tribunal Report - Inquiry into recognition for members of Rifle Company Butterworth for service in Malaysia between 1970 and 1989', 26 July 2011
I. Press Statement: 'Statement by the Honourable Peter Howson, MP, Minister for Air: New RAAF Hospital at Butterworth Malaysia', 2 March 1965

ATTACHMENT A

UNCLASSIFIED

Snowdon/2011/MA11-001151
Schedule No:
Reference: SEC/OUT/2011/437
CDF/OUT/2011/281

B1740745

Australian Government
Department of Defence

MINISTERIAL SUBMISSION | Routine

Date Dept Approved:	Date Rec in Office:	Date Due:

For Action: Senator Feeney
For Info: Minister for Defence / Mr Snowdon
Copies to: Secretary, CDF, VCDF, DEPSEC PSP, DEPSEC DS, HSMC and FASMEC

Subject: Nature of Service (NOS) Classification – Australian Defence Force Service at Butterworth from 1970 to 1989

Purpose:
To seek your agreement that Australian Defence Force (ADF) service at Butterworth from 1970 to 1989 remains classified as peacetime and obtain your signature on a letter to the Hon Bruce Billson MP advising him of your decision.

Key Points:

1. This advice follows from your meeting on 13 Oct 11 with the Secretary to discuss Butterworth nature of service issues.
2. Following numerous submissions requesting warlike status and based on advice from the then VCDF (Attachment A), on 18 September 2007 the Hon Bruce Billson MP retrospectively declared the service of the Rifle Company Butterworth (RCB) from 1970 to 1989 as either hazardous service under section 120(7) of the Veterans' Entitlements Act 1986 or non-warlike service in accordance with the 1993 Government framework.
3. In 2009, it was discovered that the Instruments of Determination (Attachment B) inadvertently omitted the RAAF Airfield Defence Guards (ADG), Police and Security Guards, did not cover all the appropriate dates and had not been registered on the Federal Register of Legislative Instruments. Consequently, all ADF service at Butterworth from 1966 to today remains classified as peacetime service.
4. A 2011 Defence review (Attachments C and D) assessed that, from first principles, the reclassification of ADF service at Butterworth from 1970 to 1989 as hazardous service under section 120(7) of the Veterans' Entitlements Act is not supported by the available evidence, although that case had previously been made by Defence and accepted by Government.
5. The 2011 Defence review found that official documents indicated that the roles of the RCB were to provide a ground force presence in Malaysia, conduct training and, if required, assist in the ground defence of Butterworth. The evidence now available does not support the claim that RCB was an operational deployment and that its primary role was to protect Australian assets at the Butterworth Base. This review assessed that the 2007 review relied on selective information provided by the RCB Review Group and that little objective research was undertaken in relation to the claims made by the Review Group.
6. Current policy is that all submissions seeking review of a nature of service classification of past operations are considered in the context of the legislation and policies that applied at the time of the operation under review. In the case of ADF service at Butterworth, from the end of Confrontation in 1966 to the end of the RCB role in December 1989, the applicable Acts are the Repatriation (Special Overseas Service) Act 1962 and the Veterans' Entitlements Act.

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7. Hazardous service was introduced into the Repatriation Act in 1985 in order to cover service that was substantially more dangerous than normal peacetime service, but could not be classified as peacekeeping service although it attracted a similar degree of physical danger. At that time, peacekeeping was intended to cover ADF service with the United Nations (UN) Transition Assistance Group in Namibia and was described as 'a force raised by the UN or another international body for the purposes of peacekeeping [not further defined] or observing or monitoring any activities or persons in an area outside Australia that may lead to an outbreak of hostilities.' Hazardous service has not previously been applied before 1986, however there is no legislative reason why hazardous service could not be applied retrospectively, including to any or all ADF service at RAAF Butterworth from 1970 to 1989, should MINDEF choose to do so.

8. Reclassification of ADF service at Butterworth before 1985 as hazardous service does not accord with the policy of considering past operations in the context of the legislation and policies that applied at the time. Notwithstanding, cases should be considered on their merit and where a clear anomaly or significant disadvantage or injustice exists, exceptions to policy should be allowed where there is no other available remedy. The evidence does not indicate that peacetime service at Butterworth from 1966 (post-Confrontation) creates an anomaly or unfairly disadvantages any personnel which might support an exception to the policy based on this consideration alone.

9. For any ADF service, including at Butterworth from 1970 onwards, to meet the original intent of hazardous service, the service would need to be shown to be substantially more dangerous than normal peacetime service and attract a similar degree of physical danger as peacekeeping service. The evidence does not indicate that ADF service at Butterworth from 1966 satisfied these conditions.

10. Previous external reviews (General Gration's 1993 Committee of Inquiry into Defence and Defence Related Awards, and Justice Clarke's 2003 Review of Veterans' Entitlements) have not supported reclassification of ADF service at Butterworth from 1966 above peacetime service.

11. Defence Legal, in consultation with staff at the Australian Government Solicitor, has advised that Defence is not legally obliged to register the current documents (Instruments), however it is possible to do so if Defence so chooses (Attachment E). DVA legal advice is that whether or not the Instruments are registered does not affect their validity, ie they are valid either way and give rise to benefits under the Veterans' Entitlements Act. Their advice goes on to say that if registered, the documents could be immediately revoked if the reclassification lacks merit. One issue in not registering them is that the Instruments have already been released through the FOI process. A second issue is that failure to proceed with registration may lead to claims under the Defective Administration Scheme.

12. Accepting that ADF service at Butterworth from 1970 does not meet the essential criteria and intent of hazardous service under section 120(7) of the Veterans' Entitlements Act, a proposal to formally reclassify this service might be based on an obligation flowing from the 2007 VCDF recommendation and decision by Minister Billson to reclassify this service as hazardous.

13. Registration of the 2007 Instruments would create an anomaly and disadvantage those RAAF ADG, Police and Security Guards who served directly and primarily in the defence of the Butterworth Base. Further, the service of all other ADF personnel at Butterworth from 1970 to 1989 could arguably be included in any revised determinations. An anomaly could also be created in that hazardous service under section 120(7) of the Veterans' Entitlements Act and non-warlike service provide subtly different levels of benefits. While both provide the more beneficial standard of proof, hazardous service does not provide eligibility to the occurrence test in considering disability pension claims.

14. Advice from the office of the PARLSEC is that Senator Feeney would entertain a recommendation that the original decision by Minister Billson be overturned. However, a considerable outcry could be expected from RCB support groups. Legal advice from both DVA and Defence Legal on the current status of the existing Instruments provides flexibility on how this matter might be resolved.

15. It is estimated that some 9,000 ADF personnel served with RCB from 1970 to 1989. The cost of including this service in the DVA budget is assessed as significant. DVA is yet to advise this cost. Inclusion of the RAAF ADG, Police and Security Guards would have an additional cost (approximately 540 personnel) and extension to all ADF personnel on the basis that all personnel at Butterworth were exposed to the same conditions (approximately 13,000 personnel) would have a very significant financial impact.

16. Separately, Mr Billson wrote to you on 31 October 2011 (Attachment F) advising that he had received a copy of a letter to you dated 25 Aug 11 from the Royal Australian Regiment Corporation which raised the issues concerning the accuracy and legitimacy of the 2007 Instruments. Mr Billson requested your consideration and that you 'seek to uphold the clear policy intention of the September 2007 RCB nature of service determination in a way that does not disadvantage DVA clients in terms of repatriation benefits'.

Conclusion:

17. Based on information now available and the intent and application of the relevant legislation and policies, it is assessed that ADF service at Butterworth during the period 1970 to 1989 does not meet the level of risk associated with a classification of hazardous service under section 120(7) of the Veterans' Entitlements Act. Such an assessment is consistent with other external reviews of ADF service at Butterworth.

18. There is no new and compelling evidence to indicate that retention of the current peacetime nature of service classification would create an anomaly or would unfairly disadvantage any ADF personnel. On the contrary, the evidence indicates that an anomaly and unfair disadvantage would be created by providing hazardous service to RCB personnel while all other ADF personnel remained under a peacetime classification. Classification of RCB service from 1970 to 1989 as hazardous service would contradict the practice of considering the nature of service of past operations in the context of the legislation and policy that applied at the time of the operation under review.

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CDF/OUT/2011/1281

Recommendations:

That you:

i. **Note** that the most recent and detailed review of ADF service at Butterworth from 1970 to 1989 does not support reclassification of this service as hazardous service under section 120(7) of the Veterans' Entitlements Act.

Noted / Please discuss

ii. **Note** that a case could be made that there is an obligation flowing from the 2007 decision by Minister Billson, but this would create further anomalies.

Noted / Please discuss

iii. **Agree** that ADF service at Butterworth from 1970 to 1989 does not meet the essential criteria for classification as special duty, or warlike or non-warlike service.

Agreed / Not agreed

iv. **Agree** that all ADF service at Butterworth from 1966 should remain classified as peacetime service.

Agreed / Not agreed

v. **Sign** the attached letter to the Hon Bruce Billson MP, advising him of your decision.

Signed / Not signed

Approved By:	Approved By:
Duncan Lewis Secretary 24 November 2011	**D.J. HURLEY** GEN CDF November 2011
Contact Officer: CDRE Paul Kinghorne, RAN	**Phone:** (02) 6207 0207

Primary Addressee

David Feeney
21/3/12

Information Addressee

Noted / Please Discuss

Stephen Smith
/ /

Warren Snowdon
/ /

Resources:

19. N/A.

Consultation:

20. Nature of Service Branch has consulted with DVA, PM&C, DoFD, the Army History Unit, the Office of Air Force History, the Directorate of Honours and Awards and Mr Adam Carr (Chief of Staff to Senator Feeney).

Attachments:

A. MINSUB B660823 dated 28 August 2007.

B. Unregistered 2007 Instruments.

C. 2011 NOS Branch Review of ADF Service at Butterworth.

D. Background Paper NOS Classification ADF Service at RAAF Butterworth.

E. Defence Legal advice dated 2 November 2011.

F. Letter from the Hon Bruce Billson MP dated 31 October 2011.

G. Talking points.

H. Draft letter to the Hon Bruce Billson MP.

UNCLASSIFIED

REQUEST FOR NATURE OF SERVICE REVIEW OF RIFLE COMPANY BUTTERWORTH (RCB) SERVICE 1970 TO 1989		
FOR: Mr Billson **Cc: Dr Nelson**	Schedule Nos.: 91229, 97315, 94573, 94076 101673	**Ministerial action required by:** 10 Sep 07
FROM: VCDF (HQJOC)	Ref: B660823	**Reason:** To respond to the RCB Review Committee

Copies: SEC, CDF, VCDF, CN, CA, CAF, DEPSEC SCG, DEPSEC IS&IP, FASCPA, HICMD, HMSC, DDSD, DDIO, FASBFP, FASIP, DGPA, AASHRA, DH&A.

Recommendations

That you:

a. **Agree** that the request for a warlike classification for the activities of the Rifle Company Butterworth be declined;
b. **Agree** that the RCB activities in the period 15 Nov 70 to 6 Dec 72 be classified 'non-warlike' and the RCB activities in the period 7 Dec 72 to 31 Dec 89 be classified 'hazardous' under section 120 of the *Veterans Entitlement Act 1986*;
c. **Sign** both Instruments of Determination,
d. **Sign** the attached letter advising Mr Robert Cross of your decision, and
e. **Agree** to Mr Cross being classified a serial correspondent if he does not accept the contents of the attached letter and is unable to provide new material to substantiate 'warlike' service.

Key Issues

1. Mr Robert Cross, Chairman of the RCB Review Group Committee, sent the Minister for Defence a lengthy submission on 18 August 2006. This submission was passed to you for a response. The submission seeks a 'warlike' classification for service with the RCB between 1970 and 1989 and argues that the RCB was deployed to protect the Butterworth Airbase and was authorised to use force should the Airbase be attacked and because of the threat from communist terrorists during the period there was an expectation of casualties.
2. The submission has been examined against the legislation and policy extant during the period 1970 to 1989. In the context of that legislation and policy I believe there are no grounds to support a 'warlike' classification. However, there are grounds for a 'hazardous' classification under Section 120 of the *Veterans Entitlement Act 1986*. Due to legislative requirements the classification of 'hazardous' applies for the period 7 December 1972 to 31 December 1989. The period prior to this, from 15 November 1970 to 6 December 1972, will need to be declared 'non-warlike'. These determinations would confer on members of the RCB the benefits of 'non-warlike' service.

K.J. GILLESPIE LT GEN VCDF Tel: W: (02) 6265 1979 28 Aug 07	(a) ~~AGREED/NOT AGREED~~ (b) ~~AGREED/NOT AGREED~~ (c) ~~SIGNED/NOT SIGNED~~ (d) ~~SIGNED/NOT SIGNED~~ (e) ~~AGREED/NOT AGREED~~ **BRUCE BILLSON** / 9 / 2007 **BRENDAN NELSON** / /2007		1	2	3	4	5
		Timeliness					
		Quality					
			Poor	Satisfactory			Excellent
		☐ Letter Amended					
Branch/Section Head	RADM R.C. Moffitt DCJOPS		W: (02) 9359 5719		Mob: 0434 654 040		
Action Officer	BRIG D.A.W. Webster DGNOSR		W: (02) 6127 1341		Mob: 0417 235 492		

3. RAAF Airfield Defence Guards and RAAF Police who also served directly in the defence of the Butterworth Air Base (BAB) can also be considered to have incurred a similar level of danger or exposure to the risk of harm and should therefore have their service considered 'hazardous' or 'non-warlike.'

4. The reasons underpinning the recommendation are in the Background at Attachment A. A draft reply to Mr Cross for your signature is at Attachment B. The Instruments of Determination are at Attachment C. Mr Cross' previous submissions are at Attachment D.

5. The volume of correspondence received by Mr Cross demonstrates his conviction that the RCB deserves its service between 1970 and 1989 to be classified 'warlike'. It is possible that your response to Mr Cross will not satisfy him. The requirement to continually respond to correspondence on this issue detracts from the ability of the Nature of Service Review team to research other claims. If Mr Cross does not accept the attached response and is unable to provide new material to substantiate 'warlike' service, I believe no further replies should be provided.

Sensitivity

6. ADF personnel who served in Rifle Company Butterworth have formed a committee to press their claim for warlike service. It is possible that they will not accept the decision to reject their claim for warlike service.

Resources

7. DVA to determine the cost impact of a hazardous classification under Section 120 B of the *VEA 1986*.

Consultation

8. DGPPEC, Finance (FASBFP) and DVA and the Directorate of Honours and Awards have been consulted in the preparation of this submission.

Attachments:

A. Background.
B. Draft Response to Chairman of the RCB Review Committee Mr Robert Cross.
C. Instruments of Determination Hazardous Service and Non Warlike.
D. MINREP 91229, MINREP 97315, MINREP 94573 MINREP 94076, MINREP 101673.

ATTACHMENT A
TO B660823

BACKGROUND TO REVIEW OF RIFLE COMPANY BUTTERWORTH NATURE OF SERVICE

Rifle Company Butterworth

1. As a result of the residual presence of communist terrorists under the leadership of Chin Peng in Malaysia, and the continued presence of two RAAF fighter squadrons and support forces at Butterworth, the Commonwealth Government decided to assist in base security by deploying an infantry company known as the Rifle Company Butterworth (RCB) to the base in 1970. This continued until 1989. The RCB was deployed to be a ready reaction force to counter any major insurgency at the base.

Basis of Submission

2. The submission from Mr Cross argues that:
   a. The deployment of the RCB between 1970 and 1989 was part of the Australia's regional security strategy;
   b. The role of the RCB was in essence to assist with the protection of the Butterworth Airbase;
   c. The assigned tasks were conducted in a country in which an insurgency was being actively prosecuted by communist terrorist organisations;
   f. There was a threat to the RCB from communist terrorists who had the potential to attack the Butterworth Airbase;
   g. The RCB was armed with weapons and ammunition and were authorised (in their rules of engagement) to use force to oppose any attack on the base; and
   h. There was an expectation of casualties should the base be attacked.

3. From these arguments Mr Cross submits that RCB service between 1970 and 1989 should be classified as warlike because it meets the criteria within the definition of warlike service. The extant definition requires that the use of force is authorised to achieve specific military objectives and that (the degree of exposure to the risk of harm is such that) there is an expectation of casualties.

4. Thus far, submissions from personnel who served with the RCB for a warlike classification have consistently been rejected. At the time of its deployment the activities of the RCB were considered to be normal peacetime duty.

Approach Taken by Recent Reviews

5. Recent reviews have taken the approach of applying the definitions of warlike and non-warlike service to operations that were conducted prior to those definitions being agreed by Cabinet in 1993. For example, Justice Mohr in 2000 and Justice Clarke in 2002 interpreted the definitions of warlike and non-warlike in a particular way and applied those definitions to operations conducted before those terms were defined and introduced into legislation and policy.

COSC Direction on Review of Anomalies

6. The Chiefs of Service Committee (COSC) was not comfortable with the approach taken by the Clarke Committee indicating that it was tantamount to applying today's standards and policies to events of the past. CDF, on COSC advice, has directed that anomalies be reviewed against the legislation and policy that was extant at the time of the conduct of the operation. As the RCB performed its role over a period of 19 years the

legislation and policy in force during the period needed to be identified and applied to the circumstances existing within the Butterworth Airbase during the period.

7. The main benefit sought in the submission is a warlike service classification. The test for qualifying service, which appears to be the most stringent of all the eligibility criteria associated with warlike service, has been used to determine eligibility. If the operations in question do meet the legislative test for qualifying service, this may inform decisions relating to:

a. The award of the AASM,
b. Eligibility for service under s.23AD of the *Income Tax Assessment Act 1936*,
c. Eligibility under the *Defence Service Home Loans Act*, and
d. Allowances specified in Defence personnel policy.

8. Considerable research has been conducted to identify the applicable legislation and the way in which it has been interpreted by the courts, tribunals and reviewing authorities.

Applicable Legislation

9. The definitions of 'warlike' and 'non-warlike' were not introduced and defined in policy until May 1993. Although Justices Mohr and Clarke used these definitions in a somewhat modified form to review anomalies that occurred before the definitions were introduced, COSC was not comfortable with this approach. As a result the NOSR Team was tasked to take a different approach. The circumstances surrounding the RCB will be reviewed using the legislation and policy in force at the time rather than the criteria contained in the definitions of warlike and non-warlike service.

10. The Repatriation legislation in force for the period in question was the *Repatriation (Special Overseas Service) Act 1962*. Special Overseas Service is achieved when three conditions are met; firstly that a special area has been prescribed, secondly that the personnel were serving in the special area and thirdly that personnel were allotted for special duty within the special area. Special duty is defined in the Act as "...duty relating directly to the warlike operations or state of disturbance by reason of which the declaration in respect of the area was made...".

11. Evidence of allotment (Section 12 of the *Act*) was by "...a certificate under the hand of a person authorised by the Naval Board, the Military Board or the Air Board to give certificates under this section certifying that a body, contingent, detachment or member of the Naval, Military or Air Forces was or was not, during a specified period, allotted for special duty in a specified special area...".

Report of the Interdepartmental Committee - 27 May 1965

12. An inter-departmental committee was constituted by the Minister for Repatriation in 1965 to consider and report on the principles on which eligibility for war service home loans (and repatriation benefits) is determined. One of the aspects the Committee examined which is relevant is "...whether for the proper administration of the existing legislation there was a need for a further directive to the services regarding the ingredients which must be present for an allotment of "special duty" to be made...".

13. The Committee noted that for a person to be eligible for repatriation and war service homes benefits in respect of current overseas service, he must be "allotted" for and serve on "special duty" (i.e. duty relating directly to "warlike operations" or a "state

of disturbance") in a special area.

14. The Committee concluded that "...realising the difficulty facing the Services in making precise comparisons in the varying circumstances of service, both in respect of their own Service and in respect of comparable service in the other Services, the committee feels that there is a need for a directive from Cabinet as to the ingredients which should be present before any ship, unit or flight, etc or person is allotted for "special duty". In particular the Committee felt that "...an important ingredient is that there should be a real element of present danger from hostile forces..."

15. The Committee recommended 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; in the present circumstances, allotment should therefore be confined to personnel specifically allotted for duty in relation to Indonesian infiltrators or communist terrorists in circumstances where there has been a specific request for the assistance of Australian forces and where the task has been clearly defined...".

Cabinet Decision

16. Cabinet Decision No 1048 of 7 July 1965 endorsed the recommendation of the Interdepartmental Committee without change. In essence, allotment was only to be made where the host nation had requested assistance and Australian troops were called out to conduct operations against Indonesian infiltrators or communist terrorists. In the context of such operations those personnel who were 'exposed to potential risk by reason of the fact that there is a continuing danger from the activities of hostile forces or dissident elements' could be allotted for duty; thus making them eligible for certain entitlements under the Repatriation (Special Overseas Service) Act 1962.

17. Even though the decision was made in relation to "Principles on which Eligibility for War Service Homes Loans is Determined..." there is sufficient evidence to indicate that the criteria for repatriation benefits and war service home loans were basically the same. After 28 May 1963, legislation provided a common eligibility for war service homes and repatriation based on "special service".

18. On Page 17 of his submission Mr Cross correctly points out the Government's intention regarding the forces deployed in Malaysia and Singapore which states that "...forces deployed in Malaysia and Singapore will be available to oppose any insurgency which is externally promoted, which is a threat to the security of the region and which is beyond the capacity of Malaysia and Singapore to handle..." No evidence is provided of '...a specific request for the assistance of Australian forces ... where the task has been clearly defined...' as required by the Cabinet Decision.

Incurred Danger

19. The notion of incurred danger, as a basis for granting access to veterans' entitlements, warrants close examination as it underpins the criteria which applied at the time the RCB was deployed in Butterworth. Such an examination also provides greater insight into the historical intent of successive governments in respect of eligibility for repatriation benefits.

20. The incurred danger test has its origins in Australian Soldiers Repatriation Act 1920 within the definition of "Served in a Theatre of War". This expression is defined in

section 23 of the Act as '...served at sea, in the field or in the air in naval, military or aerial operations against the enemy in an area, or on an aircraft or ship of war, at a time when the danger from hostile forces of the enemy was incurred in that area or on that aircraft or ship by the person so serving...'.

21. According to Justice Clarke in his *Review of Veterans' Entitlements 2003*, the starting point for any discussion of the words 'incurred danger' is the decision of the full bench of the Federal Court in *Repatriation Commission v. Thompson*, in which the Court, after referring to a High Court decision dealing with the word 'incurred' in the context of the principles of income taxation, said:

> '...The words 'incurred danger' therefore provide an objective, not a subjective test. A serviceman incurs danger when he encounters danger, or is in danger, or is endangered. He incurs danger from hostile forces when he is at risk or in peril of harm from hostile forces. A serviceman does not incur danger by merely perceiving or fearing that he may be in danger. The words 'incurred danger' do not encompass a situation where there is a mere liability to danger, that is to say, that there is a mere risk of danger. Danger is not incurred unless the serviceman is exposed, at risk of or in peril of harm or injury...'.

22. Justice Clarke believed that this decision clearly establishes that the test is an objective one and that a veteran's mere perception of being in danger is not enough; and that 'incurs danger' is, in effect, synonymous with 'exposed to or at risk of harm' from hostile forces of the enemy.

23. This notion of incurring danger, or being exposed to the risk of harm, is continued in Cabinet guidance in 1965 in the statement 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...'.

Clarke Review of RCB Service

24. The Clarke Committee described the RCB's tasks as infantry training and after-hours patrolling of the airbase perimeter thereby contributing to base security in conjunction with the Malaysian security forces, the RAAF Airfield Defence Guards and RAAF Police dogs. Its rules of engagement were protective only. The Clarke Committee believed that although there is no doubt that the RCB was involved in armed patrolling to protect Australian assets, it was clear that training and the protection of Australian assets were normal peacetime garrison duties.

25. The Clarke Committee concluded that no evidence was found that service in South-East Asia currently classified as peacetime service should be considered warlike. The Committee understands that peacetime service, whether rendered in Australia or overseas, can at times be arduous and even hazardous. However, on its own, this is not enough to warrant its consideration as operational or qualifying service for benefits under the VEA.

26. The Committee found that neither warlike nor non-warlike service was rendered in Malaysia or Singapore immediately following the cessation of Confrontation on

11 August 1966, or subsequently in Butterworth under the Five Power Defence Arrangement (FPDA) or ANZUK. It recommended that no further action be taken in respect of peacetime service at Butterworth after the cessation of Confrontation.

Comparison with Other Operations in Progress at the Time

27. In 1970 when the initial RCB deployment occurred, 7RAR was serving in Vietnam on its second tour of operational duty. It had numerous contacts with the enemy and sustained 16 killed in action and many more wounded. It is inappropriate to award the same level of benefit to the RCB as applied to other infantry units serving in South East Asia in the same broad timeframe. It is also worth noting that the activities of the RCB were never conducted as an operation but were considered to be garrison duties.

Other Relevant Decisions

28. Submissions have also been received recently seeking a warlike classification for 4 RAR service rendered in Malaya after 14 Sep 66. 4 RAR was not allotted for special duty in the prescribed special area of Malaya after 14 Sep 66 because there was no evidence that it had been called out to conduct operations against communist terrorists at the request of the Malayan Government. The term allotted for special duty is not synonymous with posting or assignment to a unit and was intended to be for those periods when Australian forces were engaged on operations against an enemy or dissident elements. 4 RAR service at the time did not meet Cabinet criteria and as a consequence, their request for warlike reclassification has not been approved.

29. Similarly, personnel deployed in Korea after the Armistice in 1953 were still required to occupy their defensive positions, they were armed and issued with ammunition and their rules of engagement were limited to self defence. Recent reviews did not consider their service to be warlike.

Hazardous Service

30. The activities of the RCB have also been considered in the context of hazardous service. The arguments tendered in the submission do indicate that service at the base during the period in question can be considered to be above and beyond normal peacetime service.

31. During the period 1972 to 1994 Defence personnel were eligible for veterans' entitlements as a result of continuous full time service of three years, or two years for national service men. Hazardous service is defined in section 120 of the VEA as service in the Defence Force of kind determined by the Minister for Defence, by instrument in writing, to be hazardous service for the purpose of this section. Hazardous service was later defined by Cabinet in May 1993 as a category of non-warlike service which exposes personnel to hazards above and beyond normal peacetime duty.

32. Arguments for a hazardous service classification can be sustained for the RCB when compared with other more recent hazardous operations such as Operation BELISI in Bougainville in 2000 during where weapons were not carried by ADF personnel and Operation AZURE in Sudan in 2006 where the six UNMO on Op AZURE were also not armed.

33. It is not unreasonable therefore, to declare the operations hazardous retrospectively pursuant to section 120 of the VEA. This would allow the more beneficial standard of proof to be applied to claims relating to service with the RCB.

Decision

34. There does not appear to be any specific request from the Malaysian authorities for the RCB to conduct operations against CT operating in the area of the Butterworth Airbase which was beyond the capacity of the Malayan forces to handle. There is also no evidence of any operations being conducted against the CT by the RCB. There is no record of the Butterworth Air Base being declared a special area during the period 1970 to 1989 and therefore there is no basis for allotting the RCB for special duty. The overall level of threat faced by the RCB is not considered to be such that their activities during the period in question warrant a warlike nature of service classification.

35. RCB activities can however be considered hazardous. A hazardous service declaration under section 120 of the *VEA 1986* would acknowledge that the RCB's activities were above and beyond normal peacetime duty and confers on them the more beneficial standard of proof for claims relating to RCB service. The benefits resulting from such a declaration are, is essence, the same as the benefits currently awarded for non-warlike service. However, as RCB service commenced prior to the enactment of the *VEA 1986* it is not possible to declare the period prior to 7 December 1972 as hazardous under Section 103 of the *Act*. The period from 15 November 1970 to 6 December 1972 will need to be declared 'non-warlike'.

Medals

36. The award of the Australian Service Medal (ASM) for this period of service also provides additional recognition for this period of service.

Implications

37. The implications of this recommendation are:

a. Others who served directly in the defence of the Butterworth Air Base (BAB) can also be considered to have incurred a similar level of danger or exposure to the risk of harm and should therefore have their service considered hazardous or non-warlike;

b. The award of the ASM noting that two different ASM's apply over this period i.e. pre and post 1975.

c. As the personnel who deployed with the RCB are most likely to have access to veterans' entitlements by virtue of continuous full time service between 1972 and 1994, the cost impact of conferring the more beneficial standard of proof on claims relating to service by the RCB needs to be assessed to determine its magnitude.

d. 'Hazardous' service cannot be applied before 1972. As a result the period 1970 to 1972 will need to be retrospectively declared as 'non-warlike' service. This will be the most expeditious means of providing a benefit equivalent to a hazardous declaration under section 120 of the *VEA 1986*.

THE HON BRUCE BILLSON MP
Minister for Veterans' Affairs
Minister Assisting the Minister for Defence

Mr Robert Cross
Chairman
RCB Review Group
4/15 Gardiner Street
ALDERLEY QLD 4051

04 OCT 2007

Dear Mr Cross

Thank you for your submission of 18 August 2006 to the Minister of Defence, the Hon Dr Brendan Nelson MP, concerning 'warlike' nature of service classification for the activities of the Rifle Company Butterworth stationed in Malaysia for the period 1970 to 1989. As this matter falls within my portfolio responsibilities your correspondence has been passed to me for response.

I have taken account of your recent correspondence to the Director of Coordination in Air Force dated 5 May 2007 in which you advise that in 1975 a pump house on Penang Island was fired on by 'communist terrorists' and that two unexploded mortar bombs were found by grass cutters embedded in the mud at the northern end of the Butterworth Airbase runway.

Your submission was assessed by the Nature of Service Review team. It is Defence policy to consider and review nature of service anomalies for past operations and deployments in the context of legislation and policy in force at the time. This is to ensure that anomalies are considered against the values and standards applied to other operations in the same broad timeframe.

The repatriation legislation in force for the period in question was the *Repatriation (Special Overseas Service) Act 1962*. Under this legislation, three conditions were necessary to qualify for repatriation benefits. Firstly, that a special area has been prescribed; secondly, that the personnel were serving in the special area; and thirdly, that personnel were allotted for special duty within the special area.

Allotment for special duty, which conferred qualifying service eligibility to units or individuals, was the responsibility of the Service Chiefs. It was their responsibility to determine whether the operations on which Australian forces deployed were sufficiently hazardous to attract the full package of benefits provided under repatriation legislation.

Parliament House, Canberra ACT 2600 Tel: (02) 6277 7820 Fax: (02) 6273 4140

During the first part of 1965, an Interdepartmental committee was formed to advise the government of the day on the need for additional guidance to the Service Chiefs on the required elements before allotment for special duty was made. In response to the recommendations of this committee, on 7 July 1965, in Cabinet Decision 1048, the Services were 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 in a continuing danger from activities of hostile forces or dissident elements. Cabinet decided that allotment should therefore be confined to personnel specifically allotted for duty in relation to Indonesian infiltrators or communist terrorists in circumstances where there has been a specific request for the assistance of Australian forces and where the task has been clearly defined.

Special duty was intended to be for those periods when Australian forces deployed in the designated special area were called out and deployed on operations against an enemy or dissident elements at the request of the host country; in this case Malaya. Any decision by the Service Chiefs to allot their personnel for special duty is therefore considered an acknowledgement that the level of danger incurred during the conduct of such operations was sufficient to attract the full package of veterans' benefits. No submission to the government of the day to declare the Butterworth Air Base a special area has been found and I note that no recommendation was made to the Chief of the General Staff at the time of the Rifle Company Butterworth (RCB) initial deployment to declare their activities 'special service'. I note also that the RCB was involved primarily in garrison duties and were not involved in the conduct of any operations.

On Page 17 of your submission, you correctly point out that the Australian Government's intention regarding the forces deployed in Malaysia and Singapore. The passage you quote states that:

> *'...forces deployed in Malaysia and Singapore will be available to oppose any insurgency which is externally promoted, which is a threat to the security of the region and which is beyond the capacity of Malaysia and Singapore to handle...'*

This same intention is reflected in the Cabinet Decision 1048, where Cabinet decreed that allotment is to be made only where there is:

> *'...a specific request for the assistance of Australian forces and where the task has been clearly defined...'*

There was no specific request from the Malaysian authorities to conduct operations against communist terrorists operating in the area of the Butterworth Airbase which was beyond the capacity of the Malayan forces to handle.

I note that your submission seeks a 'warlike' classification for RCB activities during the period in question. The definitions of 'warlike' and 'non-warlike' were not introduced until May 1993. Defence considers it inappropriate to assess your claim against the 'warlike' and 'non-warlike' definitions as they were not in force at the time of the service under review. However, when viewed against the definitions of 'warlike' and 'non-warlike', the criteria that are most appropriate are those contained in the definition of 'non-warlike' service. Within the 'non-warlike' definition, the application of force is limited to self-defence and casualties could occur but are not expected. By contrast, in the 'warlike' definition, the application of force is authorised (other than in self-defence) and there is an expectation of casualties.

Importantly, your submission was also assessed against the incurred danger test which is the fundamental concept underlying the award of the full package of veterans' entitlements. The notion of incurring danger, or being exposed to the risk of harm, as a condition of 'qualifying service' has been the basis of legislation and policy since 1914. In examining your mission and tasks in the context of Australia's strategic objectives in the region at the time together with rules of engagement, threat assessments and the other issues you raised, the key issue is a judgement on the extent to which RCB personnel were exposed to the risk of physical and mental harm and whether or not it was sufficient to justify allotment for special duty by the Vice Chief of the Defence Force, Lieutenant General Ken Gillespie, AO, DSC, CSM.

After careful examination of your submission, the Vice Chief of the Defence Force has advised that the extent of the danger incurred by the RCB during the period 1970 to 1989 was not sufficient to warrant allotment for special duty required under the *Repatriation (Special Overseas Service) Act 1962* and under Cabinet guidance issued in July 1965.

By way of comparison, units that were allotted for duty in the same broad time period were fighting in South Vietnam and were engaged on operations in Borneo/Sarawak and other parts of Malaya. In these conflicts, Cabinet guidance to the Service Chiefs was clearly met before units were allotted for special duty. This is evidenced in part by the numbers of casualties suffered by the forces involved. Defence considers that to reclassify the activities of the RCB in Malaya from 1970 to 1989 as 'warlike', or comparable to other periods of special duty in the same region at the same time, would not be appropriate.

Defence also regards as significant the fact that no approach was made to Australian Government at the time to declare the base a special area and no recommendation regarding special duty was put to the Chief of the General Staff at the time of the initial RCB deployment. Nor were any submissions made in 1975 when, as you point out, the threat from communist terrorists within Malaya was at its peak.

I also note the findings of the *Review of Veterans' Entitlements* chaired by Justice Clarke. Justice Clarke found that the RCB's tasks were infantry training and after-hours patrolling of the perimeter of the base, thereby contributing to base security in conjunction with the Malaysian security forces, the RAAF Airfield Defence Guards and RAAF Police. The rules of engagement were protective only.

Justice Clarke also found that although there is no doubt that the RCB was involved in armed patrolling to protect Australian assets, it is clear that training and the protection of Australian assets are normal peacetime garrison duties. The Clarke Committee expressed the view that peacetime service, whether rendered in Australia or overseas, can at times be arduous and even hazardous. However, on its own, this is not enough to warrant its consideration as operational or qualifying service for benefits under the *Veterans' Entitlement Act 1986*. It concluded that neither 'warlike' nor 'non-warlike' service was rendered in Malaysia or Singapore immediately following the cessation of Confrontation on 11 August 1966, or subsequently in Butterworth under the Five Power Defence Arrangement or the Australian and New Zealand and United Kingdom Force. The Australian Government accepted this recommendation.

Having taken account of the advice from Defence as an outcome of their consideration of your submission, I am not prepared to overturn the advice from Defence nor the advice from the Clarke Review regarding 'warlike' service. The degree of exposure to the risk of harm was not sufficient to warrant the full package of repatriation benefits.

However, the arguments tendered in your submission do indicate that service at the base during the period in question can be considered hazardous service. During the period 1972 to 1994 Defence personnel generally were eligible for veterans' entitlements as a result of continuous full time service for a period of three years, or two years for National Servicemen. I note that hazardous service is defined in section 120 of the *Veterans' Entitlement Act* as:

> *'...service in the Australia Defence Force of kind determined by the Minister for Defence, by instrument in writing, to be hazardous service for the purpose of this section.'*

I am prepared to declare retrospectively this period of service as hazardous pursuant to section 120 of the *Veterans' Entitlement Act*. This would allow the more beneficial standard of proof to be applied to claims relating to service with the RCB.

The award of the Australian Service Medal will also apply to those who served at the Butterworth Air Base during the period in question.

I appreciate your interest in this matter.

Yours sincerely

BRUCE BILLSON

Veterans' Entitlements Act 1986

Determination of Non Warlike Service

Rifle Company Butterworth

I, Bruce Billson, Minister for Veterans' Affairs, for the Minister for Defence:

determine that service rendered as a Member of the Australian Defence Force assigned for service with Australian Army Rifle Company Butterworth at the Butterworth Air Base in the country of Malaysia during the period 15 November 1970 to 6 December 1972 as non warlike service.

Dated this 18th day of September 2007

BRUCE BILLSON
Minister for Veterans' Affairs
for the Minister for Defence

Veterans' Entitlements Act 1986

Determination of Hazardous Service

Rifle Company Butterworth

I, Bruce Billson, Minister for Veterans' Affairs, for the Minister for Defence:

determine that service rendered as a Member of the Australian Defence Force assigned for service with Australian Army Rifle Company Butterworth at the Butterworth Air Base in the country of Malaysia during the period 6 December 1972 to 31 December 1989 as hazardous service under Section 120 of the Act.

Dated this 18th day of September 2007

BRUCE BILLSON
Minister for Veterans' Affairs
for the Minister for Defence

2011 NATURE OF SERVICE BRANCH REVIEW
ADF SERVICE AT RAAF BUTTERWORTH – 1970-1989

Introduction

1. The following discussion is based on the first full and comprehensive Defence review of the nature of service (NOS) for all Australian Defence Force (ADF) personnel at RAAF (Royal Australian Air Force) Butterworth, Malaysia. This review, initiated in May 2011, considers Government, Defence, Army and Air Force policy and procedural documentation and issues related to both ADF service in Malaysia and Singapore and Rifle Company Butterworth (RCB) service at Butterworth. Both the Army History Unit and the Office of Air Force History have been consulted during document preparation.

2. Since Confrontation between Malaysia and Indonesia ceased on 11 Aug 66, the NOS for all ADF personnel serving in Malaysia has been deemed by Government to be peacetime.

3. In view of the then planned withdrawal of UK forces from Malaysia and Singapore, the Prime Minister (PM), in 1969, announced revised ADF deployment and organisational arrangements for this region.

4. For Army, the battalion at Malacca was to be relocated to Singapore and, to maintain an Army presence in Malaysia, one company, the RCB, was to be detached from the battalion to Butterworth on a monthly rotation basis. The first company arrived on 15 Nov 70 by sea.

5. Over recent years Groups representing RCB participants have written to Government Ministers and the Chief of the Defence Force (CDF) seeking to have the NOS of the RCB at Butterworth revised to 'warlike' service for medallic recognition and repatriation benefits purposes.

Aim

6. The aim of this paper is to ascertain the NOS for ADF forces, and the RCB in particular, at Butterworth from 1970 to 1989.

Genesis

7. The genesis of the establishment of the RCB at Butterworth was the PM speech to Parliament on 25 Feb 69 '.. to inform the House of what the Australian Government is prepared to do militarily in Malaysia-Singapore after the British withdrawal from those areas and to set this in the context of our general interest in, involvement in and thinking concerning the region.'.

8. Extracts of the speech pertinent to the consideration of the operation and service of ADF forces generally, and the RCB in particular, in Malaysia and Singapore after 1969 follow:

> The Army battalion '.. on military grounds, and because of the considerable financial savings involved will be based in Singapore, although one company will be detached in rotation to Butterworth except on occasions when the whole force is training either at the Jungle Warfare School or elsewhere in Malaysia.'.

'.. no matter in what part of the Peninsula (including Singapore) our forces are stationed, we regard them as being there in order to assist the security and the stability of the whole of that Peninsula.'

'I wish to indicate the conditions under which they will be there and the role which we envisage they will fulfil.'

'While there, they are not intended for use, and will not be used, for the maintenance of internal civil law and order which is the responsibility of the government concerned.'

'Their presence in Malaya (sic) and Singapore and their participation in training and military exercises with Malaysian and Singaporean troops will we believe have value in helping to build the indigenous defence capacity of both Malaysia and Singapore, will provide additional security while that indigenous defence capacity is built up, and will make it more possible for Malaysian troops to be assigned to other parts of Malaysia ..'

'They will be available – our troops – subject to the usual requirement for the Australian Government's prior consent for the use against externally promoted and inspired Communist infiltration and subversion ..', and '.. these forces will be available to oppose any insurgency which is externally promoted, which is a threat to the security of the region and which is beyond the capacity of the forces of Malaysia and Singapore to handle.'

9. Two important issues are that the ADF would assist in the security and stability of the region with a purposely peacetime nature of service, and would require specific Government approval to become involved in any discrete and specific Malaysian military operation.

The Role of the RCB – 1969 to 1982

10. A number of significant documents have been found, subsequent to this speech, that address the formal role of the RCB at Butterworth. Appropriate extracts follow.

7 Mar 69 – Minute DCGS to DCAS – DCGS Minute No 124/169

11. Reference to administration relating to the detachment of the RCB to Butterworth.

'7. and 8. The circumstances under which we seek Department of Air co-operation in this matter are developed further in this minute so that RAAF planning may proceed satisfactorily.' and '.. We would see each company, whilst at Butterworth, continuing its operational training on local ranges and being available for local defence exercises.'

'9. Arrangements to cover operational tasks associated with local defence should be rehearsed whenever a company was detached to Butterworth. Should an emergency arise the necessary Army ground defence force could be despatched to or retained in Butterworth and placed at the disposal of AOC (Air Officer Commanding) Butterworth in accordance with agreed arrangements.'

'10. In so far as the provision of domestic support and common user facilities are concerned we see the basis as being:

d. The infantry training which will be undertaken in the general area based on Butterworth.

e. The possible operational local defence role to be agreed between AOC Butterworth and Commander ANZAC Army Force and subsequently rehearsed by each company.'

'11.a. Command and Control. Apart from the operational situation posed in paragraph 9 above, the company detached to Butterworth should remain under the command of Commander ANZAC Force but come under the command AOC Butterworth for local administration.'

19 May 69 – Letter Secretary of the Army to the Secretary of Defence

12. With reference to advising Commander 28 Commonwealth Brigade of matters relating to the detachment of the RCB to Butterworth.

'1. I .. accept that the general Government intention underlying the detachment of a company to Butterworth is to provide a real sense of ground force presence in Malaysia for most of the year.

8. Training is a major consideration, bearing in mind not only the Roles of the Force but the continuing requirement of maintaining a state of operational readiness. We see companies detached to Butterworth taking advantage of every opportunity to use the training areas and facilities of Butterworth and its environs to vary and enhance their own training and to develop further cooperation with the Malaysian forces.

We envisage each company playing its part in the overall scheme and programme of Army training with and without the Malaysian Army.

Should it be regarded as politically desirable, we would envisage companies moving by road from Singapore to Butterworth and vice versa, exercising along the way and using alternative routes in order to display their presence to the population over as wide an area as possible.

We also see each company learning and rehearsing its part in the local ground defence for the base at Butterworth in accordance with mutual arrangements made by the Army and Air Component Commanders in conjunction with the Force Commander.

9. Each company at Butterworth will remain under command of Commander 28 Commonwealth Brigade but will come under command AOC Butterworth for local administration. Should an emergency arise and Army assistance for local ground defence be required, the company would be placed at the disposal of AOC Butterworth in accordance with agreed arrangements.'

11. To summarise .. The detachments will continue in accordance with a programme to be arranged by Commander 28 Commonwealth Brigade in conjunction with AOC Butterworth taking into account the Australian Government intention to provide a real sense of ground force presence in Malaysia, the periods of combined battalion group training, the Australian and New Zealand national relief requirements, the roles of the force and the numerous domestic considerations.'

23 May 69 – Letter Army Headquarters to Commander HQ Australian Army Force

13. With reference to the establishment of the RCB and the frequency and duration of the RCB rotations to Butterworth.

> 'Discussions with the Department of Defence have now resolved this matter more precisely. Defence has stated that the Prime Minister's statement of 25 Feb 69, as quoted in paragraph 3 of DCGS Minute No 124/1969 (paragraph 11 above), is unambiguous and have further stated:
>
> > "The general intention of the proposals put to Cabinet seems evident. The company at Butterworth is to provide a real sense of ground force presence in Malaysia and should be at Butterworth for most of the year."
>
> Based on this unequivocal interpretation we have proposed to Defence that Commander 28 Commonwealth Brigade will be advised to detach a company to Butterworth whenever his force as a whole is not exercising in Malaysia.'

10 Jul 69 – Letter Commander NZ Army Force to HQ Australian Army Force

14. With reference to a draft Standing Directive to the Officer Commanding the RCB.

> '1. It is suggested that Purpose of Detachment of the draft forwarded under cover of reference A be reworded as follows:
>
> > **"Purpose of Detachment**
> >
> > 4. The purpose of maintaining a detached company at Butterworth is to provide an Australian Army (or New Zealand Army) presence in Malaysia, additional to normal training activities carried out in the State of Johore.
> >
> > 5. In addition, in an emergency, the company may be used:
> >
> > a. As a means of supplementing the protective security of RAAF Base Butterworth.
> >
> > b. For assistance in the protection of RAAF families, should such protection be necessary."
>
> 2. This amendment to the wording to this draft appears to be in conformity with our two Governments' decision that the purpose of the attachment is to "provide a presence;" but at the same time gives the necessary authority for the company to be used for security of base, property, families etc.'

29 Jul 69 – HQ Australian Army Force – Draft Directive to the Company Commander

15. With reference to the formal role of the RCB, the foregoing correspondence culminated in this second draft Directive to the Company Commander RCB.

> '4. The purpose of maintaining a detached company at Butterworth is to provide an Australian Army (or New Zealand) presence in Malaysia, additional to normal training activities carried out in the State of Johore.

5. In addition, in an emergency, the company may be used:

a. as a means of supplementing the protective security of Air Base Butterworth,

b. for assistance with the protection of RAAF Butterworth families, should such protection be necessary.

8. During the period your company .. will remain under command of your parent battalion. Should a local operational emergency arise, the OC RAAF Butterworth may place you and your company under his operational control.

10. Your company will be responsible for the domestic security of its own lines at Butterworth, but will not be called upon for other guard or sentry duties, except in an operational emergency.

11. You may only employ your company on protective security duties at Air Base Butterworth or on Penang Island on orders of the Officer Commanding RAAF Butterworth under conditions outlined in para 8 above.

13. You are to ensure that all ranks know the actions sentries may take in normal circumstances when on duty in protected areas and places.

15. Throughout its tour of duty, your company will continue unit training in accordance with the Training Directive issued by your parent battalion.'

22 Aug 73 – Chiefs of Staff Committee AJSP No 1/1973 – Plan ASBESTOS

16. With reference to the rotation of rifle companies to Butterworth AJSP (Australian Joint Service Plan) No 1/1973, Plan ASBESTOS, advised of new RCB rotation arrangements.

'1. Under arrangements made between Australia and Malaysia, beginning in November 1970, an Australian rifle company was deployed on monthly rotation from Singapore to Butterworth, with the purpose of providing an opportunity for training and developing further cooperation with the Malaysian forces and the elements of the RAAF at Butterworth. .. With effect from 1st September 1973 the current arrangements are to be replaced by the three-monthly rotation of a rifle company direct from Australia.

2. The new rotational plan accords with Australian national policy of deploying troops overseas for training exercises. However, in addition to training tasks, troops deployed to Butterworth will, as in the past, be available if needs be, to assist in the protection of Australian assets, property and personnel at Air Base Butterworth.

7. Taking into account its security role, the Australian based company deployed to Butterworth is to conduct training and participate in exercises in accordance with instructions issued by Army Headquarters. These exercises are to include where possible, exercises with units of the Malaysian Armed Forces.

15. Press statements on the movement will be issued. However no publicity is to be sought for the arrangement. In response to queries, the deployment is to be viewed as routine.

17. The company is under the Administrative Control of the Officer Commanding RAAF Butterworth for .. matters of local administration: (five topics) .. ,

18. In respect of all other matters the company is under command Army Headquarters.

20. The Officer Commanding RAAF Butterworth is to liaise, when appropriate, with the Australian Services Adviser, Kuala Lumpur, on matters relating to training areas and combined training exercises.

> "Subject to agreement by OC Butterworth, such training is to be undertaken as the opportunity occurs and in areas mutually agreed by the Malaysian Ministry of Defence and the Australian Services Adviser, Kuala Lumpur. <u>These areas are to be well clear of any in which counter-insurgency operations are being carried out</u>".'

29 Nov 82 – Directive Chief of Air Staff to AOC Operational Command

17. With reference to a CDFS Directive regarding command of the RCB.

'1. In accordance with the terms of the Five Power Defence Arrangements entered into by the Australian and Malaysian Governments, an Australian Army rifle company is deployed on a rotational basis from Australia to Air Base Butterworth to provide an opportunity for training and exercising with elements of the Royal Malaysian Armed Forces.

2. The rifle company will participate in training and exercises and, if necessary, be available to assist in the protection of Australian personnel, assets and property at Air Base Butterworth.

5. The company will conduct training and participate in exercises in accordance with instructions issued by Army Office. These exercises will, where possible, include exercises with units of the Royal Malaysian Armed Forces.

6. You are to ensure that:

a. the company is not employed on aid to the civil power tasks without my direct approval;

b. the company is not employed operationally outside the Air Base Butterworth perimeter;

c. unless authorised by me, no contingency planning is to take place with Malaysian authorities for the employment of the rifle company other than for the defence of shared areas within the perimeter of Air Base Butterworth;

d. operational command or control of all or part of the rifle company is not assigned to Malaysian authorities.

14. Media statements relating to the company will be issued by the Director of Public Information as necessary. No publicity is to be sought for the arrangement.'

Summary – The Role of the RCB

18. In summary, the foregoing high level documents provide a continuum of information from 1970 to 1982, particularly in relation to the initial and ongoing role of the RCB at Butterworth and, also, the nature of the RCB movement on rotation to Butterworth.

19. Within the documents the only three generic RCB role functions addressed were:

a. to provide a real sense of ground force presence in Malaysia;

b. to continue unit training in accordance with the Training Directive issued by the parent battalion/Army; and

c. to be available, in an emergency, to assist and supplement in the protection of Australian assets, personnel and families at Butterworth and Penang.

20. The review shows that the RCB was not intended to perform any operational activity at Butterworth, except to assist in the protection of assets and personnel, if necessary, in a shared defence emergency. This is consistent with the role of the Australian Army Force in Singapore to assist in the security and stability of the region with the peacetime NOS.

21. Also, the movement of the companies to Butterworth were described as generally detached, deployed rotationally, detached or deployed – there was no reference that directly stated or implied any operational connotation or intent for these rotational movements.

22. The following table shows the consistency between the documents from 1970 to 1982:

Attach - ment	Document	Presence	Training	Assist Security	Movement - reference
A	7 Mar 69 - DCGS to DCAS		Yes	Yes	detached, and deployed
B	19 Mar 69 - Sec Army to Sec Defence	Yes	Yes	Yes	detachment
C	23 May 69 – Army HQ to HQ AAF	Yes			detach
D	10 Jul 69 – NZAF to HQ AAF	Yes	Yes	Yes	detached
E	29 Jul 69 – HQ AAF Directive	Yes	Yes	Yes	detached
F	22 Aug 73 – COSC AJSP 1/1973		Yes		deployed
G	29 Nov 82 – CAS to AOCOC		Yes		deployed, and deploy

23. While the foregoing discussion relates to higher level policy and procedural matters, it is important also to consider the Air Force aspects relating directly to the emergency ground defence of Butterworth, and the place of the RCB in this event, as follows.

Shared Defence of Air Base Butterworth

24. With the imminent withdrawal of UK forces from Butterworth in 1971, the responsibility for the ground defence of the base was transferred from the UK forces to the

RAAF and the Malaysian Armed Forces. The arrangements and responsibilities for the ground defence of Butterworth have been found in the joint Australian and Malaysian Operation Order No 1/71 of 8 Sep 71 (Op Order), 'Shared Defence of Air Base Butterworth'.

25. In relation to an emergency ground defence event, this Op Order specified the threat, the protection mission, contingency plans, operational plans, unit operational responsibilities and rules of engagement, all of which are normal and necessary elements of such an Op Order.

26. There is no evidence that this Op Order was located or considered within Defence as part of RCB matters before May 2011.

27. In an emergency, the Ground Defence Operations Centre (GDOC) at Butterworth was activated under the command of the Ground Defence Commander (GDC - the Commanding Officer Base Squadron). This activation also authorised the rules of engagement and the appropriate issue of weapons and ammunition.

28. In 1971 about 1,400 RAAF personnel served at the Base (of whom only 300 lived on the Base), some 890 Malaysian Service and Police personnel (610 RMAF servicemen, 130 Special Security Police and 150 Royal Malaysian Navy personnel) lived in the close region of the Base, and about 130 RCB personnel also lived on the Base. In an emergency security situation all these personnel came under the operational command of the GDC through the GDOC.

29. The shared ground defence responsibilities of these forces were:

a. Malaysian personnel were responsible for external defensive operations and access to the Base.

b. RAAF personnel were responsible for internal defence activities. Inside the Base perimeter, the RAAF Police and Airfield Defence Guards, with guard dogs, provided the broad Base security functions. The remaining RAAF members comprised Defence Flights, formed from the six RAAF squadrons on the Base, when the GDOC was activated. Each Defence Flight was responsible for the close protection of its squadron aircraft and/or operational assets and other service assets in the same locality.

c. RCB was shown in the GDOC organisation chart as one of 12 ground defence force elements. Appendix 6 to Annex C of the Op Order 'details the actions to be taken by the ANZUK Company (RCB), when deployed to Air Base Butterworth, during a shared defence emergency as:

'5. Tasks. The company will be employed as far as possible on tasks commensurate with their training and specialist skills. Dependent on the situation, tasks could include:

- deployment of platoons, if considered appropriate for the task at the discretion of the Ground Defence Commander;
- a quick reaction force capable of responding to any incident as required;
- patrols for the prevention of illegal entry, or the apprehension of persons who have entered;
- cordon an area for a search;

- the provision of a road block;
- crowd control and dispersal; and
- establish additional protection of Vulnerable Points as required.'

30. It must be stated that the foregoing ground defence activities and responsibilities were only in place during a shared defence emergency at Butterworth. In that the Office of Air Force History has advised that, following issue of the Op Order, the GDOC was never activated due to a shared defence emergency, then the nature of service at Butterworth must have remained as peacetime service subsequent to 8 Sep 71. More particularly, peacetime has been in place since 11 Aug 66.

31. An Office of Air Force History paper 'ADG and RAAF Police Service at Butterworth' has provided a detailed background on RAAF security personnel and responsibilities, operation of the GDOC and security related aspects and incidents in the Butterworth region.

Civilian and Domestic Environment – Butterworth Region

32. Separate to the formal review of Government and ADF policies and information, a qualitative discussion of the civilian and domestic, that is non-military, environment in the Butterworth region can provide support to ADF service being determined as peacetime.

33. The RAAF Officers Mess, RAAF Hospital and Boat Club, located directly opposite the Base and across the separating main road (the western boundary of the Base), at all times had fully open access with no protective arrangements in place.

34. Similarly, married quarters for RAAF families were located across the same road (nearest about 30 m from the Base fence) with no active protection and no restrictions on car, taxi or bus travel in the Butterworth region, and travel via ferry to Penang Island.

35. Also, just south of one married quarter area there was an open access family recreation area with a canteen and swimming pool – the swimming pool is still there.

36. During the Vietnam conflict, which ended in 1972, Penang was a formal Rest and Recuperation Leave centre. During such leave there were no restrictions on travel and the use of public transport in the Butterworth and Penang regions. Also, at least from the 1960s to now, Penang has been an unrestricted international holiday destination.

Conclusion

37. The foregoing review of official documentation has determined that the formal role of the RCB was:

a. to provide a real sense of ground force presence in Malaysia;

b. to continue unit training in accordance with the Training Directive issued by the parent battalion/Army; and

c. to be available, if required in an shared defence emergency, to assist and supplement in the protection of Australian assets, personnel and families at Butterworth.

38. Apart from the possible ground defence assistance tasking at Butterworth, no evidence has been found that has shown Government or ADF intent that the RCB should be involved in any operational activity on the Malaysian Peninsula – as no shared ground defence emergency was experienced at Butterworth, no ground defence assistance was required. However, evidence has been found that RCB training activities were to be conducted 'well clear' from known communist terrorist related activity and military operations.

39. In relation to ground defence operations at Butterworth, the RAAF had prime responsibility for all security within the perimeter of the Base. More specifically, the Office of Air Force History advised that routinely 'Base Security Flight (of Base Squadron) was responsible for the physical security of base facilities, information security, investigation of crimes and security breaches and liaison with the civil police on matters concerning Australian personnel and dependents. They were assisted in the task of securing the base by Dog Handlers and RAAF Auxiliary Police ..'.

40. In the event of a shared defence emergency, the GDOC would be activated, with all Malaysian and ADF personnel assigned to their ground defence responsibilities specified in the Op Order. The RCB, as one small element of this force and dependent on the situation, would have been employed as far as possible on tasks commensurate with their training and specialist skills.

41. All ADF personnel, including members of the RCB would be rendering peacetime service on a day-to-day routine basis.

42. In conclusion, it is found that the nature of service for the many deployments of the RCB to Butterworth is peacetime service, as it has been for all other ADF personnel serving at Butterworth since 11 Aug 66.

Nature of Service Branch

14 October 2011

BACKGROUND INFORMATION PAPER
NATURE OF SERVICE CLASSIFICATION –
ADF SERVICE AT RAAF BUTTERWORTH

INTRODUCTION

1. Australia has maintained a presence at Butterworth in Malaysia since shortly after World War II, with RAAF aircraft based at Butterworth playing an active role during the Malayan Emergency and Confrontation with Indonesia. On 1 Jul 58, the RAAF assumed control of the air base on a lease basis including responsibility for all facility improvements such as new runways, parking areas and buildings. Subsequently, on 31 Mar 70, formal ownership of the air base was transferred from the RAF to the Malaysian Government, including the transfer of security responsibilities from the RAF Regiment. However, additional security arrangements were implemented for the protection of Australian personnel and RAAF assets. Sector security was coordinated by the RAAF through a combination of the RAAF Police, Air Field Defence Guards (ADG) and RAAF dog handlers.

2. The first programme for rotating an infantry rifle company to Butterworth (RCB) was implemented on 15 Nov 70 by the Australian, New Zealand and British battalions from 28 Commonwealth Brigade. The stated formal role of the RCB was to provide a ground presence in Malaysia, to assist, if required, in the ground defence of Butterworth and otherwise to train. Notable is the claim of the RCB Review Group that RCB was to provide a quick-reaction force to meet the communist terrorist threat, and be responsible for internal security within Butterworth Air Base. The duties of RCB were assumed solely by the ADF using battalions of the Royal Australian Regiment from 1975. Following the signing of a peace accord by Chin Peng, the leader of the Malaysian Communist Party, in December 1989, the RAAF presence was significantly reduced and the quick reaction role of the RCB was abolished. From 1970 the nature of service (NOS) of the RCB was classified as peacetime service.

3. Following numerous representations from the RCB Review Group, representing ex-RCB members, over a number of years seeking a warlike NOS classification for RCB service, in 2007 Defence conducted a review of ADF service at RAAF Butterworth between 1970 and 1989. The review recommended that there were grounds for a hazardous classification under section 120 (7) of the *Veterans' Entitlements Act 1986* (VEA). The then Minister for Veterans' Affairs, the Hon Bruce Billson MP, agreed with the Defence recommendation and on 18 Sep 07 he signed separate Instruments of Determination of non-warlike service from 15 Nov 70 to 6 Dec 72 and hazardous service from 6 Dec 72 to 31 Dec 89. On 4 Oct 07, Mr Billson wrote to Mr Robert Cross of the RCB Review Group advising him that service with RCB would not be classified as special duty or warlike, however he was prepared to classify it as hazardous service under section 120 of the VEA.

4. Following a further submission from Mr Cross in May 2009, it was discovered that there are significant errors and omissions in the current Instruments. There is a one day overlap in the dates, and the RAAF Police, ADG and dog handlers who also served in the defence of the Base were inexplicably omitted from the recommendations in the relevant MINSUB and consequently were not included in the Instruments. Further, and more significantly, the Instruments were never registered on the Federal Register of Legislative Instruments (FRLI) and are therefore not enforceable.

5. In early 2010, NOS Branch attempted to redress this situation by redrafting the Instruments, however this approach was not supported by the Department of Veterans' Affairs (DVA). Defence submitted the matter to the NOS Review Board on 3 May 11. The Board did not support classification of this service as warlike, non-warlike or hazardous service and directed Defence (NOS Branch) to review the matter from first principles and report back. The Board considered this matter again on 30 Aug 11 with a view to providing advice to agency superiors and Ministers.

6. The most recent Defence review of this matter assessed that the argument for hazardous service for RCB from 1970 to 1989 was not supported by the available evidence. Nevertheless, it had previously been made by Defence and accepted by Government. In this case, it could be argued that there is a 'moral obligation' on Government to implement the decision of Minister Billson. Legal advice from both DVA and Defence Legal on the current status of the existing Instruments provides significant flexibility on how this matter might be resolved.

PURPOSE

7. This paper will consider the appropriate NOS classification for ADF service at RAAF Butterworth from 1970 to 1989.

REVIEW METHODOLOGY

8. It is policy that all submissions seeking review of a NOS classification of past operations are considered in the context of the legislation and policies that applied at the time of the operation under review. This paper adopts that methodology.

HISTORY – RAAF BUTTERWORTH

9. RAF Butterworth was commissioned in October 1941 as a Royal Air Force station as part of the British defence plan for the Malayan Peninsula against the threat of invasion by Japanese forces during World War II. The air base was captured by units of the advancing Japanese Army on 20 Dec 41 and the control of the air base remained in Japanese hands until the end of hostilities in September 1945, whereupon the RAF resumed control of the base.

10. During the Malayan Emergency from 1948 to 1960, RAF, RAAF and RNZAF units stationed at the air base played an active role by attacking suspected hideouts and harassing the communist guerrillas. The air base also served as a vital front-line airfield for various other units on rotation from other air bases.

11. In 1955 the airfield was refurbished and in 1958 Air Base Butterworth was placed under RAAF control. Shortly thereafter No 78 Fighter Wing, RAAF, comprising No 3 and No 77 Squadrons flying Sabre aircraft, and No 2 Squadron flying Canberra bombers, was established at Butterworth. The air base became the home to numerous Australian fighter and bomber squadrons stationed in Malaya during the Cold War era, during the Malayan Emergency and through to Confrontation with Indonesia from 1962 to 1966.

12. Ownership of Air Base Butterworth was formally transferred from the RAF to the Malaysian Government on 31 Mar 70. At that time, the RMAF was still in its infancy and therefore not in a position to fully take over the air defence role or utilise the facilities at Butterworth. Subsequently, two RAAF fighter squadrons of Mirage aircraft were deployed to the air base, thus marking the start of the RAAF's presence as the primary contributor to the air defence of Malaysia. The deployment was under the ambit of the Five Power Defence Arrangements (FPDA) between Australia, Malaysia, New Zealand, Singapore and the United Kingdom. It was in accordance with these arrangements that the Integrated Air Defence System (IADS) was established with the headquarters at Butterworth. Between 1965 and

1983, the RAAF at Butterworth had a peak strength of approximately 1,400 service personnel.

13. Until 1970 security at the Butterworth base was provided by the RAF Regiment, however responsibility transferred to the Malaysian authorities with the transfer of ownership on 31 Mar 70. Additional security arrangements were implemented for the protection of Australian personnel and RAAF assets. Sector security was coordinated by the RAAF through a combination of RAAF Police, ADG, and Malaysian security police with guard dogs. In August 1971, a contingent of RAAF dog handlers arrived at Butterworth to replace the Malaysian auxiliary dog handlers.

14. In 1971, in the event of a security emergency due to a communist terrorist threat, the Air Base Butterworth Ground Defence Operations Centre (GDOC) was to be activated and all Malaysian and ADF personnel at Butterworth formed a Base ground defence force with specified defensive duties. This force comprised about 1,400 RAAF, 880 Malaysian and 130 RCB personnel.

15. Air Force has advised that no security emergency was ever declared at Butterworth.

16. The first programme for rotating an infantry rifle company to Butterworth was implemented on 15 Nov 70 by the Australian, New Zealand and British battalions from 28 Commonwealth Brigade. Responsibility for provision of the rifle company was transitioned to the ANZUK Force (upon establishment) in 1971 and finally in 1975, with the disbandment of ANZUK Force, to the battalions of the Royal Australian Regiment.

17. The Australian RCB was initially held under the command of 28 Commonwealth Brigade, then Army HQ in Canberra, but was later transferred to the command of the Officer Commanding RAAF Butterworth.

18. The stated ADF role of RCB was:

(a) to provide a real sense of ground force presence in Malaysia for most of the year (following the drawdown of UK forces in SE Asia and the redeployment of the Australian battalion from Malacca to Singapore);

(b) to assist and supplement Air Force and Malaysian ground defence assets in the event of a security emergency; and

(c) when not involved in a security emergency, to continue unit training in accordance with the Training Directive issued by the parent battalion in Singapore.

19. During the period 1970 to 1989, RCB conducted its own training program and participated in training with the Malaysian Army. It was also tasked with providing ground security support to RAAF Butterworth and providing a quick-reaction force to meet any threats to the base. RCB was not to be involved in local civil disturbances or to be employed in operations outside the gazetted area of the Air Base. Rules of Engagement (ROE) for the RCB were specific on ‘Orders to Open Fire’ if threatened and security was breached, but were applied within Air Base Butterworth only, regardless of curfew, periods of increased security, air defence exercises or time of day or night. These ROE applied not just to RCB but also to all RAAF personnel who had primary responsibility for internal base security. Although it may have involved patrolling, RCB’s ROE were defensive only. In the event of a security emergency being declared, RCB was to assist with the protection of facilities, personnel and families under the direction of the RAAF GDOC.

20. In February 1988, in consultation with the Malaysian and Singaporean governments, the Australian Minister for Defence announced a reduction of the RAAF presence at Butterworth. In December 1989, Chin Peng, the leader of the Malaysian Communist Party signed a peace accord with the Malaysian Government. These events resulted in the RAAF presence being dramatically reduced and the quick reaction role of the RCB being abolished.

21. Since 1989, Butterworth has continued to provide a good overseas training ground for Army personnel. RCB, now 2nd/30the Training Group, conducts a variety of training activities, including bi-lateral exercises with the armies of Brunei, Malaysia, Thailand and Singapore. RAAF presence continues at Butterworth with No 324 Combat Support Squadron and a regular detachment of Orion aircraft from No 92 Wing under Operation GATEWAY. The FPDA Headquarters remains, but since 2000 as Headquarters Integrated Area Defence System.

NATURE OF SERVICE HISTORY

22. The Malayan Peninsular has had a long and varied history of being an operational area for the ADF since WWII. The area of Butterworth was a designated an operational area from 29 Jun 50 to 31 Jul 60 during the Malayan Emergency with the Malay/Thai border area remaining an operational area until 16 Aug 64. With the start of Confrontation with Indonesia, the Malayan peninsular was again declared an operational area from 1 Aug 60 to 27 May 63, however this does not confer eligibility for qualifying service under the VEA. Subsequently Malaysia, Singapore and Brunei were declared an operational area with eligibility for qualifying service from 17 Aug 64 to 30 Sep 67, however as Confrontation ended in 1966 there were no allotments of ADF personnel in Malaysia after 11 Aug 66.

23. Essentially, from 1966 all ADF service at Butterworth has been classified as peacetime service. As a consequence of the fact that the Instruments of Determination were not registered, service at RAAF Butterworth from 1966 to today remains classified as peacetime service.

24. Following a number of representations from the RCB Review Group, representing ex-RCB members, over a number of years seeking a warlike classification for RCB service, in 2007 Defence conducted a review of ADF service at Butterworth between 1970 and 1989. A recommendation from this review was that there were grounds for a hazardous classification under section 120 (7) of the VEA.

25. At that time, it was considered that the legislative requirements meant that the classification of hazardous service could only be applied from 7 Dec 72. Consequently, RCB service from 7 Dec 72 to 31 Dec 89 was retrospectively declared hazardous by the former Minister for Veterans' Affairs, the Hon Bruce Billson MP, for the Minister for Defence, by virtue of a Determination of Hazardous Service dated 18 Sep 07. The earlier period of RCB service from 15 Nov 70 to 6 Dec 72 was retrospectively declared non-warlike service by virtue of a Determination of Non-warlike Service by Minister Billson, also dated 18 Sep 07.

26. Following the signing of the Instruments of Determination, on 4 Oct 07 Minister Billson wrote to Mr Robert Cross, Chairman of the RCB Review Group, advising him that service with RCB could not be classified as special duty or warlike service as the 'degree of exposure to the risk of harm was not sufficient to warrant the full package of repatriation benefits'. However the Minister further advised that he was *'...prepared to declare retrospectively this period of service [1970 to 1989] as hazardous pursuant to section 120 of the Veterans' Entitlement [sic] Act.'*

27. The Defence review also discussed the RAAF Police, ADG and dog handlers who served directly and primarily in the defence of the Butterworth Air Base. It was assessed that

they also incurred a similar level of danger or exposure to the risk of harm and should therefore have their service classified as either hazardous or non-warlike. Inexplicably, these RAAF personnel were not included as a recommendation in the MINSUB to Minister Billson and consequently these RAAF personnel were not included on the respective Instruments of Determination.

28. On 22 May 09, Mr Cross wrote to the Minister for Defence Science and Personnel, the Hon Warren Snowdon MP, referring to the letter from Minister Billson dated 4 Oct 07, advising that the retrospective declaration of hazardous service did not appear to have been followed through. Further, Mr Cross advised that the RCB Review Group was preparing a detailed response to Minister Billson's letter of refusal of their claim for war service. He also sought confirmation whether the retrospective classification of hazardous service referred '…only to the soldiers who were actually deployed at the Airbase Butterworth in this security role or in fact does rightly extend to the RAAF personnel who were also at the base during these communist terrorist dominated years across Malaysia.'. Mr Cross further advised that any reply would be incorporated into the detailed response which the Group was preparing for the Defence Honours and Awards Tribunal.

29. In considering Mr Cross's 2009 correspondence, Defence discovered that the original Instruments of Determination signed by Minister Billson had inadvertently omitted the RAAF Police, ADG and dog handlers (as was recommended in the brief) and have remained legally unenforceable as they were not registered on the Federal Register of Legislative Instruments (FRLI).

30. In early 2010, NOS Branch attempted to redress this situation by redrafting and resubmitting the Instruments, however this proposal was not supported by DVA. Defence submitted the matter to the NOS Review Board on 3 May 11. The Board did not support classification of this service as warlike, non-warlike or hazardous service and directed Defence (NOS Branch) to review the matter from first principles and report back. The Board considered this matter again on 30 Aug 11 with a view to providing advice to agency superiors and Ministers.

31. At this time all ADF service at RAAF Butterworth from 1966 remains classified as peacetime service. A number of Ministerial Representations remain unresolved.

PREVIOUS REVIEWS

32. ADF service at Butterworth has been the subject of previous external reviews.

Report of the Committee of Inquiry into Defence and Defence Related Awards (CIDA)

33. In March 1993, the committee chaired by General P.C. Gration, considered a number of submissions seeking medallic recognition for service at RAAF Butterworth. Some of these submissions argued that a low level communist terrorist threat against the base continued until the surrender of Chin Penh in 1989, and that security patrols and deployments around the base throughout the 1970s were active with live ammunition. Other submissions argued that RAAF Butterworth played a support role to Australian Forces in Vietnam, and service in Butterworth should be recognised through the award of the Vietnam Logistic Support Medal (VLSM). The Committee noted that the VLSM applied only to service in the declared area of Vietnam and considered that this was appropriate. The Committee did not support an extension of the VLSM to those serving in other areas. Neither did the Committee consider that service at Butterworth was clearly and markedly more demanding than normal peacetime service, and therefore did not recommend that this service be recognised through a medal.

Mohr Report

34. In his 1999 report, *The Review of Service Entitlement Anomalies in Respect of South-East Asian Service 1955-1975 (Mohr Report),* MAJGEN Justice R.H. Mohr discussed ADF service at RAAF Base Butterworth up to 1975. He noted that the Malayan Emergency formally came to an end on 31 Jul 60 and activity from communist terrorists was then effectively being contained in the Thai/Malay border region. Although there was still some danger abroad, this danger was remote from activities at RAAF Base Butterworth. Consequently, with the exception of service in the Thai/Malay border region, he considered that 31 Jul 60 was a suitable date to signify the end of the period of qualifying service for the service pension during the Malayan Emergency.

35. However, as there was still some remote danger throughout the Malayan peninsular, Justice Mohr stated that the nature of service from 31 Jul 60 until the end of the operational period on 27 May 63 would still satisfy the conditions for it to be classified as operational service. He recommended that eligibility for qualifying service for the service pension during the Malayan Emergency should be restricted to those personnel allotted for service up to and including 31 Jul 60, and that the period from 1 Aug 60 to 27 May 63 inclusive remain as operational service. Of note is that in December 2000, service in Malaysia (including Butterworth), Singapore and Brunei from 17 Aug 64 to 14 Sep 66 was retrospectively allotted for duty to the Confrontation operational area.

36. It is of some interest that Justice Mohr did not make specific reference or recommendations regarding service by the RCB. Possibly this omission is an indication that he considered all service beyond 27 May 63 as not appropriate for further consideration.

Clarke Review

37. In the 2003 *Review of Veterans' Entitlements (Clarke Report)* Justice Clarke described the RCB's tasks as infantry training and after-hours patrolling of the air base perimeter thereby contributing to base security in conjunction with the Malaysian security forces, the RAAF Airfield Defence Guards and RAAF Police dogs (sic – dog handlers). ROE were protective only. The Clarke Committee concluded that although there is no doubt that the RCB was involved in armed patrolling to protect Australian assets, it was clear that training and the protection of Australian assets were normal peacetime garrison duties.

38. The Clarke Committee concluded that no evidence was found that service in South-East Asia currently classified as peacetime service should be considered warlike. The Committee agreed that peacetime service, whether rendered in Australia or overseas, can at times be arduous and even hazardous. However, on its own, this is not enough to warrant its consideration as operational or qualifying service for benefits under the VEA.

39. The Clarke Committee found that neither warlike nor non-warlike service was rendered in Malaysia or Singapore immediately following the cessation of Confrontation on 11 Aug 66, or subsequently in Butterworth under the FPDA or ANZUK. It recommended that no further action be taken in respect of peacetime service at Butterworth after the cessation of Confrontation.

REPATRIATION LEGISLATION

40. All nature of service reviews are considered in the context of the legislation and policies that applied at the time of the activity or operation under review. In the case of ADF service at RAAF Butterworth from the end of Confrontation in 1966 to the end of the RCB quick reaction role in December 1989, the applicable legislation is the *Repatriation (Special Overseas Service) Act 1962* (Act) and the VEA.

41. Special overseas service (which is equivalent to warlike service) was achieved when three conditions were met: that a special area has been prescribed; that the personnel were serving in the special area and that personnel were allotted for special duty within the special area. Special duty is defined in the Act as '…duty relating directly to the warlike operations or state of disturbance by reason of which the declaration in respect of the area was made…'.

42. **Assessment.** ADF service at RAAF Butterworth from the end of Confrontation in 1966 to the end of the RCB quick reaction role in December 1989 does not meet the essential criteria for allotment for special duty in a proscribed special area for the purposes of the Act.

1993 Framework

43. On 17 May 93, Government established a 'conditions of service' framework for ADF personnel deployed overseas and agreed to the terms 'warlike' and 'non-warlike' operations to describe the level of force that is authorised and the likelihood of casualties (*Cabinet Minute No. 1691 dated 17 May 93.* Under this framework, ADF service is classified as either warlike or non-warlike service. Service that does not meet the criteria for classification as either warlike or non-warlike service defaults to a peacetime classification. On 13 May 97, the definitions of warlike and non-warlike service were inserted into the VEA by the *Veterans' Affairs Legislation (Budget and Compensation Measures) Act 1997 (No 157/1997).*

44. **Warlike Service**. Under section 5C(1) of the VEA, warlike service is defined as service in the Defence Force of a kind determined in writing by the Minister for Defence to be warlike service. Warlike service requires that the use of force is authorised to achieve specific military objectives and that (the degree of exposure to the risk of harm is such that) there is an expectation of casualties. Warlike service provides qualifying service under the VEA. Warlike operations include such situations as a state of declared war, conventional combat operations against an armed adversary and peace enforcement operations. Irrespective of any other considerations, ADF service at RAAF Butterworth from the end of Confrontation in 1966 to the end of the RCB quick reaction role in December 1989 does not meet the essential criteria for reclassification as warlike service under the VEA.

Non-warlike Service

45. Under section 5C(1) of the VEA, non-warlike service is defined as service in the Defence Force of a kind determined in writing by the Minister for Defence to be non-warlike service. Non-warlike operations were defined in 1993 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 hazardous operations that expose individuals or units to a degree of hazard above and beyond that of normal peacetime duty such as mine avoidance and clearance, weapons inspections and destruction, Defence Force aid to civil power, Service protected or assisted evacuations and other operations requiring the application of minimum force to effect the protection of personnel or property, or other like activities; and peacekeeping.'*

46. It remains open to the Minister for Defence to make a determination of non-warlike service for any period of Defence service, including during World War II. Non-warlike service provides consideration of disability pension claims using the more beneficial reverse criminal standard of proof. Non-warlike service also includes eligibility for the occurrence

test, but does not provide qualifying service under the VEA for the purposes of the Service pension or the automatic Gold Card at age 70 years.

47. As previously advised, it is policy that all nature of service reviews are considered in the context of the legislation and policies that applied at the time of the activity or operation under review. Recent advice from DVA was that the 1993 warlike/non-warlike framework is taken to have commenced on 13 May 1997, however, as there is a clear legislative intention that the warlike/non-warlike framework would be applied retrospectively, the framework can apply to service prior to this date. Notably, there have been retrospective determinations of both warlike and non-warlike service made for periods before 1993.

48. Notwithstanding the policy, DVA advice and NOS Review Board consideration, cases should be considered on their merits and where a clear anomaly or significant injustice has been incurred, exceptions to policy (as permitted under the VEA) should be allowed where there is no other remedy available.

49. **Assessment.** It is assessed that the operational risks associated with ADF service at Butterworth from 1970 to 1989 do not meet the level of risk required for reclassification as non-warlike service. Combined with the policy that the NOS classification of non-warlike should not be applied to ADF service before 17 May 93 and that another suitable remedy (hazardous service under section 120(7) of the VEA) remains available, there is no requirement to set aside this policy. There is no new and compelling evidence to indicate that a decision not to classify ADF service at Butterworth from 1970 to 1989 as non-warlike would create an anomaly or significant injustice. In fact the new evidence indicates the contrary. As this service was recommended as hazardous, and this remains a suitable remedy, if warranted, reclassification as non-warlike service is not appropriate.

OUTCOMES OF THE 2011 DEFENCE REVIEW

50. As previously noted, following a 2007 review of ADF service at RAAF Butterworth from 1970 to 1989, Defence recommended that service which was related directly to the security of the base, be reclassified as hazardous service under section 120(7) of the VEA. This recommendation was accepted by Government at that time. Subsequently, in 2011, a detailed review of the role of RCB has not supported this recommendation and has indicated that, in addition to the administrative and legal omissions, reclassification of hazardous service is not appropriate. Key outcomes of the 2011 review are contained in the following paragraphs.

51. It appears that the Defence review conducted in 2007 relied mostly on the information and claims contained in the RCB Review Group submission. At best, the information provided by the RCB Review Group was selective and lacked objectivity. There is no clear evidence that the 2007 review sought to either corroborate or disprove the claims made by the Review Group. The 2007 review does not appear to have been based on detailed research, particularly in light of the many documents that have recently been discovered that tend to contradict much of the information and observations made in the earlier 2007 review and subsequent MINREP.

52. The 2011 review found that official documents generally indicted that the roles of the RCB were to provide a ground presence, to conduct training and, if required, to assist in the ground defence of Butterworth. File references to the role of the RCB differ in detail but are consistent with these tasks, while not always in this priority order. The documentary evidence does not support the RCB Review Group claim that RCB was an operational deployment and that its primary role was to protect Australian assets at Air Base Butterworth.

53. Operational plans for the defence of Air Base Butterworth during the period 1970 to 1989 state that the primary ground defence force external to the Base was the Malaysian Special Police, while inside the base security and ground defence remained a RAAF responsibility. If RCB was required for ground defence it would be subordinate to RAAF command and operational requirements. In practice, RCB was mostly involved in infantry training activities and the ready reaction and ground defence tasks were secondary. Notably, in the 19 years from 1970 to 1989, RCB was never required in an emergency ground defence capacity.

54. In 1971, there were approximately 1,400 RAAF and 130 RCB personnel assigned to Butterworth. In the event of a security crisis, the service of the RAAF personnel directly involved in security of the base would have been at least as hazardous as that of the RCB and would be equally deserving of any reclassification, as contained in the relevant MINREP (MINREP 91229). As all RAAF personnel on the base had responsibilities in the event of a ground defence emergency situation, arguably the service of all RAAF personnel at Butterworth could be included along with RCB in any NOS reclassification.

ASSESSMENT AS HAZARDOUS SERVICE UNDER SECTION 120(7) OF THE VEA

55. Hazardous service was introduced into the *Repatriation Act 1920* (section 107J) in 1985 in order to cover service that was substantially more dangerous than normal peacetime service, but could not be classified as peacekeeping service although it attracted a similar degree of physical danger. It was introduced to provide a more beneficial standard of proof for claims relating to this service. Hazardous service is currently defined in section 120(7) of the VEA as:

> '*service in the Defence Force, before the MRCA commencement date [1 Jul 04], that is of a kind determined in writing by the Minister administering section 1 of the Defence Act 1903 [Minister for Defence] to be hazardous service for the purposes of this section'.*

56. The basis of this statement is that the Minister for Defence is best placed to receive detailed advice concerning the service under consideration, which might be sensitive. Hazardous service under section 120(7) of the VEA does not necessarily involve opposition from hostile forces or belligerent elements. The explanatory memorandum supporting the introduction of the VEA did not provide the meaning of 'hazardous' other than to infer that it was service that was above and beyond normal peacetime duty.

57. Determinations for hazardous service under section 120(7) of the VEA have been made in respect of a number of operations including Kurdish refugees (1991); Iran (1991); Afghanistan (1991); Mozambique (1994); Rwanda (1994) – later re-classified as 'Warlike'; Haiti (1994) and the former Yugoslavia (1997).

58. It is important to note that the classification of hazardous service under section 120(7) of Part IV of the VEA is not the same as the hazardous category of non-warlike service as contained in the 1993 framework and included in section 5C(1) of Part II of the VEA. While both provide consideration of disability pension claims using the more beneficial reverse criminal standard of proof of 'beyond reasonable doubt' rather than 'balance of probabilities', hazardous service under section 120(7) does not provide eligibility to the occurrence test. Neither provides qualifying service for the purposes of the Service pension or automatic eligibility to the Gold Card at age 70.

59. Service that is uncomfortable, strenuous or unpleasant is not necessarily hazardous. Similarly, peacetime training activities which often involve a higher degree of risk of injury do not qualify as hazardous service.

60. Until June 2009 it was considered that VEA legislation would not allow hazardous service to apply before 7 Dec 72 because repatriation benefits only applied to those who served in a war or warlike conflict up until that point (7 Dec 72). It was for this reason that the period from 1970 to 1989 was proposed (by the 2007 review) as hazardous service from 6 [sic] Dec 72 and as non-warlike before that date. However recent legal advice has confirmed that MINDEF can determine any period of service to be hazardous service and consequently there is no legislative reason that hazardous service could not be applied retrospectively, including to ADF service at Butterworth from 1970 to 1989.

61. As stated, hazardous service under section 120(7) of the VEA was not introduced into legislation until 1985 and it has not previously been applied before 1986 until the current situation with RCB. Consequently, any decision to reclassify ADF service at Butterworth from 1970 as hazardous service would not be strictly in accordance with the current policy of considering the NOS of past operations in the context of the legislation and policy that applied at the time of the operation under review. Notwithstanding, cases should be considered on their merits and where a clear anomaly, or significant disadvantage or injustice exists, exceptions to policy should be allowed where there is no other available remedy. Based on the evidence available, there is no clear anomaly, nor significant disadvantage or injustice to personnel, which would necessitate an exception to this policy.

62. Under the current definition of hazardous service under section 120(7) of the VEA, any ADF service could meet the criteria for reclassification as hazardous service. For any ADF service, including service at Butterworth from 1970 onwards, to meet the original intent of hazardous service, the service would need to be shown to be 'substantially more dangerous than normal peacetime service' and 'attract a similar degree of physical danger' as peacekeeping service.

63. Peacekeeping service generally involves interposing the peacekeeping force, which may be unarmed, between opposing hostile forces. The immediate threat to the peacekeepers may be by being directly targeted or by simply being caught in the crossfire of the opposing forces. Usually, the peacekeeping force has no ability to negate the threat or withdraw until the level of threat has reduced.

64. It is considered that the level of risk associated with ADF service at Butterworth from 1970 to 1989 is not sufficient to be considered to be 'substantially more dangerous than normal peacetime service' or that it should be considered as 'attracting a similar degree of physical danger' as peacekeeping service.

65. **Summary.** Based on all the information now available and the intent and application of the relevant legislation and policies, it is assessed that ADF service at RAAF Butterworth during the period 1970 to 1989 does not meet the level of risk associated with a classification of hazardous service under section 120(7) of the VEA. Such an assessment is consistent with other external reviews of service at Butterworth. There is no new and compelling evidence to indicate that the current classification of peacetime service has created an anomaly and has unfairly disadvantaged ADF personnel. Indeed the evidence indicates that an anomaly and unfair disadvantage would be created by providing hazardous service to RCB personnel while all RAAF personnel remained under a peacetime classification. Classification of RCB service from 1970 to 1989 as hazardous service would, in part, contradict the Defence policy of considering the NOS of past operations in the context of the legislation and policy that applied at the time of the operation under review.

OTHER CONSIDERATIONS

66. In considering the NOS of ADF service at Butterworth from 1970 to 1989, there are a number of issues to consider, in addition to the application of the relevant legislation and policies.

Moral Obligation

67. Accepting that ADF service at Butterworth from 1970 does not meet the essential criteria of hazardous service under section 120(7) of the VEA, any proposal to formally reclassify this service would need to be based on the view that there is a moral obligation flowing from the 2007 recommendation by VCDF and the decision by Minister Billson to reclassify this service.

68. Accepting this argument, any decision to proceed with registering the Instruments in their current format would create a further moral question as to the responsibility which remains for the reclassification of the service of those RAAF Police, ADG and dog handlers whose service was directly and primarily in the defence of the Base.

Legal advice

69. Defence Legal has advised that Defence is not legally obliged to register the documents (Instruments). They are incomplete with one failing to include the reference to the appropriate legislation, and neither has an Explanatory Statement which is a normal requirement. An issue in not registering them would be the fact that the Instruments have already been released through the FOI process. Defence would need to check with the Minister over the fact that the Instruments had actually been signed by a Minister of a previous Government.

70. Having established that Defence is not legally obliged to register the documents, it is actually possible to register them if Defence chooses to do so. This would require a relevant authority in Defence to sign a statement to the effect that the documents were indeed signed by the Minister, but that the originals have not been located. Explanatory Statements would have to be drafted to explain the effect of the Instruments and they would be registered along with the Instruments.

71. The Defence Legal advice on registration and/or revocation of the RCB Instruments is consistent with the DVA advice. DVA further advises that any individual claims for compensation and detriment caused by the defective administration in failing to register the Instruments may need to be dealt with under the Defective Administration Scheme.

Other Departmental views

72. While the 2007 MINREP (91229) stated that DVA had been consulted in preparing the MINREP, it appears that this consultation was very informal and cursory, if at all. Consequently, advice provided to DVA in 2009 on the problems with the Instruments apparently came as a surprise and was submitted to the Repatriation Commission for consideration.

73. DVA acknowledges the current uncertain legal status of the Instruments and has advised through the NOS Review Board forum that the expected costs of registering the Instruments and providing Hazardous service to the approximately 9,000 members of RCB would be significant. Inclusion of the RAAF personnel would further increase the cost to Government. DVA does not support reclassification of this service as hazardous service.

74. While PM&C and DOFD, again in the NOS Review Board forum, expressed some sympathy with the Defence position, their advice was that they did not agree with the

classification of RCB service as hazardous service under section 120(7) of the VEA and believed it should remain classified as peacetime service. Notwithstanding any argument of the existence of an obligation to proceed with the registration of the Instruments, they are unlikely to support such a proposal.

Ministerial advice

75. On 5 Oct 11, Mr Adam Carr, Chief of Staff to Senator Feeney, raised the matter of a separate MINREP on RAAF service at Butterworth (Mr Hylton Wild) with DGNOS. Mr Carr is very familiar with Butterworth and in particular with RCB through previous conversations with DGNOS and Senator Feeney's responsibility for the Defence Honours Awards and Appeals Tribunal. DGNOS advised Mr Carr that NOS Branch was working on a brief addressing the issues surrounding the 2007 MINSUB.

76. Mr Carr advised that 'Senator Feeney is of the view that notwithstanding the fact that a Minister in a previous government agreed to a proposal based on the 'best advice' available at the time, there is nothing stopping a subsequent Minister overturning the earlier decision when presented with more complete advice. This case is easier because the original decision was never implemented.' He further advised that Senator Feeney 'remains prepared to receive a submission that provides the full story and will support a recommendation to overturn the Billson decision'.

Scope of additions to current Instruments

77. Should the decision be made that Defence proceed with registering the Instruments, it will need to be determined whether, on the basis of equity, the Instruments should be revised to include the RAAF Police, ADG, and dog handlers who also served directly in the defence of the Base. While some support might be expected for registering the current Instruments on the basis of the moral obligation, it is unlikely that this level of support would be forthcoming should Defence press to include the RAAF personnel, particularly if all RAAF personnel from 1970 to 1989 might also be included.

78. It could also be expected that any proposal to backdate the start date from 15 Nov 70 based on the deployment of the first RCB contingent to Butterworth to 31 Mar 70, when responsibility for security at Butterworth transferred from the RAF Regiment to Malaysian authorities and Australia implemented additional security arrangements for the protection of Australian personnel and RAAF assets, would not be supported.

Benefits provided by the separate Instruments

79. The difference between hazardous service under section 120(7) of VEA and non-warlike service was highlighted earlier in this paper. Hazardous service does not provide eligibility to the occurrence test. As such, it provides a lower benefit. It is clear that this was not well understood in 2007 and consequently the current Instruments of non-warlike and hazardous provide different benefits. Should the current Instruments be registered, the personnel under each Instrument would have different levels of benefits. As already noted, it is possible under legislation for the whole period from 1970 to 1989 to be declared hazardous service if required.

RESOURCE IMPACTS

80. DVA is currently calculating the costs associated with registering the Instruments in their current form. It is estimated that some 9,000 ADF personnel served with RCB from 1970 to 1989. The cost of including this service in the DVA budget is assessed as significant. Inclusion of the RAAF Police, ADG and dog handlers (approximately 540 personnel) will have an additional cost and extension to all RAAF personnel (approximately 13,000

personnel) would have a very significant impact.

CONCLUSION

81. The current situation with the NOS classification of ADF service at Butterworth from 1970 to 1989 is complicated by inadequate research in the first instance, incomplete advice to Minister Billson, and subsequent administrative errors and omissions.

82. The RCB Review Group and other claimants have not provided any new or compelling evidence or documents to support their subjective and narrative arguments. In fact the available official documentation contradicts the basis of their claims.

83. ADF service at Butterworth from 1970 to 1989 does not meet the essential criteria for classification as special duty, or warlike or non-warlike service.

84. From a 'first principles' approach, classification of ADF service at Butterworth from 1970 to 1989 as hazardous service under section 120(7) of the VEA is not supported by the available evidence. It does not meet the essential criteria and intent of hazardous service. However, an argument could be made that there is a moral obligation on Defence to ensure that the decision made by Minister Billson is implemented.

85. Should the current Instruments be registered, an anomaly and disadvantage would be created for those RAAF Police, ADG and dog handlers who served primarily in the defence of the Base, but were inadvertently omitted from the Instruments. There would also then be an anomaly in the different levels of benefits provided by non-warlike and hazardous service.

Nature of Service Branch
14 October 2011

Australian Government
Department of Defence
Defence Support Group

Minute
Defence General Counsel
CP2-4-004
PO Box 7911
CANBERRA BC ACT 2610
Tel: (02) 61270003
Fax: (02) 6266 3255

2011/1191256
DGC/OUT/2011/27910

VCDF **(R1-5-B025)**

DETERMINATIONS OF NON-WAR LIKE SERVICE AND HAZARDOUS SERVICE - RIFLE COMPANY BUTTERWORTH – LEGISLATIVE INSTRUMENTS

1. The purpose of this minute is to confirm the advice provided previously by email (see attached) that Defence is not legally obliged to register legislative instruments to determine Non-War Like and Hazardous Service for the Rifle Company Butterworth, particularly given the nature of the instruments themselves. The Instruments are incomplete with one failing to include the reference to the appropriate legislation and secondly neither has an Explanatory Statement (ES) which is a normal requirement.

2. One potential issue in not registering the instruments would be the fact that they have already been released through the FOI process. Defence would need to advise the Minister that the instruments had been signed by a Minister of a previous Government.

3. While noting that Defence is not legally obliged to register the instruments, it is possible to register them if Defence chose to do so. However, this would require an appropriate person in Defence to sign a Statutory Declaration to the effect that the instruments were indeed signed by the Minister but the originals have not been located. This may require seeking information from Mr Billson if the Department has no other means of verifying that there was a signed original. Explanatory Statements would also have to be drafted to explain the effect of the instruments and they would be registered along with the instruments.

4. This advice was confirmed by the Office of Legislative Drafting and Publishing in the Attorney General's Department.

Dr David Lloyd
Defence General Counsel

2 November 2011

Defending Australia and Its National Interests

Ross, Lyn MS

From: Lloyd, David DR
Sent: Wednesday, 12 October 2011 16:04
To: Kinghorne, Paul CDRE
Cc: Ross, Lyn MS; Kaney, Keith MR
Subject: FW: Rifle Company Butterworth - Legal Advice regarding Instruments/Determinations [SEC=IN-CONFIDENCE]
Categories: IN-CONFIDENCE

IN-CONFIDENCE

Paul,

As discussed last week and as previously advised by my office on 30 Sept 2011 - the statement in your email is legally correct. The position has also been confirmed by Leigh Schneider, Assistant Secretary in the Office of Legislative Drafting and Publishing. This office is responsible for the administration of the Legislative Instruments Act and is an appropriate Commonwealth legal officer to be providing advice on issues of this type.

regards

Dr David Lloyd
Defence General Counsel

IMPORTANT: This email remains the property of the Department of Defence and is subject to the jurisdiction of section 70 of the Crimes Act 1914. If you have received this email in error, you are requested to contact the sender and delete the email.

From: Schneider, Leigh [mailto:Leigh.Schneider@ag.gov.au]
Sent: Thursday, 6 October 2011 08:19
To: Ross, Lyn MS
Cc: Lloyd, David DR; Kaney, Keith MR; Tuckfield, Danielle MS
Subject: RE: Rifle Company Butterworth - Legal Advice regarding Instruments/Determinations [SEC=IN-CONFIDENCE]

IN-CONFIDENCE

Good morning.

The statements are correct.

Regards
Leigh Schneider
Assistant Secretary
Drafting Unit 2
Office of Legislative Drafting and Publishing
Attorney-General's Department

Phone 02 6141 4305
Fax 02 6282 5821

From: Ross, Lyn MS [mailto:Lynne.Ross@defence.gov.au]
Sent: Wednesday, 5 October 2011 5:40 pm
To: Schneider, Leigh
Cc: Lloyd, David DR; Kaney, Keith MR; Tuckfield, Danielle MS
Subject: FW: Rifle Company Butterworth - Legal Advice regarding Instruments/Determinations [SEC=IN-CONFIDENCE]

IN-CONFIDENCE

Hi Leigh

I have received the following statement from the policy on the problem with the rifle company det that was signed by
Minister Billson in Sept 2007. Following our conversation on this matter can you please confirm the statement in the email below.

Cheers

Lynne Ross
Director Legislation
Defence General Counsel
Phone 62662166 Mob 0410121606

From: Kinghorne, Paul CDRE
Sent: Monday, 26 September 2011 09:24
To: Paule, Kevin AVM
Cc: Maher, Peter COL; Young, Brian WGCDR; Kar, Ajoy DR; Cooper, Jacqueline MRS; Bilton, Ted MR; Ross, Lyn MS; Kaney, Keith MR
Subject: Rifle Company Butterworth - Legal Advice regarding Instruments/Determinations [SEC=IN-CONFIDENCE]

IN-CONFIDENCE

Sir

Advice from Defence legal regarding the 'instruments/determinations' that were signed by Minister Billson in 2007 on the Rifle Company Butterworth is as follows:

- We are ***not legally obliged to register the documents***, particularly given the nature of the documents themselves. The Documents are incomplete with one failing to include the reference to the appropriate legislation and secondly neither has an Explanatory Statement (ES) which is a normal requirement.
    - An issue in not registering would be the fact that the instruments have already been released through the FOI process and we would need to check with the Minister over the fact that the instruments had actually been signed by a Minister of a previous Government.

- Having established that we are not legally obliged to register the documents, ***it is actually possible***

to register them if we chose to do so. However this would require someone in Defence (presumably DGNOS) to sign a statement to the effect that the documents were indeed signed by the Minister but the originals have not been located . Explanatory Statements would have to be drafted to explain the effect of the instruments and they would be registered along with the instruments.

Paul

Paul G KINGHORNE
Commodore RAN
Director General Nature of Service/*Chairman RAN Relief Trust Fund*
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Veterans' Entitlements Act 1986

Determination of Hazardous Service

Rifle Company Butterworth

I, Bruce Billson, Minister for Veterans' Affairs, for the Minister for Defence:

determine that service rendered as a Member of the Australian Defence Force assigned for service with Australian Army Rifle Company Butterworth at the Butterworth Air Base in the country of Malaysia during the period 6 December 1972 to 31 December 1989 as hazardous service under Section 120 of the Act.

Dated this 18th day of September 2007

BRUCE BILLSON
Minister for Veterans' Affairs
for the Minister for Defence

Veterans' Entitlements Act 1986

Determination of Non Warlike Service

Rifle Company Butterworth

I, Bruce Billson, Minister for Veterans' Affairs, for the Minister for Defence:

determine that service rendered as a Member of the Australian Defence Force assigned for service with Australian Army Rifle Company Butterworth at the Butterworth Air Base in the country of Malaysia during the period 15 November 1970 to 6 December 1972 as non warlike service.

Dated this 18th day of September 2007

BRUCE BILLSON
Minister for Veterans' Affairs
for the Minister for Defence

PARLIAMENT OF AUSTRALIA HOUSE OF REPRESENTATIVES

Bruce Billson MP

YOUR FEDERAL MEMBER FOR DUNKLEY

20 Davey Street (PO Box 501), Frankston, Vic 3199
Telephone: (03) 9781 2333 Fax: (03) 9783 7912
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Our ref: 36190/bfb
October 31, 2011

REFERRED
0 2 NOV 2011
To the Office of the Parliamentary Secretary

Office of the Hon Warren Snowdon MP
RECEIVED
- 2 NOV 2011
DVA / Defence / Health

The Hon Warren Snowden MP
Minister for Veterans Affairs
Minister for Defence Science and Personnel
Parliament House
CANBERRA ACT 2600

Dear Minister, Warren,

Nature of Service - Rifle Company Butterworth (RCB)

As a former Minister for Veterans Affairs and Defence personnel Minister, you'd be aware of my deep commitment and ongoing interest in the wellbeing of those who have served our nation both while in uniform and in their post-military life.

In this light, veterans' organisations, veteran's families, serving personnel and clinicians maintain contact with me about matters of interest and concern.

A recent example involves the Determination of Service for Rifle Company Butterworth (RCB) following an extensive review of service and Defence recommendation during my time as the responsible Minister.

I have received a copy of the August 25 letter to you from The Royal Australian Regiment Corporation concerning the Ministerial Determination of Hazardous Service for RCB and delays in resolving the matters thought to be finalised with my September 2007 determination.

The correspondence refers to sections of a document obtained under Freedom of Information that suggest that a subsequent review by the NOSB found that that the instrument I executed on September 18, 2007 was inaccurate and invalid. The extract goes on to claim specific personnel were inadvertently omitted from the (Defence?) recommendations and that the Instruments were not registered.

Reference is made to revised determinations being prepared and how these are apparently before you for decision. The extracts conveyed to me via the letter make no mention of any reasons for the delay between the alleged deficiencies in the previous determination and executing any remedial action that is necessary.

These concerns have not previously been drawn to my attention and the process and documentation that appears to have reconsidered the determination I made when Minister have not been canvassed with me either.

My concern is that considerable time has elapsed since the September 2007 determination that is unexplained. In the interim, rather than simply attending to alleged administrative deficiencies, the policy intention of the determination appears to have been revisited and revised without adequately ensuring that the interests of those former service personnel address by the original determination being preserved.

Given the uncertainty and anxiety caused by the recent revelations, I ask that you give this matter early consideration and seek to uphold the clear policy intention of the September 2007 RCB nature of service determination in a way that does not disadvantage DVA clients in terms of repatriation benefits.

Your early advice would be appreciated along with your facilitation in accessing copies of relevant documents under the Convention that enables a Minister to review material from the period in office for purpose of refreshing recollections of considerations at the time, if the Gillard Government plans to deviate from the September 2007 policy intention to the disadvantage of the Butterworth veterans community.

Yours sincerely,

BRUCE BILLSON MP
Federal Member for Dunkley
Shadow Minister for Small Business, Competition Policy and Consumer Affairs

Copy: Michael von Berg, MC, Chairman, Royal Australian Regiment Corporation
Senator the Hon Michael Ronaldson, Shadow Minister for Veterans Affairs

Positive ☑ Passionate ☑ Persistent ☑

ATTACHMENT B

Australian Government
Department of Defence

UNCLASSIFIED

Minister for Defence Personnel

PDR: MS19-000009

Copies to: Secretary, CDF, Associate Secretary, FASMECC

REVIEW OF THE DECISION REGARDING THE 2007 HAZARDOUS AND NON-WARLIKE DETERMINATIONS FOR RIFLE COMPANY BUTTERWORTH (RCB) SERVICE 1970-1989

Urgency N/A

Recommendations That you:	
1. **note** the outcome of the Defence review of the decisions regarding the 2007 hazardous and non-warlike determinations for RCB service 1970-1989.	1. **Noted / Please discuss**
2. **note** that no record to explain why the instruments were not registered at the time has been found.	2. **Noted / Please discuss**
3. **note** that Defence provided no evidence in 2007 to support the reclassification of RCB service as hazardous.	3. **Noted / Please discuss**
4. **note** that the 2012 decision by then PARLSEC Senator Feeney that RCB service during the period is peacetime service is supported by the evidence and is consistent with all other reviews of ADF service at Butterworth.	4. **Noted / Please discuss**
Signature: ..... **Darren Chester** 22/2/2019	
Contact Officer: [redacted]	[redacted]

Key Points:

- On 3 December 2018 you met with the Vice Chief of the Defence Force to discuss the classification of Rifle Company Butterworth (RCB) service following your meeting with representatives from the RCB Review Group on 27 November 2018.
- At the meeting you requested information on the decision by former Minister for Veterans' Affairs, Mr Bruce Billson, to sign Hazardous and Non-warlike Instruments of Determination on 18 September 2007, and the subsequent decision by the former Parliamentary Secretary (PARLSEC) Senator David Feeney on 21 March 2012, that ADF service at Butterworth from 1970 to 1989 should remain classified as peacetime service.
- Research has been unable to locate any records which explain why Defence failed to register the instruments.

- Despite advising that RAAF Airfield Defence Guards and RAAF Police who also served at Butterworth should have their service classified the same as RCB service, they were not included on the instruments for hazardous and non-warlike service. The instruments also contained errors in the listed dates.
- The Defence advice to Minister Billson was also flawed in that the Department of Veterans' Affairs (DVA) was not consulted regarding the legislative and financial impacts of the instruments.
- Recent Defence review of the 2007 decisions has confirmed that Defence advised Minister Billson that the arguments tendered by Mr Cross indicate that service at Butterworth can be considered to be hazardous service, but provided no evidence to justify the classification. (Attachment A)
- The 21 March 2012 decision by Senator Feeney that RCB service during the period is peacetime service, is supported by the evidence, and is consistent with the findings of independent reviews.

Minister,
As requested by you when we met in December, I have enclosed the detailed review into the 2007 decisions

DL Johnston
Vice Admiral, Royal Australian Navy
Vice Chief of the Defence Force
02 6265 4758
01 February 2019

Background:

- In 2007, Defence advised then Minister Billson that there had been no request from Malaysian authorities for RCB to conduct operations against communist terrorists (CT), and no evidence of CT conducting operations against RCB. Defence noted that the Clarke Review found that RCB service was normal peacetime garrison duty.
- With respect to the failure to register the instruments, it may be of consequence that, just one month after Minister Billson signed the instruments, a federal election was announced on 14 October 2007, resulting in a government shutdown period until the election date, 24 November 2007, and a subsequent change of government.
- In his 2010 letter to Defence, the then Repatriation Commissioner expressed his concern over the lack of consultation on the proposed hazardous and non-warlike classifications for RCB service and, noting the Commission's role to protect the integrity of the repatriation system, also questioned the justification for the reclassifications.
- In 2009, Defence proposed to revise the 2007 instruments to correct errors, and to have them registered. To support this proposal, Defence undertook the first comprehensive review of ADF service at Butterworth during the period 1970-1989.
- In 24 November 2011, that the Secretary and the Chief of the Defence Force jointly signed a ministerial submission to the PARLSEC which sought agreement that Australian Defence Force service at Butterworth from 1970 to 1989, remain classified as peacetime service. On 21 March 2012 Senator Feeney agreed with the Defence recommendations.
- The peacetime classification is supported by the findings of several independent reviews of ADF service at Butterworth during the period, including RCB service.

Sensitivity: Nil.

Financial Impacts:

There are no financial impacts.

Regulatory Implications: Nil.

Consultation: YES.

[redacted]

Attachments:
Attachment A: Defence review of the decisions regarding the 2007 hazardous and non-warlike determinations for RCB service 1970 to 1989 (Black review)

REVIEW OF THE DECISIONS REGARDING THE 2007 HAZARDOUS AND NON-WARLIKE DETERMINATIONS FOR RIFLE COMPANY BUTTERWORTH SERVICE 1970-1989

2006 RCB Review Group Submission

1. On 18 August 2006, Mr Robert Cross, Chairman of the Rifle Company Butterworth (RCB) Review Group Committee, forwarded a submission to the then Minister for Defence (MINDEF), the Hon Brendan Nelson MP.[1] In the submission, the RCB Review Group sought:

a. Qualifying [warlike] service for *Veterans' Entitlements Act 1986* (VEA);

b. Australian Active Service Medal (AASM) with clasp 'MALAYSIA';

c. Returned from Active Service Badge; and

d. General Service Medal 1962, with clasp 'MALAYSIA' for those who served in RCB until 14 February 1975.[2]

2. The Review Group claimed that:

> *... previous reviews did not consider all relevant facts and therefore incorrectly concluded that RCB service was peacetime service.*

Mr Cross indicated that they were willing to meet with the Minister or staff to discuss the submission.

3. On 26 November 2006, the RCB Review Group sent a follow-up email to MINDEF's Office seeking an update on the consideration of their August 2006 submission.[3] On 28 November 2006, a response was provided by the Office of the Minister Assisting MINDEF to advise that the submission was under consideration. On 23 February 2007, Mr Cross sent a further email to Minister Billson seeking a further update on the RCB Review Group submission.[4]

4. On 21 May 2007, Minister Billson advised Mr Cross that he had asked the then Vice Chief of the Defence Force (VCDF), Lieutenant General Gillespie, to have the Nature of Service (NOS) review team investigate the claim. The Minister advised that a response was unlikely before June 2007.[5]

2007 Defence Submission to Minister Billson[6]

5. On 28 August 2007, the VCDF in a ministerial submission, recommended that the request for warlike classification for RCB be declined, and that the service be classified as either non-warlike service (15 November 1970 to 6 December 1972) or hazardous service (7 December 1972 to 31 December 1989. Note that the Instrument of Determination for Hazardous Service signed by Minister Billson had a start date of 6 December 1972 rather than 7 December 1972.

6. The ministerial submission states that the RCB Review Group submission has been examined against the legislation and policy extant during the period 1970 to 1989 and that there

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[1] R31126798.

[2] BH43882.

[3] R25554595.

[4] R17938197.

[5] R31126711.

[6] R11407933. Ministerial Submission Schedule Nos 91229, 97315, 94573, 94076, 101673 signed on 28 August 2007 by the VCDF LTGEN Gillespie.

are no grounds for the service to be classified as warlike service. However, it claims that there are grounds for a hazardous classification under section 120 of the VEA.

7. The ministerial submission also notes that the Royal Australian Air Force (RAAF) Airfield Defence Guards (ADGs) and RAAF Police would also need to be considered to have incurred a similar level of danger or exposure to the risk of harm and should therefore also be considered to have their service considered non-warlike/hazardous. Notwithstanding, they were not included in the recommendation to the Minister or included in the Instruments. Defence notes that the RCB Review Group is unlikely to be satisfied by this outcome. There is no obvious explanation for the oversight of not including the RAAF elements.

8. The ministerial submission notes 'DVA to determine the cost impact of a hazardous classification under Section 120B of the *VEA* (sic)' and indicates that the Department of Veterans' Affairs (DVA) was consulted in the preparation of the Ministerial.

> **Comment**. In 2010, the Repatriation Commissioner expressed concern with the apparent lack of consultation leading up to the 2007 decision by former Minister Billson. He noted that DVA can find no record of being consulted, had no record of providing costings attributable to the decision and, noting the Commission's role to protect the integrity of the repatriation system, also questioned the justification for the hazardous and non-warlike reclassifications.[7] Recent correspondence between Defence and DVA, confirms that there is no evidence that DVA was consulted in the preparation of the 2007 ministerial submission

9. **Background Paper**. Attachment A to the 2007 ministerial submission is a paper titled 'Background to Review of Rifle Company Butterworth Nature of Service'. The paper:

a. States that the RCB was deployed to be a ready reaction force to counter any major insurgency at the base.

> **Comment**: This is not the purpose of the company being at the Base. It is an incorrect generalisation and places greater emphasis on the reason for the infantry company being there, and is not supported by official records. More correctly, one of the roles of the company was to assist in the protection of Australian Defence Force (ADF) assets; it achieved this by providing a Quick Reaction Force (QRF) normally of section (10-12 personnel) size.

b. Correctly determines that the service does not meet the criteria for classification as warlike service.

c. Correctly identifies that the Mohr[8] and Clarke[9] Reviews applied the definitions of warlike and non-warlike to operations before the 1993 Cabinet decision on those terms, and before they were introduced into legislation (1997).

d. Correctly identifies that the Chiefs of Service Committee (COSC) was not comfortable with the Clarke approach as it was tantamount to applying today's standards and policies to events of the past. The CDF, on COSC advice, directed that anomalies be reviewed against the legislation and policy that was extant at the time of the conduct of the operation.

> **Comment**. The NOS review team subsequently examined RCB service against the *Repatriation (Special Overseas Service) Act 1962* (SOS Act). The paper identified the

[7] R11408734.

[8] *Review of Service Entitlement Anomalies in Respect of South-East Asian service 1955-75*

[9] *Review of Veterans' Entitlements*

criteria which had to be considered, and noted that Mr Cross had provided no evidence that RCB service satisfied this criteria.

e. Correctly identified that the Clarke Review found that neither warlike nor non-warlike service was rendered in Malaysia or Singapore following the cessation of Confrontation on 11 August 1966. The paper notes that the Clarke Review found that RCB service was normal peacetime garrison duty and that:

... the activities of the RCB were never conducted as an operation but were considered to be garrison duties.

f. There is no comment made in the background paper in relation to the Mohr Review consideration of service in Malaysia or the *Committee of Inquiry into Defence Awards* (CIDA) consideration of this service.

Comment. Both reviews considered ADF service at Butterworth during the period. CIDA did not consider that service at Butterworth was more demanding that peacetime service. The Mohr Review, directed specifically to consider service at Butterworth during the period 1955-75, made no recommendation for any change to the peacetime classification.

g. States that:

... the arguments tendered in the [RCB] submission do indicate that service at the base during the period in question can be considered to be above and beyond normal peacetime service…

Arguments for a hazardous service classification can be sustained for the RCB when compared with other recent hazardous operations ...

It is not unreasonable therefore, to declare the operations hazardous retrospectively .... This would allow the more beneficial standard of proof to claims relating to service with RCB.

Comment. Beyond this reference to the arguments tendered by Mr Cross, there is no evidence provided in the background paper to support a hazardous classification. There is no evidence of any research being undertaken to validate the claims made by Mr Cross, or to determine an appropriate classification based on the official records.

10. **The Instruments**. On 18 September 2007, the then MINVA, the Hon Bruce Billson MP agreed with the Defence ministerial submission recommendations[10] and signed separate Instruments of Determination under the VEA for non-warlike service from 15 November 1970 to 6 December 1972[11], and hazardous service from 6 December 1972 to 31 December 1989.

11. As legislative instruments, there was a requirement for them to be registered on the Federal Register of Legislation. A legislative instrument is not enforceable unless and until registered as a legislative instrument.[12] There is no record of any action by Defence in relation to this requirement. There is no record of any reason for the failure to register the instruments.

Comment. It may be of consequence that, just one month after Minister Billson signed the instruments, a federal election was announced on 14 October 2007, resulting in a

[10] Ibid. R11407933.

[11] Hazardous service cannot be applied before 1972. Declaring this period as non-warlike was seen as the most expeditious means of providing benefits equivalent to a hazardous declaration under section 120 of the VEA.

[12] *Instrument Handbook*, Australian Government, Office of Parliamentary Counsel. Reissued June 2018.

government shutdown period until the election date, 24 November 2007, and a subsequent change of government.

12. **Hazardous service purpose**. In his research paper *History of Nature of Service - Law and Policy*,[13] Bruce Topperwien[14] in regard to hazardous service notes that the concept of 'hazardous service' was introduced into the *Repatriation Act 1920* in June 1985 as part of amendments that changed the standard of proof to be applied in decision-making under that Act.[15] A copy of the paper is at Enclosure 1.

13. Topperwien notes that a letter dated 16 August 1985, from MINVA's Private Secretary to the Senate Standing Committee for the Scrutiny of Bills, provides some indication of the Government's thinking at the time of the introduction of the concept of 'hazardous service' into the *Australian Repatriation Act 1920*, in 1985. The letter stated:

> *In some circumstances, it might be possible to define [hazardous service] by a generic description of the service (e.g. parachuting duties), at other times on the basis of service with a specific Defence Force group (e.g. service with the Special Air Services Regiment), or by a description of particular incidents (e.g. neutralising an unexploded device).*

14. He also comments that hazardous service was regarded as a category of service lower in status to that of 'operational service'.[16] The only advantages that differentiated hazardous service from other Defence service were the more beneficial standard of proof and the omission of the minimum 3 year period of service.

15. Topperwien also notes that the fact that hazardous service was regarded as lower in status and importing lesser benefits than operational service, is evidenced by the fact that it was applied to service in the same area that applied to the First Gulf War, but after that area ceased to be an 'operational area' for the purpose of operational service.

16. He further notes that while, the legislation required an element of danger for the characterisation of service in a 'theatre of war', danger was also recognised as a policy element in the characterisation of 'operational service'. Topperwien cites a speech to the House of Representatives on 8 November 1990, The Hon. Ben Humphreys, Minister for Veterans' Affairs (MINVA), in which he said:

> *The special benefits under the Act available to persons who serve on operational service are in recognition of the special dangers associated with operational service.*

Comment. As already noted above, beyond stating that the arguments tendered by Mr Cross indicate that service at Butterworth during the period can be considered to be above and beyond normal peacetime service, there is no evidence provided in the background paper to support a hazardous classification. While the background paper discussed the findings of the Clarke Review in relation to the classification of RCB

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[13] Research paper prepared by Bruce Topperwien for the Nature of Service Branch, Department of Defence.

[14] Bruce Topperwien Dip Law (BSAB), LLM (Public Law) (ANU) a former Director Litigation DVA and member of the Veterans' Review Board.

[15] Section 25 of the Repatriation Legislation Amendment Act 1985, Act No. 90 of 1985, which commenced on 6 June 1985, amended section 107J of the Repatriation Act 1920, permitting the Minister for Defence to make a written instrument determining particular service to be 'hazardous service' for the purposes of the application of the more beneficial standard of proof to claims for disability pension or dependant's pension relating to such service.

[16] Operational service not only imported these advantages, but also included the 'occurrence' test for entitlement to pension. The 'occurrence' test had been regarded as a very important advantage under Repatriation legislation and was available to members who had rendered 'active service'.

service, it does not provide any evidence to justify a classification which contradicts the Clarke Review recommendation that it remain classified as peacetime service.

2007 Minister Billson letter to Mr Cross Chairman RCB Review Group[17]

17. On 4 October 2007, Minister Billson wrote to Mr Cross, advising him that service with RCB during the period was examined against the appropriate legislation, the SOS Act. Under this legislation, three conditions were necessary to qualify for repatriation benefits. Firstly, that a special area has been prescribed; secondly, that the personnel were serving in a special area; and thirdly, that personnel were allotted for special duty within the special area.

18. The Minister confirmed that allotment for special duty was the responsibility of the Service Chiefs. In this regard, Cabinet directed the Services that 'allotment for special duty' should only be made at a time where 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.

19. He also confirmed that special duty was intended to be for those periods when Australian forces deployed in the designated special area were called out and deployed on operations against an enemy or dissident elements at the request of the host county, in this case Malaya. Any decision by the Service Chiefs to allot their personnel for special duty is an acknowledgement that the level of danger incurred during such operations was sufficient to attract the full package of veterans' benefits.

20. The Minister also comments that no submission to the government of the day to declare Butterworth Air Base a special area has been found and no recommendation was made to the Chief of the General Staff at the time of the RCB initial deployment [or as subsequent research has confirmed, at any time between 1970 and 1989] to declare their activities 'special service'.

21. Minister Billson noted in his letter to Mr Cross that RCB contributed to base security in conjunction with the RAAF Police, ADGs and dog handlers who had primary responsibility was the security of ADF assets at RAAF Base Butterworth, as well as personnel and dependents. There was no reference to any other RAAF personnel posted to RAAF Butterworth who were, of course, also exposed to any risk of harm in the location.

22. In his letter, the Minister indicates that he has taken into account Mr Cross' 4 October 2007 letter to the Director of Coordination Air Force. In this letter Mr Cross makes reference to alleged CT attributed activities in 1975 and 1976, and an intelligence briefing but does not provide any reference to support his statements. Of note is that the letter from Mr Cross is not referenced in the Defence ministerial submission.

23. The Minister advised Mr Cross that the RCB service could not be classified as special duty or warlike service as the:

> *… degree of exposure to the risk of harm was not sufficient to warrant the full package of repatriation benefits.*

The Minister, however did advise Mr Cross that he was:

> *... prepared to declare retrospectively this period of service [1970 to 1989] as hazardous pursuant to section 120 of the Veterans' Entitlement [sic] Act.*

Comment. NOS research was unable to locate any records which explain why the form Minister Billson's decision was not actioned by Defence or why the instruments were not registered.

[17] Ibid. R11407933.

2007/2008 Further Representation from RCB Review Group

24. On 26 October 2007, Mr Cross wrote to Minister Billson expressing disappointment at the decision by the Minister.[18] He stated that it:

> *... disillusioned thousands of ex-service personnel who rightly believe that the details of their overseas deployment as part of RCB in Malaysia have been particularly downgraded.*

Comment. As the service was classified as peacetime service prior to this period the reclassification of the service to non-warlike/hazardous service is an upgraded rather than downgrade. NOS believes that the claim of thousands of ex-service personnel is wildly exaggerated.

25. In the letter, he also requested a full copy of the NOS Review Team's recommendations to Government.

26. On 19 November 2007, Assistant Secretary Ministerial and Executive Support[19] wrote to Mr Cross advising him that as a result of the Federal Election to be held on 24 November 2007, the Government had assumed a caretaker role and that as a result departments avoid commenting on Government policy or on matters that could commit an incoming government, and that accordingly he was responding on behalf of the Minister.[20] In the letter the Assistant Secretary referred to the previous consideration of the RCB Review Group submission and the response provided by Minister Billson, stating that:

> *... Defence believes that the advice [provided by Minister Billson] was substantiated by fact. Should you wish to pursue the matter you can submit a Freedom of Information application.*

27. On 23 November 2007 Mr Cross applied for the information under FOI and provided the application fee. On 21 December 2007 the Office of VCDF was sent an 'Estimated Time' form from the FOI Directorate to complete with a response due by 4 January 2008 – subsequently returned on 8 January 2008.

28. On 3 December 2007, Mr Cross wrote to MINDEF, the Hon Joel Fitzgibbon MP requesting that he review the decision of former Minister Billson to classify RCB service as hazardous rather than warlike service.[21] Mr Cross restated that they [the RCB Review Group] were after warlike service and the facts presented in their submission were not considered. Mr Cross indicated the Review Group's willingness to meet with the Minister's staff to discuss the submission.

29. On 11 March 2008, Mr Cross again wrote to Minister Fitzgibbon to complain of the alleged 'tardiness and delaying tactics of the Dept (sic) of Defence in releasing documents to our Group'. He noted that the Review Group FOI request had been with the Department for 6 months and they had not yet received a copy of the requested documents. He sought the Minister's assistance in the documentation being provided. On 11 April 2008, Defence responded to the FOI request and provided a copy of the background paper to Mr Cross.

30. On 27 August 2008, the Minister for Defence Science and Personnel, the Hon Warren Snowdon MP wrote to Mr Cross confirming that there is no basis on which RCB personnel could be allotted for special duty during the period 1970 to 1989.

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[18] R11668225.

[19] Mr Tony Corcoran.

[20] R15427585.

[21] R11668252.

31. The response confirmed that the RCB Review Group submission had been extensively reviewed against the relevant legislation and policy at the time of the service. The letter essentially restated the reason for not declaring the service as warlike as previously expressed in the 2007 letter from former Minister Billson.

32. On 1 September 2008, Minister Snowdon wrote to Mr Cross in response to his 11 March 2008 letter confirming that the FOI request had been completed.[22]

2009 Representations from RCB Review Group

33. On 22 May 2009, Mr Cross wrote to Minister Snowdon, referring to the 4 October 2007 letter from former Minister Billson, advising that the retrospective declaration of hazardous service did not appear to have been followed through.[23] Mr Cross advised that the Review Group was preparing a detailed response to former Minister Billson's letter of refusal of their claim for war service.

34. Mr Cross sought confirmation on whether the retrospective classification of hazardous service referred:

> *...only to the soldiers who were actually deployed at the Airbase Butterworth in this security role or in fact does rightly extend to the RAAF personnel who were also at the base during these communist terrorist dominated years across Malaysia.*

35. On 2 December 2009, as he had not received a response to the May 2009 letter, Mr Cross wrote to Minister Snowdon seeking an update on his consideration of their request. Mr Cross also noted that the Review Group had been advised that their submission to the Defence Honours and Awards Appeals Tribunal was to be reviewed in 2010.[24]

36. On 19 August 2009, the National Archives of Australia (NAA) passed to Defence the 25 May 2009 request from Mr Cross for processing. The NAA letter noted that Mr Cross was seeking clarification of matters raised in the 2007 former Minister Billson letter to Mr Cross, namely the Cabinet guidance issued in July 1965.

2009 Defence Revisits the Former Minister Billson Instruments

37. As a result of the 22 May 2009 letter from Mr Cross to Minister Snowdon, Defence prepared a draft ministerial submission which included revised instruments of determination for ADF service at RAAF Butterworth, including draft revocation instruments. On 14 September 2009, the draft was passed to DVA, Directorate of Defence Honours and Awards and Air Force Headquarters for comment.[25]

38. In the draft Defence:

a. Noted that the 2007 Instruments of Determination are not enforceable against the Commonwealth because they had not been registered.

b. Sought agreement for the RAAF ADGs, RAAF Police and RAAF Security Guards to be included as they served directly in the defence of Butterworth. Defence acknowledged that these had inadvertently been omitted from the 2007 Instruments.

39. The draft ministerial submission stated that the start date of 15 November 1970 reflected in the non-warlike instrument was based on the first RCB contingent to Butterworth

[22] R11668235.

[23] R15430848.

[24] Ibid. R15430848.

[25] BN1663227.

and not from the date the base security responsibility was transferred to the Malaysians from the RAF. This is the date that the ministerial submission indicates the RAAF had sector security responsibility.

40. It also states that as a result of DVA advice that service prior to 1972 could be included determined as hazardous service, a single instrument of hazardous service was prepared for the period 31 March 1970 to 31 December 1989. It also reflects that DVA are not currently in a position to calculate the additional cost of this decisions (estimated that there are approximately 530 personnel). It further states that DVA was consulted in the preparation of the 2007 ministerial submission, although DVA can not locate any records of previous correspondence on the matter [NOS research has also failed to locate any evidence that Defence consulted with DVA]. Draft instruments were also prepared to revoke the 2007 Instruments signed by former Minister Billson.

41. The background paper prepared by Defence to support the 2009 draft ministerial submission, demonstrates that very little research was undertaken to confirm the previous 2007 decision for the service being classified as non-warlike/hazardous service. The only additional research which appears to have been undertaken was in relation to the activities and service of the RAAF ADGs, Police and Security Guards.

42. **DVA interim response**. On 23 September 2009, Mr Ric Moore Acting National Manager Rehabilitation, Compensation & Income Support Policy DVA, provided an interim response to the draft Defence ministerial submission.[26] In the letter he noted that as the matter

> *... involves significant potential implications for benefits under the ... [VEA] it will need to be considered by the Repatriation Commission.*

43. The letter further noted that while DVA does not have a formal position on the matter it does not disagree with the Clarke Review consideration in relation to this service. Mr Moore also noted that the draft ministerial submission does not present a compelling argument for the reclassification of the service of RCB.

44. **Defence second draft**. On 12 October 2009, Director NOS (DNOS), Colonel Peter Maher provided a second draft to DVA (Mr Martin Page).[27] In his email Colonel Maher acknowledged the DVA advice that the previous draft had been provided to the Repatriation Commission and commented that as this was simply to correct the original instruments, he was not sure that there are new 'significant potential implications' for benefits under the VEA. He considered that the only additional implication for benefits under the VEA will flow from the recommendation that the start date for service be brought forward to 31 March 1970.

45. On 14 October 2009, Mr Page responded that he acknowledged that the current draft is simply designed to correct errors and oversights in the original instruments:

> *... it remains that DVA appears to have not been consulted in the preparation of MIN Billson's advice to Robert Cross of 4 October 2007. I can only assume that this reply was prepared in his capacity as Minister Assisting the Minister for Defence; we have no record of this letter in our correspondence system.*

46. Mr Page also commented that given:

> *... DVA's lack of participation in the reclassification up until recently ... it's probably inaccurate to suggest that the only additional implications for VEA benefits will be those attributable to the 'extra' period of eight months ...*

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[26] R15461591.

[27] Ibid. BN1663227.

> *On this issue of benefits, we can find no record of costing being provided for the proposal that went up to the Minister…*

47. On 15 October 2009, COL Maher commented that 'I can't imagine how we got into such a mess.' He indicated that he would send information from the 2007 consideration and briefs to assist DVA. He noted the urgency to complete the work to sort it out before Mr Cross appears on 60 Minutes.[28]

Comment. There is no information which NOS has been able to locate in Defence records that indicate Mr Cross was to appear on 60 Minutes.

48. The second draft ministerial submission did not ask the Minister to note that the 2007 Instruments are not enforceable against the Commonwealth because they had not been registered. Rather the second draft notes that the 2007 Instruments:

> *… amending the nature of service (NOS) classification are inaccurate and invalid. …*

Commenting that:

> *Recent legal advice is that ADF service prior to 7 Dec 72 is not precluded from classification as hazardous service.*

Repatriation Commission Comment on the Service

49. On 1 February 2010, the Repatriation Commissioner Brigadier Bill Rolfe AO (Rtd) wrote to DGNOS (Brigadier Webster) noting that he had recently become aware of the proposal to reclassify RCB service.[29] He also noted that the current draft ministerial submission is designed to correct errors and oversights in the 2007 Instruments.

50. While the Commissioner acknowledged the right of Defence to make decisions regarding the NOS of ADF operations, the Commission does not resile from its role:

> *… of protecting the integrity of the repatriation system, and I am concerned that in this instance, on the evidence we have at hand, there appears to have been little in the way of justification for the reclassification.*

51. The Commissioner noted that the Clarke Review had examined the issue of RCB service and recommended that no further action be taken, which was accepted by the then Government. The issue, therefore in the Commission view, was outside the scope of the Minister's current revisitation of unimplemented recommendations.

52. He also expressed concern with the apparent lack of consultation leading up to the 2007 decision by Minister Billson. He noted that DVA can find no record of being consulted and no record of providing costings attributable to the decision. He commented that costings have been prepared by DVA for the eight months of the initial period (15 November 1970- 31 December 1989) and the extrapolation of the estimate for the entire period results in a significant level of expenditure which rests with DVA. He also expressed concern about the precedent that this decision will have through this reclassification, both for other like ADF service and for other ADF personnel based at Butterworth during the same time.

Comment. NOS is unable to find any follow-on correspondence between DGNOS and the Repatriation Commissioner on this matter. However, from the Commissioner's letter and the earlier exchange between Colonel Maher and Mr Page, notwithstanding what might have been

[28] Ibid. BN1663227.

[29] Ibid. R11408734.

inferred in the 2007 Defence ministerial submission to former Minister Billson, DVA does not appear to have been consulted.

The NOSRB Consideration on RCB Service

53. The matter of the classification of ADF service at Butterworth, was considered by the Nature of Service Review Board (NOSRB)[30] on 3 May 2011. In presenting the case, DNOS Colonel Maher noted that there had been a failure in the administration process in implementing the former Minister Billson decision. The Board agreed that further consideration of the matter was required.

54. At the subsequent meeting of the Board on 30 August 2011, it was agreed that there were a range of potential outcomes in relation to resolving the nature of service determination, but were not yet in a position to agree or progress formal advice to Ministers. The Board requested a legal opinion from the Australian Government Solicitor, or other competent Commonwealth legal authority.

55. At its 9 November 2011 meeting the Chairman of the NOSRB advised that formal advice from Defence legal had been received and that former Minister Billson had written to Minister Snowdon on the matter (31 October 2011) and that the Secretary (Mr Duncan Lewis) had meet Minister Snowdon on 13 October 2011. He noted that a draft ministerial submission for the Secretary and CDF was being prepared by Defence.[31]

56. The Board next met on 26 September 2012. At this meeting the Chairman advised that the PARLSEC Senator Feeney had accepted the Defence recommendation that the NOS of ADF service at Butterworth from 1966 should remain classified as peacetime service.[32]

2011 the Minister for Defence requests the matter be expedited

57. On 5 October 2011, Defence provided a ministerial responding to a submission from the Chairman of the Royal Australian Regiment Corporation (RARC).[33] In this ministerial Defence noted that the RARC submission sought advice on whether any new instruments would be backdated to 2007. Defence noted that the 'issues' surrounding the 2007 advice and subsequent non-registration of the instruments are still to be resolved within Defence and other agencies.

58. The Defence ministerial noted that while the 2007 Instruments did not include elements of the RAAF involved in security duties, they are:

> *... also invalid because they were not formally registered ...*

Defence further noted that in December 2009:

> *... Defence sought to redress the situation by drafting new instruments for signature by Minister for Defence, however this action was not completed by May 2010 when the then Prime Minister Kevin Rudd MP requested that outstanding issues regarding reclassification of past ADF service be resolved ...*

The ministerial submission noted that the matter remained under review.

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[30] A Board, chaired by Defence, comprised Band 2 (equivalent) from PM&C, Finance and DVA and established in response to the direction of then Prime Minister Rudd that resolution of outstanding claims for reclassification of past service, many from Clarke Review recommendations, be agreed between the Departments.

[31] R10249016.

[32] R12495035.

[33] R11670510.

59. On 20 October 2011, then MINDEF the Hon Stephen Smith MP annotated on the ministerial submission:[34]

Make every effort to expedite the finalisation of this. Keep me informed.

2011 Letter from Mr Billson MP requesting the 2007 decisions be upheld

60. As noted in paragraph 54. on 31 October 2011, Mr Billson wrote to Minister Snowdon noting that, as a result of the information provided to him by the RARC, he was aware that the instruments he executed on 18 September 2007 were now assessed as inaccurate and invalid.[35] Mr Billson requested that consideration be given to upholding:

...the clear policy intention of the September 2007 determination in a way that does not disadvantage DVA clients in terms of repatriation benefits.

November 2011 Defence Submission to PARLSEC

61. On 24 November 2011, the Secretary and CDF jointly signed ministerial submission to PARLSEC which sought agreement that ADF service at Butterworth from 1970 to 1989, remain classified as peacetime service.[36] The ministerial also sought PARLEC's signature to a letter to Mr Billson explaining the decision. This submission:

a. Noted that the Secretary met with PARLSEC on 13 October 2011.

b. Explained the background to the 2007 decision and how in 2009 it was discovered that the 2007 Instruments did not include RAAF ADGs, Police and Security Guards. The ministerial also noted that the instruments were not registered.

c. Noted that a 2011 Defence review assessed that, from first principles, the 2007 reclassification of ADF service is not supported by the evidence, although the case had previously been made by Defence and accepted by Government.

d. Noted that the 2007 Defence review relied on selective information provided in the RCB Review Group submission and carried out little objective research in relation to the claims made.

Comment. This statement is confirmed by current-day NOS research on the matter.

e. The submission acknowledges that while the reclassification of the service as hazardous before 1985 does not accord with policy of considering service in the context of legislation and policies which existed at the time of the service, where a clear anomaly exists or significant disadvantage or injustice exists, exceptions to policy should be allowed. The submission considered that a classification of peacetime service does not create an anomaly or disadvantage any personnel.

f. Noted the outcome of the consideration of this service by CIDA and the Clarke Review.

g. That Defence legal in consultation with Australian Government Solicitors (AGS), advised that Defence is not legally obliged to register the current Instruments, however it is possible to do so if Defence chooses. DVA advice was that they did not need to be registered to be valid as either way they give rise to benefits under the VEA. The submission also noted that the Instrument have already been released under FOI. The submission also noted that failing to register them may lead to claims under the

[34] R11475688.

[35] R11660588.

[36] R11134895.

Defective Administration Scheme. It noted that legal advice provided flexibility to the PARLSEC on how the matter might be resolved.

h. A proposal to reclassify this service might be based on an obligation flowing from the 2007 decision to reclassify the service as hazardous, even that the evidence does not support this. However, registering the 2007 Instruments would create an anomaly and disadvantage RAAF AGDs, Police and Security Guards, and arguably other ADF service at Butterworth.

Comment. Current NOS research confirms that other RAAF personnel were also rotated through training to assist with security responsibility at the Air Base.

i. Noted that advice from the PARLSEC's Office was that he would entrain a recommendation to the original decision being overturned.

j. Noted that the cost of including the cost for this RCB service in the DVA budget would be significant, although at this time they had not provided any details of costings. If all ADF service at Butterworth was to be included then it would have a very significant financial impact.

k. Noted that Mr Billson in his 31 October 2011 letter, requested PARLSEC's consideration to:

... uphold the clear policy intention of the September 2007 determination in a way that does not disadvantage DVA clients in terms of repatriation benefits.

62. The ministerial submission was supported by a paper '2011 Nature of Service Branch Review ADF Service at RAAF Butterworth – 1970-1989', dated 14 October 2011.

Comment. While the paper is not as comprehensive as recent research undertaken by NOS and subsequent consideration of the research for this period of service, it nevertheless is sufficiently detailed to support the recommendation to PARLSEC that the 2007 decision be reversed and that the service remain classified as peacetime service.

63. In relation to the sub-paragraph 60.g. above, presumably this inclusion in the ministerial submission is based on the advice provided by DVA (Mr Martin page) in an email to Director Nature of Service on 16 September 2011.[37] In the email Mr Page notes that following informal discussions with DVA legal staff:

A summary of their advice is:

Defence had an obligation to register the instruments.

The failure to register the instruments doesn't affect their validity.

Suggested the instruments could be properly registered, then revoked if the view is that the reclassification lacks merit.

Any individual claims could be dealt with under the Compensation for Detriment caused by Defective Administration Scheme.

64. It is unclear why the statement in relation to the failure to register the instruments not affecting their validity would be provided in the advice from DVA, when the requirements of Section 15K(1) of the *Legislation Act 2003* which states that:

[37] BQ1257549.

> *A legislative instrument is not enforceable by or against any person (including the Commonwealth) unless the instrument is registered as a legislative instrument.*

And DVA noted that Defence had an obligation to register them.

65. The Defence Legal advice is relevant and it was appropriate that it be included in the advice to the PARLSEC.

66. On 21 March 2012, the PARLSEC agreed with the recommendations that:[38]

a. ADF service at Butterworth from 1970 to 1989 does not meet the essential criteria for classification as special duty, or warlike or non-warlike service.

b. All ADF service at Butterworth from 1966 should remain classified as peacetime service.

June 2012 PARLSEC Letter to the Hon Bruce Billson MP

67. Subsequently, although the signed letter is undated, the PARLSEC wrote to Mr Billson to advise him of his decision.[39] In the letter PARLSEC:

a. Noted that the matter had become somewhat complicated.

b. Confirmed that based on the recommendation from Defence, he [Mr Billson] had signed two instruments on 18 September 2007, one for hazardous service and one for non-warlike service, and that on 4 October 2007 he [Mr Billson] had written Mr Robert Cross advising him of this decision.

c. Noted that following further correspondence from Mr Cross in 2009, Defence discovered that the original instruments had inadvertently omitted the RAAF Police, ADGs and Security Guards, whose service was similar to that of RCB.

d. Noted that the instruments had not been formally registered on the Federal Register of Legislative Instruments, and were therefore invalid and consequently all service at Butterworth from 1966 (post-Confrontation) remained classified as peacetime service.

e. Noted that in mid-2011, Defence conducted a first-principles review of all ADF service at Butterworth from 1970. It found that official documents generally indicated that the roles of the RCB were to provide ground force presence in Malaysia, conduct training and, if required, assist in the ground defence of Butterworth.

f. This 2011 review also confirmed that the 2007 review relied on selective information, and that little objective research was undertaken in relation to the claims which had been made. The advice provided to Mr Billson at the time was the best available, although it has subsequently been shown inadequate and misleading.

g. Confirmed that all ADF service RAAF Base Butterworth from the cessation of Confrontation should remain as peacetime service and that this decision would not affect eligibility for the award of the ASM.

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[38] Ibid. R11134895.

[39] Ibid. R11134895. On 22 June 2012, then Minister for Defence the Hon Stephen Smith MP noted and agreed the letter from Parliamentary Secretary Feeney.

2012 Letter from VCDF (AIRMSHL Binskin) to LTGEN Gillespie (former VCDF)

68. On 16 April 2012, then VCDF Air Marshal Binskin wrote to the former VCDF (Lieutenant General Gillespie) to advise him of the decision that:[40]

> *The Government has now determined that ADF service at Butterworth from the end of Confrontation in 1966 until today will remain classified as peacetime for nature of service purposes.*

69. He advised that this overturns the 2007 decision. While the 2007 Defence recommendations and Minister's decision were based on the best advice and information available at the time, the VCDF notes that in 2009, it was discovered that the 2007 signed instruments were not legally valid as they had not been registered.

2012 Letter from Senator Feeney to RCB Review Group and Others

70. On 19 May 2012, PARLSEC wrote to Mr Cross, and others who had made representation on the matter of RCB service. The letter conveyed the same information as the letter to Mr Billson.

2013 Letter from Senator Ronaldson to Mr Robert Cross

71. On 26 February 2013, Senator the Hon Michael Ronaldson then Shadow MINVA, wrote to Mr Robert Cross to advise him of the response from the PARLSEC, following the Senator's representation on behalf of Mr Cross. Senator Ronaldson noted his disappointment that former Minister Billson was not provided with the correct information when he made his 2007 decision. He advises Mr Cross that:

> *... unless significant new information comes to light, his 29 October 2012 statement that the Coalition would not further review the matter continues to stand. ... Only with significant new information could the Coalition consider a different position.*

Conclusion

72. There are a number of instances of unsatisfactory staff work associated with the original ministerial submission to former Minister Billson which resulted in poor advice being provided to him, and the signed instruments having errors and the failure to register them.

73. As legislative instruments, there was a requirement for them to be registered on the Federal Register of Legislation. No record of any action by Defence in relation to this requirement has been found. No record to explain the failure to register the instruments has been found.

74. The decision by then PARLSEC Senator Feeney that RCB service during the period is peacetime service, is supported by the evidence, and is consistent with all other reviews.

Prepared by: Nature of Service Directorate
Date: Jan 19

Enclosures:

1. *History of Nature of Service - Law and Policy*, Bruce Topperwien

[40] R11221336.

History of Nature of Service
Law and Policy

Research paper prepared by Bruce Topperwien
for the Nature of Service Branch, Department of Defence

'Danger' and the development of tiered veterans' benefits

The *War Pensions Act 1914*, which was enacted very shortly after the outbreak of the First World War, provided, in effect, that all members of the Defence Force who served during the War were to be eligible to claim compensation,[1] whether they served outside Australia or not. There was no differentiation between those who served overseas and those who served only in Australia.

However, shortly after the War, the concept of exposure to 'danger' or 'risk of harm' began to be applied as the main nature of service criterion for differentiating eligibility for particular Repatriation benefits.

Enlistment to serve overseas — entitlement to have 'occurrence' test applied

A distinction was made in 1920 between those who had enlisted to serve outside Australia and those who did not, by introducing an 'occurrence' liability provision into the *Australian Soldiers' Repatriation Act 1920*. Soldiers did not actually have to have served outside Australia to benefit: the mere enlistment to so serve was sufficient. Thus voluntary exposure to the possibility of incurring the risks of overseas service gave rise to an additional, generous, means of obtaining an ***entitlement***.[2] The Act provided, in effect, a non-rebuttable presumption of service-connection for any event that happened during the period of enlistment of a soldier if it resulted in incapacity or death.[3]

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[1] Note that war pensions were not 'Repatriation' benefits at this time. The first Repatriation Commission, which was established in 1918 and abolished in 1920, was a very different body to the current Repatriation Commission, which was created in 1920. The former Repatriation Commission and the Repatriation Department were solely concerned with the repatriation of soldiers from overseas, their rehabilitation and re-establishment into the Australian community. They had no role in administering pensions, which were the province of the Commissioner of Pensions who operated under the auspices of the Department of Treasury in accordance with the *War Pensions Act 1914*.

[2] In the context of veterans' law, there is a distinction between 'eligibility' for a pension and 'entitlement' to a pension. A person would be *eligible* to claim a pension if the person had rendered such service as to bring him or her within the class of persons for whom the pension was potentially provided. The realisation of that potential is a question of *entitlement*, and is based on whether the criteria for being awarded that pension are met. In the case of a war pension under the 1920 Act, to be *eligible* for the pension, the person must have been a 'member of the Forces' as defined in the Act, but to be *entitled* to the pension the eligible person must have had an incapacity that was relevantly related to their service. In the case of a service pension (introduced in the legislation on 1 January 1936), to be *eligible*, the person had to have 'served in a theatre of war', but to be *entitled* to the pension, the person had to meet either an age or incapacity for work test as well as meet a means test.

[3] Paragraph 23(a), *Australian Soldiers' Repatriation Act 1920*.

The 'occurrence' provision was far more generous than the liability tests found in workers' compensation legislation at that time.[4] It did not require any causal connection between the soldier's service and the event that resulted in the soldier's incapacity – it merely had to have occurred during the period of the soldier's enlistment: events happening while on leave were thereby covered. In contrast, a soldier who did *not* enlist to serve overseas had to show that his incapacity 'resulted from his employment in connexion with naval or military preparations or operations'.[5]

Entitlement based on the extent or nature of service

In 1921, the Act was amended to provide that if a member served in camp for at least 6 months or had rendered active service[6] overseas, the Commonwealth would be liable to pay pension if the death or incapacity arose from a pre-existing condition, provided that the conditions of the member's war service 'contributed in any material degree' to the death or incapacity.[7] This was the first differentiation of ***entitlement*** to a pension based on the ***extent*** (6 months) or ***nature*** (active service overseas) of the person's service.

Incurred danger from the enemy — eligibility for the service pension

The first differentiation in ***eligibility*** based on the nature of a person's service did not occur until 1 January 1936, when the *Australian Soldiers' Repatriation Act 1920* was amended[8] to provide for payment of a service pension. The service pension is a means-tested income-support pension equivalent to the Commonwealth age or invalid pensions. It is payable five years earlier than the age pension, and was commonly referred to as the 'burnt-out digger's pension'. Prime Minister Lyons said, in introducing the Bill:[9]

> 'It remains undeniable that the returned soldier's period of usefulness has been shortened when compared with that of the civilian, and it is also undeniable that the strenuous conditions of modern war are capable of hastening the process of decay which impairs organic functions.'

Members of the Forces were eligible for a service pension if they had 'served in a theatre of war',[10] which was defined as:

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[4] One of the more generous schemes was the Commonwealth's *Workmen's Compensation Act 1912*, which provided for 'the payment of compensation to all workmen … employed by the Commonwealth, who may be injured in the course of, or by reason of their employment'. Thus, unlike the 'occurrence' test, the circumstances of a compensable injury at least had to be connected in some way to the person's employment.

[5] Paragraph 23(b), *Australian Soldiers' Repatriation Act 1920*.

[6] All members of the Australian Defence Force were on 'active service' during the First World War, whether they served overseas or in Australia. At that time, section 4 of the *Defence Act 1903* defined 'active service' to include 'any naval or military service in time of war'.

[7] Amendment of section 23 of the *Australian Soldiers' Repatriation Act 1920* by section 2 of the *Australian Soldiers' Repatriation Act 1921*.

[8] *Australian Soldiers' Repatriation Act 1935*, Act No. 58 of 1935.

[9] *House of Representatives Hansard*, Vol 148, page 1814.

[10] Sections 45AD and 45AE of the *Australian Soldiers' Repatriation Act 1920*.

> 'served at sea, in the field or in the air, in naval, military or aerial operations against the enemy in an area, or on an aircraft or ship of war, at a time when danger from hostile forces of the enemy was incurred in that area or on that aircraft or ship of war by the person so serving'.[11]

This was the first time an ***eligibility*** distinction[12] was made for those who had rendered service in connection with the war based on the nature of their service. Merely enlisting for overseas service and thus having the potential to incur danger from the enemy was not sufficient for eligibility; the person had to have 'served in a theatre of war' and thus actually incurred danger from hostile forces of the enemy.

In discussing the rationale for the introduction of the service pension, Justice Toose said:

> 'In this way, stresses and strains which had their origin in war service may well have played a part in both damaging the health of the men concerned and also their employment capabilities. …
>
> The decision to introduce service pensions was taken in the light of the known circumstances of 1914-18 war service, in which the majority of members who served overseas would have been subjected to prolonged periods of exposure to hazardous and difficult conditions. The requirement of service in a theatre of war was seen as the best available way of identifying the members most likely to have been affected in that way.'[13]

<u>Extension of eligibility to women not engaged in operations against the enemy</u>

In 1936, the service pension eligibility provisions of the Act were amended to provide that female members merely had to have served overseas or embarked for service overseas to be eligible, whereas male members of the Forces had to have served in a theatre of war, as defined.[14] While the women, almost all of whom were nurses, were exposed to risk of harm,[15] they were not 'engaged in operations against the enemy', and so could not, in a literal sense, meet the definition of 'served in a theatre of war'. Therefore, it was decided, for women, that overseas service during the war would suffice to give them eligibility for the service pension.

By 1936, the following categories of service giving rise to particular eligibility and entitlement had developed in the legislation:

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[11] Amendment to section 22 of the *Australian Soldiers' Repatriation Act 1920* by section 2 of the *Australian Soldiers' Repatriation Act 1935*.

[12] See footnote, above, regarding the distinction between *entitlement* and *eligibility* in veterans' law.

[13] P B Toose, *Independent Enquiry into the Repatriation System*, Volume 1, 1975, at page 395.

[14] Amendment of sections 45AD and 45AE of the *Australian Soldiers' Repatriation Act 1920* by sections 5 and 6 of the *Australian Soldiers' Repatriation Act 1936*.

[15] Of the 2,139 nurses who served overseas in World War 1, 25 died and 388 were decorated (including seven Military Medals for their actions under fire). By the mid-1930s nurses had formed their own RSL sub-branches and most were still working, mainly in Repatriation General Hospitals, continuing to care for the casualties of the War.

Eligibility for service rendered in World War 1, as at 1936

<table>
<tr><th>Nature of service</th><th colspan="2">Benefits*</th><th>MRCA equivalent*</th><th>VEA equivalent*</th></tr>
<tr><td>(Males) Service in a theatre of war

(Females) Service outside Australia</td><td colspan="2">Eligibility for Service Pension</td><td>Warlike service</td><td>Qualifying service

Warlike service</td></tr>
<tr><td>Enlisted for service outside Australia</td><td>Entitlement for incapacity or death due to an occurrence that happened during service</td><td rowspan="3">Eligibility for:
• War Pension ('Disability Pension'),
• War Widow's Pension,
• Orphan's Pension
• Medical treatment, etc.</td><td rowspan="3">Non-warlike service

Peacetime service</td><td>Operational service

Non-warlike service

Peacekeeping service</td></tr>
<tr><td>Service outside Australia

or

Served for 6 months</td><td>Entitlement for aggravation of pre-existing condition</td><td rowspan="2">Hazardous service

Defence service</td></tr>
<tr><td>Any other service in the Defence Force</td><td>Entitlement for incapacity or death directly attributable to service</td></tr>
</table>

* Benefits were cumulative: a person with eligibility for a higher level benefit was also eligible for any of the benefits listed below that level (but not *vice versa*). MRCA (or VEA) equivalent refers to the service type that gives rise to the same or similar benefit.

In 1941, the *Australian Soldiers' Repatriation Act 1920* was amended to provide eligibility for service pension to veterans of the 1899-1902 Anglo-Boer War. To be eligible, the person had to have been a member of any Naval or Military Force or contingent raised in Australia for active service in that war, or a member of the Naval or Military Forces of any of the King's dominions outside Australia and who was resident in Australian within the 12 months before enlisting in those Forces. The service pension provisions were extended to those members 'in like manner' as they extended to World War 1 members of the Forces.[16] This meant that the definition of 'served in a theatre of war' had to be satisfied.

Second World War

In 1943, extensive amendments were made to the *Australian Soldiers' Repatriation Act 1920*,[17] including eligibility for service pension in relation to certain service in World War 2. Eligibility for service pension was amended to have regard to the fact that, unlike World War 1, in which no women had 'served in a theatre of war' (because none had been engaged in operations against the enemy), it was recognised that some women had 'served in a theatre of war' *within* Australia in World War 2, and so the qualification for entitlement to the service pension for female members was amended to include service in a theatre of war

[16] Section 57AA of the *Australian Soldiers' Repatriation Act 1920* was inserted by section 7 of the *Australian Soldiers' Repatriation Act 1941*.

[17] Amendments made by the *Australian Soldiers' Repatriation Act 1943*.

as an alternative to service overseas.[18] Those benefits that were available to World War 1 veterans who had enlisted to serve overseas were made available only to World War 2 veterans who had *actually* served outside Australia, or had served within Australia in actual combat against the enemy, or in such circumstances as the Repatriation Commission deemed to have been in actual combat against the enemy.

By the end of World War 2, the following categories of service had developed in the legislation in relation to service in that conflict:

Eligibility for service rendered in World War 2, as at 1945

<table>
<tr><th>Nature of service</th><th colspan="2">Benefits*</th><th>MRCA equivalent*</th><th>VEA equivalent*</th></tr>
<tr><td>(Males or Females) Service in a theatre of war

(Females) Service outside Australia</td><td colspan="2">Eligibility for Service Pension</td><td>Warlike service</td><td>Qualifying service

Warlike service</td></tr>
<tr><td>Service outside Australia

or

Service in actual combat against the enemy</td><td>Entitlement for incapacity or death due to an occurrence that happened during service</td><td rowspan="3">Eligibility for:
• War Pension ('Disability Pension'),
• War Widow's Pension,
• Orphan's Pension
• Medical treatment, etc.</td><td rowspan="3">Non-warlike service

Peacetime service</td><td>Operational service

Non-warlike service

Peacekeeping service</td></tr>
<tr><td>Served for 6 months</td><td>Entitlement for aggravation of pre-existing condition</td><td rowspan="2">Hazardous service

Defence service</td></tr>
<tr><td>Any other service in the Defence Force</td><td>Entitlement for incapacity or death that arose out of or was attributable to service</td></tr>
</table>

* Benefits were cumulative: a person with eligibility for a higher level benefit was also eligible for any of the benefits listed below that level (but not *vice versa*). MRCA (or VEA) equivalent refers to the service type that gives rise to the same or similar benefit.

Policy behind higher level benefits for 'theatre of war' service

In reviewing policy documents concerning the extension of service pension to veterans of World War 1 and later conflicts, Justice Toose said, in 1975:[19]

> It is difficult today, if not impossible, to determine whether the Government in 1935 was actually motivated by considerations of principle or by political and economic factors, or a combination of both, when it introduced service pensions.

[18] This is noted in a circular letter, dated 19 April 1943, sent to all Deputy Commissioners by J Webster, the Acting Chairman of the Repatriation Commission, commenting on each provision of the *Australian Soldiers' Repatriation Act 1943*.

[19] P B Toose, *Independent Enquiry into the Repatriation System*, Volume 1, 1975, at p 397.

> Similarly, it is extremely difficult to enunciate the rationale in respect of the extension of service pension to service in the 1939-45 War and subsequent warlike operations. There has been evidence, however, that many members during those later conflicts did experience circumstances of service as arduous as some of those experienced during the 1914-18 War. It must be conceded, therefore, that if the application of service pension was valid for the 1914-18 War, then it had some application for the later war and warlike operations. There is no doubt that after each period many members suffered difficulties in readjusting to civilian life.
>
> If the traditional concept of the service pension being partly a compensatory and partly a welfare measure is correct, I consider that in respect of the later periods the compensatory element has tended to become less evident in many cases. The prospects for restoring the validity of the compensation component to its original status in the service pension depends upon the interpretation to be applied to 'theatre of war' service as the basis for entry to benefit.'

In relation to service in the Interim Forces (1947-1951) and the Far East Strategic Reserve (1956-1963), Toose said:[20]

> 'It is significant, however, that service in the Interim Forces and the Far East Strategic Reserve did not attract service pension eligibility when war pension and associated benefits were extended to members in respect of these operations. Service with the Interim Forces was of an occupational peace keeping nature while service with the Far East Strategic Reserve involved only sporadic operations against insurgents. In the circumstances extension of service pension to these members could not be justified because of the lack of any real element of hazardous or arduous service.'

It is relevant to note from these passages, that Toose regarded a justification for eligibility for the service pension to be 'hazardous or arduous service' that resulted in 'difficulties in readjusting to civilian life'. The implication was that exposure to risk of harm in the course of military operations and the longer term psychological and physical effects of rendering such service were important policy drivers for the creation of the service pension (colloquially referred to as the 'burnt out digger's pension').

The Hon. Alan Griffin MP, Minister for Veterans' Affairs, in a speech in the House of Representatives on 13 May 2010 said:[21]

> 'The concept of qualifying service itself dates back to that period after World War I. There have been a number of considerations of the issue of, if you like, what people actually faced rather than the question of what they were prepared to face. That is why I say very much it goes away from the question of the courage of those who volunteered, because they all were courageous in volunteering. It goes to the question of what was the impact of that volunteering given the question of where they were serving at the end of the day. There have been studies that have shown back in the 1930s that if people served in a forward area and faced a hostile enemy then there is certainly evidence to suggest that there were almost indefinable or unquantifiable health impacts for those in that situation. What that has meant is that that ought to be allowed to be part of what you

[20] Ibid.

[21] The Minister's speech in reply to the debate on the Veterans' Entitlements Amendment (Income Support Measures) Bill 2010.

consider when you set up your beneficial system. It goes to a thing called the 'burnt-out digger effect', which was established in the 1940s and was the basis for the establishment of the service pension, which again is a qualifying service entitlement. With the service pension you access it five years earlier than the age pension, which is effectively recognition of the fact that your life expectancy may well have been impacted upon by the nature of the service that you gave.'

Interpretation of 'theatre of war' criteria

When service pension eligibility was extended to World War 2 veterans in 1943, it was anticipated that there would be only limited numbers of claims for the service pension based on World War 2 service for the first decade or two until most veterans reached 60 years of age. However, the 1943 legislation also provided for a disability pension to be paid at 100% of the general rate for anyone who had 'served in a theatre of war' and who was suffering from pulmonary tuberculosis. There were significant numbers of such cases in the 1940s, and so it was very important for the Commission to establish policies regarding the meaning of 'theatre of war'. On 5 May 1943, the Acting Chairman of the Repatriation Commission issued a Circular Letter to all Deputy Commissioners stating:

'9. With regard to the 1939 war, the following theatres of war will apply:-

A. In the field (Army) and in the Air (Air Force).

1. Middle East theatre – to (include all operations) in –

(a) Libya.

(b) Greece.

(c) Crete.

(d) Syria from 6.6.41 to 11.7.41.

2. Pacific theatre from 7.12.41

(a) Malaya and Singapore

(b) Burma.

(c) Dutch East Indies.

(d) Timor.

(e) Solomon Islands.

(f) All other islands in the South and South West Pacific Areas.

3. Australian theatre – All Services –

(a) New Guinea and Papua from 7.12.41.

(b) Within Australia as laid down in the definition of "Active Service" in Section 100.

B. At Sea (Naval) and in the Air (Naval Aircraft).

"Ship of war" and "Service in a Ship of War at Sea" will have the same meanings as expressed in G.O.P. Appendix 24, but for 1939 war purposes the qualifying period commenced on 3.9.39.

> Note: Should any member consider his service, although not in any of the abovementioned places at the time stated, was in a theatre of war within the meaning of the Act, he may apply to have his case considered, and should furnish all relevant evidence, by Statutory Declaration or on oath, that he is able to give regarding such service. Such cases will be referred to the Commission with a recommendation of the Repatriation Board.'

The text of this Circular Letter was essentially reproduced in General Orders Pensions in 1945, but with start and end dates for service in the northern part of Northern Territory of 19 February 1942 and 12 November 1943, respectively, and a proviso that the member had to have served for three months continuously in that area between those dates to be considered to have 'served in a theatre of war'.

These guidelines were established by the Commission to enable quick processing of claims without having to consider the actual circumstances of a particular person's service unless the member did not fall neatly within the guidelines. Essentially, the Commission was conceding that if a member had served in those areas at the relevant times, they would have 'incurred danger from hostile forces'. If a person, for example, could not meet the three month minimum requirement for the Darwin area, then if they could provide evidence that they, in fact, did incur danger from the enemy, a claim could be accepted by the Commission in accordance with the 'Note' to the Circular Letter.

In a legal opinion, dated 31 March 1944, given to the TB Sailors & Soldiers' Association of Victoria, and subsequently provided to and relied on by the Repatriation Commission,[22] Wilbur Ham KC of Selbourne Chambers, said regarding the definition and meaning of 'served in a theatre of war':

> 'The language of the sub-section, apart from the definition, suggests by the words 'theatre of war' something very much wider than the field-of-battle. The definition emphasises by requiring the service to be in an area (including aircraft or ship-of-war), "when *danger* from hostile forces of the enemy was incurred in that area."
>
> The service must be in a naval, military or aerial operation against the enemy in an area, etc, at such time.
>
> This definition shows that *actual fighting* is not required, but only *danger from hostile forces*.
>
> In modern conditions of warfare with long range cannon and very long-range airships, the extent of the theatre of war; i.e., the area in which such danger exists, is much wider than before these weapons and the submarine were employed.
>
> It may be that a merchantman, simply sailing through waters he hopes and believes to be safe, is not serving in naval operations against the enemy, but yet be in danger.
>
> He might be excluded. Similarly, soldiers training in a dominion or part thereof which was not being involved in operations, would fall outside the definition.

[22] In a letter to the Secretary, Attorney-General's Department, dated 9 July 1964, the Chairman of the Repatriation Commission said that in a memorandum (ref. 45/1715) of 10 May 1946 from the Secretary of the Attorney-General's Department, the Repatriation Commission was advised that the opinion of Mr Ham should be followed.

> For instance, I should say that up to the date of this Opinion, service in Victoria would not come within the definition, but service in Darwin would.
>
> Similarly, I should say that soldiers being transported from Australia to England to constitute a reserve for the fighting-line would pass from an area where danger from hostile forces was not likely to be incurred, to an area in which such danger was imminent; the fact that they did not encounter an attack is not the test; it is the danger of hostile action, not the actual attack that is important.
>
> I think, however, that the fact that the service must be naval, military, or aerial operations against the enemy in an area, etc. does constitute a limitation which is extremely difficult to define.
>
> In the World War 1914-1918, it is clear that service anywhere in France would be within the definition.
>
> But troops mobilised in England awaiting the order to advance are as much engaged in military operations against the enemy and are in an area in which danger from hostile forces existed.
>
> Similarly with troops and naval men on the sea, in channel waters and other waters in proximity to the fighting operations, in waters infested with submarines, strewn with mines and swept by enemy aircraft.
>
> Service of this kind in such places, I think, comes within the definition, and it is a question of degree how far from the fighting operations would still come within the requirements that the service should be in operations against the enemy.
>
> The headquarters in France and in England were engaged in naval, military and aerial operations against the enemy in an area where danger from hostile forces was incurred.
>
> I think the fact that the Act in which these words occur is one providing for pensions for members of the Forces and their dependants who become incapacitated through pulmonary tuberculosis (inter alia) should aid the interpretation which gives a wide construction to the words of the definition.' (original emphasis)

In an undated opinion (most likely mid-1940s) provided to the Repatriation Commission regarding the interpretation of 'served in a theatre of war', Richard Windeyer KC,[23] said:

> 'The phrase to be interpreted is 'Theatre of War'. The language of the definition of this phrase in section 23 of the Act itself requires an examination of its words:- "served", "area", "danger", "hostile forces".
>
> "Served" means – was on service with one of the armed forces of the Crown.
>
> "Area" means any portion of the earth's surface.
>
> "Danger" means, in my opinion, the immediate possibility reasonably conceived of the happening of injury, as the situation is judged at the time.
>
> "Hostile forces" means agencies of the enemy.

[23] Richard Windeyer KC had been a King's Counsel since 1917. In 1937-38 he was an acting Justice of the NSW Supreme Court. He lectured at Sydney University from 1935-1944 and retired in 1946. He died in 1959. He was an older brother of High Court Justice Sir William Windeyer KC. Richard's oldest son was killed in action in Belgium in 1917 and his youngest son was killed in action at Tobruk in 1941.

> The word which creates most difficulty is "danger", and it cannot be considered without regard to the primary phrase "theatre of war". According to Webster's Dictionary the word "danger" may connote risk, jeopardy or peril, suggesting various degrees of danger. The benefit or alleviation contemplated by Sec. 37(3)(a) should be regarded as some reward for a man who, while serving, has been in a situation calling for bravery and self-devotion. If therefore, at any time when a man was serving, there was a real physical possibility of injury from enemy action and it was reasonable to regard it as possibly imminent at any moment – that, in my opinion, is the situation connoted by the word "danger" where used.
>
> I am of the opinion that having proved a risk possible the onus would NOT lie on the claimant to prove that at a particular time the enemy was in a position to inflict injury, so that the risk was in that sense probable. If in a particular area, say the Indian Ocean, it was proved that the "Emden" was destroyed, it would not be necessary to show that there were other raiders about. To put it another way, the claimant would not be defeated because knowledge obtained later showed that the enemy had no more raiders.
>
> I am therefore of the opinion that a claimant is entitled to the benefit of Sec. 37(3)(a) if he can proved (sic) that he was on service in some place on sea or land where injury from hostile action was conceivable and might reasonably have been regarded as an existing risk, this is irrespective of proof whether the enemy at that particular time was or was not capable of inflicting injury at that spot.' (original emphasis)

In a booklet, published in 1944, G J O'Sullivan, Chairman of No. 1 Entitlement Appeal Tribunal, discussed various provisions of the *Australian Soldiers' Repatriation Act 1920*, including the 'served in a theatre of war' provision. He said:[24]

> 'Danger from hostile forces must have been incurred. *Danger* means liability or exposure to harm, risk or peril (of one's life or of death or other evil). *Incurred* means, literally, to run into, or become involved in. So that when a member of the Forces, otherwise fulfilling the requirements of the definition, has served at any time and in any place where he was exposed to, or ran into, or became involved in harm, risk or peril to his physical (or mental) health, or the risk or peril of death, he falls within the category of a person who has served in a theatre of war. No geographical limits can be marked out in advance to serve the purposes of this definition. Whether a person served in a theatre of war within the definition is a question of fact, not merely one of geography.
>
> Take for example, the case of any member of the Forces who, whilst serving as such member, proceeds from Australia on an ordinary troopship overseas, say, to England, or Egypt, or New Guinea—or, for that matter, almost anywhere else on the open sea. Such a voyage invariably involves operations (either defensive or offensive, or both) against, and risk or peril from, hostile U-boats, aircraft, mines and surface raiders. The ship takes extraordinary precautions by arming herself, proceeding in convoy and without lights, zigzagging and so forth to avoid disaster at the instance of such hostile forces: and every person on board is likewise armed, drilled, on guard, or otherwise ready for any eventuality on every mile of the way. It is notorious, of course, that we have suffered tragic losses both in shipping and personnel on such sea routes—even unarmed hospital ships not escaping within a few miles of the Australian coast. That being so, it is

[24] Pages 11-12, *War Pensions Entitlement Appeals*, by G J O'Sullivan, 1944, Government Printer, with a forward by the Attorney-General, Dr H V Evatt KC. O'Sullivan was later appointed as a District Court Judge in NSW.

> impossible to escape the conclusion that a member of the Forces, in the circumstances mentioned, comes precisely and fairly within the definition. Illustrations might be multiplied and then not be exhaustive. It is not possible to envisage in advance every conceivable set of circumstances which might bring a case within the four corners of the definition. Each case must turn on its own facts and merits. But it is again emphasized that the test is not only geographical but factual; and a person might well find himself within the definition in almost any part of the globe, especially during the present (1939) War.'

In an opinion dated 14 August 1964,[25] B J O'Donovan, wrote on behalf of the Secretary of the Attorney-General's Department to the Repatriation Commission, in which he gave advice concerning whether a Captain P P Smyth had 'served in a theatre of war' on 5 August 1944 at Cowra, NSW. The Commission sought this advice because:[26]

> '8. The Senior Legal Officer of the Crown Solicitor's Sub-office attached to this Department, has advised verbally that in his opinion, the member served in a "theatre of war".
>
> 9. The Commission considers that is was never intended that service by a member at a prisoner-of-war camp in Australia, where danger existed for a very short time as a result of an outbreak by prisoners, should constitute service in a "theatre of war". No warlike operations were taking place in Australia although there was some danger from prisoners-of-war. When service pensions were first introduced in 1935 the intention was to confer pensions on a class of members who, by reason of active service, were prematurely aged. The Commission was fully acquainted with the purpose of introducing the 1935 legislation and it considers that this purpose was clearly recognised at the time. Whilst it is true that Parliamentary debates are not a guide to statutory intention, the Commission feels that the members of the Parliament, in 1935, were concerned with providing pensions to members "burnt out" at an early age by active service. It is considered that the Bill was drafted with this concept in mind. This leads the Commission to the view that service rendered at Cowra P.O.W. Camp on 5th August, 1944 should not qualify for a service pension, unless of course you advise that, in the circumstances of Mr Smyth's case, it clearly comes within the statutory requirements.'

O'Donovan agreed with the Senior Legal Officer, and wrote:

> '6. In carrying out the task of "bringing in" escaped prisoners, Captain Smyth can, I think, be said to have "served in the field of military operations against the enemy". There can be no doubt that Captain Smyth "served in the field in military operations". Whether or not these operations were "against the enemy" is perhaps not quite so clear.
>
> 7. A prisoner-of-war, so long as he is in custody and unarmed, ceases to have the characteristics of a member of a hostile force of the enemy. When, however, a group of prisoners, acting with violence and in concert, escapes and takes up arms, I think the

[25] Source: National Archives of Australia, Attorney-General's Department file 64/3179, *Repatriation Act 1920-63 Theatre of War: Cowra P.O.W. Outbreak: Capt P P Smyth Entitlement*.

[26] Ibid. Letter from R Kelly, Secretary, Repatriation Commission, dated 9 July 1964 to Secretary, Attorney-General's Department.

better view is that, whilst at large, the group is properly to be regarded as a hostile force of the enemy. In view of the organized nature of the attack by the prisoners at Cowra, the numbers who were involved and who escaped and the fact that many of them were armed, it is my view that the escapees constituted a "hostile force of the enemy". It follows that, whether or not Captain Smyth was in fact attacked by one or more of the escapees (as he alleges), he nevertheless, in my view, "*incurred danger*" from hostile forces of the enemy", in that it was not until after all the escapees had been accounted for that it became apparent that the hostility of the initial attack within the confines of the Camp dissipated after the prisoners found themselves at large.

8. Though I think that members of the Forces who were engaged in the fighting and subsequent mopping up operations in the vicinity of the Cowra prisoner-of-war Camp on 5 August, 1944, on that occasion, "served in a theatre of war", it does not follow that all members of the Forces who served as guards in prisoner-of-war camps in Australia during World War II could also be said to have "served in a theatre of war". Indeed, I am disposed to think that, except in circumstances similar to those that prevailed at Cowra on 5 August, 1944, persons who served in prisoner-of-war camps in Australia which were outside those areas of the mainland that were obviously susceptible to attack by organized forces of the enemy, could not, by reason only of that service, be regarded as having "served in a theatre of war".' (original emphasis)

This opinion from the Attorney-General's Department prompted the Commission to reconsider its policy regarding its interpretation of 'served in a theatre of war'. That review was conducted from late 1964 to early 1965, and resulted in about a complete rewrite of the General Orders concerning 'theatre of war'. By 1966, the General Orders Entitlement stated, in relation to World War 2 service:

'**6/2 Outside Australia**

Subject to the reservations implied in the footnotes to this paragraph, a member will qualify as having served in a theatre of war if, on or after 3rd September, 1939 and before 3rd September, 1945, he:

(i) Disembarked or deplaned at a place other than Australia or the Dominion of enlistment; or
(ii) Served in a naval vessel on seagoing operations, outside coastal waters; or
(iii) Served in an aircraft engaged in operations against the enemy, or on reconnaissance or patrol duty over enemy-occupied territory.

Notes

1. Where a member's *only* service outside Australia was in the South-West Pacific area on or after 15th August, 1945, or in the European-North African area on or after 6th May, 1945, full details of such service, including dates and method of travel to and from the area, will be submitted to the Commission for determination.
2. Service in New Britain, New Guinea or Papua is regarded as service in a theatre of war only from 7th December 1941.

6/3 Coastal Waters

A member of any Branch of the Services will qualify as having served in a theatre of war if he served at sea in Australian coastal waters on or after 3rd September, 1939, and before–

(i) 6th May, 1944, – south-west coast of Western Australia (Exmouth Gulf to Albany);
(ii) 26th March, 1945, - south and south-east coast of Australia (Albany to Sydney);
(iii) 16th September, 1943, - east and north-east coast of Australia (Sydney to Thursday Island).

6/4 Within Australia

A member will qualify as having served in a theatre of war if he served in any of the following areas between the dates specified–

(i) Northern Territory north of parallel 14.5° south latitude, or any of the islands contiguous to that part of the Northern Territory; - on or after 19th February, 1942, and before 13th November , 1943, provided such service was for a period of not less than three consecutive months;
(ii) Torres Strait Islands, where the member of native member–
- enlisted at a place other than the Torres Strait Islands – on or after 3rd September, 1939, and before 16th September 1943;
- served outside the three-mile limit of the island of enlistment on or after 3rd September, 1939, and before 16th September, 1943;
- served only on the island of enlistment – on or after 14th March, 1942, and before 19th June, 1943, provided such service was for a period of not less than three consecutive months.

6/5 Other Service

Cases that do not clearly fall within the foregoing provisions will be submitted to the Commission for determination. These will include all cases of service–

(i) in the north-west or north-east of Australia, only in the area of, and during, enemy air attacks;
(ii) on Rottnest Island;
(iii) in the Northern Territory north of parallel 14.5° south latitude for a period of less than three consecutive months between 19th February, 1942, and before 13th November , 1943.
(iv) In the air adjacent to the seaboard of the Commonwealth of Australia or its Territories;
(v) In a naval vessel on seagoing operations, where the evidence does not clearly establish eligibility under the provisions of G.Os.E. 6/2 or 6/3.

6/6 … [To assist decision-makers, this paragraph listed locations in the Northern Territory both north and south of the parallel 14.5° south latitude.] …

6/7 A member who visited or travelled through a designated area while *on leave* has not thereby "served in a theatre of war" within the meaning of that term as defined in section 23. However, he will be deemed to have served in a theatre of war, if, while *proceedings* on leave, he travelled through a designated area and performed "service" while so doing (e.g., on submarine watch). Any case in which the evidence in this connection gives rise to doubt about the member's eligibility will be submitted to the Commission with full details.

6/8 Service in Moreton Bay, Queensland, or on the islands at the entrance to that Bay does not constitute "service in a theatre of war".'

These instructions remained in place, with only minor alterations, until the 1980s, when the cases that did not clearly fall within the guidelines began to be appealed to the Administrative Appeals Tribunal, and then to the Federal Court. In discussing these cases, Creyke and Sutherland, in *Veterans' Entitlements Law*[27], said:

> The cases in this area often turn on fine distinctions which are not always discernible without a full appreciation of the facts. …
>
> To establish that danger is present as an objective fact it must be shown that there is an actual risk of physical or mental harm …. It is not sufficient if the veteran feels or believes that he or she is in danger. …
>
> On appeal in *Repatriation Commission v Thompson* (1988), the Full Federal Court stated what has become the most cited test for "incurred danger":
>
> > The words "incurred danger" therefore provide an objective, not a subjective, test. A serviceman incurs danger when he encounters danger, is in danger, or is endangered. He incurs danger from hostile forces when he is at risk or in peril of harm from hostile forces. A serviceman does not incur danger by merely perceiving or fearing that he may be in danger. The words "incurred danger" do not encompass a situation where there is mere liability to danger, that is to say, that there is a mere risk of danger. Danger is not incurred unless the serviceman is exposed, at risk of or in peril of harm or injury. (at 44 FCR 23)
>
> However, the matter has not been allowed to rest there. Belief or apprehension of danger has been held to be significant *evidence* that danger did in fact exist. … That is, subjective evidence may prove a significant indicator of risk. An example is concern by officers in higher authority which was reasonable in the circumstances. …
>
> As to which the Tribunal commented in *Re Buckingham and Repatriation Commission* (1992):
>
> > To interpret the concept of "danger" as excluding purely subjective feelings of threat or dread, but as including as a relevant factor the perception of experts and persons who acquired experience, is consistent with contemporary theory and practice of risk-assessment. According to the latter, quantitative assessment of risk in purely physical terms based on mathematical probabilities no longer is possible see for example, *Environmental Threats: Perception, Analysis and Management* (ed Jennifer Brown; London, Belhaven Press; 1989) pp2-3, 127. As Rodricks: *Calculated Risks* (Cambridge University Press; 1992) says at p199:
> >
> > > Judgments about risk necessarily include factors that are very difficult to make explicit, but which are perceived to be true by experts who, depending upon their experience, have learned to weigh in some fashion large sets of data that cannot easily be compared and evaluated in a completely objective way.
> >
> > Transposed into the context of assessment of danger within the meaning of the Act, measures taken by those in command or procedures defined in orders may provide some basis for inferring that a situation of danger existed. (at 28 ALD 421-422).

[27] R Creyke and P Sutherland, *Veterans' Entitlements Law*, 2nd Edition, 2008, Federation Press and Softlaw Community Projects, at pages 179-181.

The Federal Court has held that the degree of danger incurred from hostile forces 'must of course be more than a merely fanciful danger or a danger so minimal that the rule of *de minimis* applies'.[28]

While one Tribunal case[29] has held that danger must be faced during a substantial period of time, four other Tribunal cases[30] that have particularly considered the issue of duration of danger have held that the legislation sets no minimum period, and that a single episode of incurring danger would be sufficient to meet the requirement. In another case, the Tribunal held that a single episode of danger could be sufficient, but in cases of doubt, it must be asked whether it was a characteristic of the posting that there was danger 'during a substantial (or at the very least not insignificant) time of the applicant's presence on the posting both on and off duty'.[31] The Federal Court has not directly addressed this issue.

Post-World War 2 service

Following the cessation of hostilities in World War 2, the Government was faced with the need to demobilise its substantial armed forces (over one million Australians had served in the Defence Force during the War), yet still meet its regional commitments, including the British Commonwealth Occupation Force (BCOF) in Japan, and maintain an effective permanent Force for the longer term needs of Australia's defence.

In 1947, the Parliament passed the *Interim Forces Benefits Act 1947* (IFB Act), which was a significant element in the Government's plan to provide an 'Interim Force' mainly comprising short-term enlistees (two years) to ensure that the BCOF commitment could be maintained while the Government could complete demobilisation of the Second AIF and plan for a properly structured permanent Defence Force. The IFB Act was used as an incentive for enlistment, and provided that the persons who enlisted on or after 1 July 1947 into the Interim Forces would be eligible for Repatriation benefits. The Act expressly excluded service pension eligibility by providing that the only benefits available were those specified in the Act, which referred only to benefits contained in particular parts of the Repatriation Act (which did not include the service pension).

In 1948, the *Commonwealth Employees Compensation Act 1930* (CEC Act) was amended to extend its coverage to permanent members of the Defence Force with effect from 3 January 1949. Those covered by the CEC Act were expressly excluded from coverage under the Repatriation Act.

Korean War and Malayan Emergency

In 1950, with the commencement of hostilities in Korea, and Australia's commitment to assist the British Forces in Malaya against the Communist Terrorist insurgency (the Malayan

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[28] *Repatriation Commission v Thompson* (1988) 44 FCR 23 at para [13].

[29] *Re Howlett and Repatriation Commission* (1987) 13 ALD 416.

[30] *Re Tiplady and Repatriation Commission* (1987) 12 ALD 670; *Re Crawford and Repatriation Commission* [1987] AATA 3963; *Re Dwyer and Repatriation Commission* [1987] AATA 3780, and *Re Kingsley and Repatriation Commission* [2000] AATA 376.

[31] *Re Marsh and Repatriation Commission* (1986) 10 ALD 355.

Emergency), the Repatriation Act was amended to provide coverage for these two conflicts. The Act provided that members of units of the Defence Force that were allotted for duty in the relevant operational areas would be deemed to have served in a theatre of war. The Act authorised prescribing the operational areas by Regulation. The relevant arm of the Defence Force was responsible for specifying for the purposes of the Repatriation Act, which units were allotted for duty in the operational areas. The Army published allotments in Military Board Instructions (in later years, Army Orders), the Navy published allotments in Commonwealth Navy Orders (in later years, Australian Navy Orders), and the Air Force issued letters to the Repatriation Commission listing those units and individuals that had been allotted for duty for the purposes of the Repatriation Act.

By the end of 1950, the following categories of service had developed in the legislation in relation to service in the Defence Force at that time:

Eligibility for service rendered in 1950, as at the end of 1950

<table>
<tr><th>Nature of service</th><th colspan="2">Benefits*</th><th>MRCA equivalent*</th><th>VEA equivalent*</th></tr>
<tr><td>(Males or Females) Service in a theatre of war (if in the CMF or still enlisted for WW2)
(Females) Service outside Australia (if still enlisted for WW2)
Service as a member of a unit allotted for duty in an operational area</td><td colspan="2">Eligibility for Service Pension</td><td>Warlike service</td><td>Qualifying service
Warlike service</td></tr>
<tr><td>Service outside Australia (if in the CMF, or still enlisted for WW2, or in the Interim Forces)</td><td>Entitlement for incapacity or death due to an occurrence that happened during service</td><td rowspan="3">Eligibility for:
• War Pension ('Disability Pension'),
• War Widow's Pension,
• Orphan's Pension
• Medical treatment, etc.</td><td rowspan="3">Non-warlike service
Peacetime service</td><td>Operational service
Non-warlike service
Peacekeeping service</td></tr>
<tr><td>Served for 6 months (if in the Interim Forces)</td><td>Entitlement for aggravation of pre-existing condition</td><td rowspan="2">Hazardous service
Defence service</td></tr>
<tr><td>Other service in the Defence Force (if still enlisted for WW2, or in the Interim Forces)</td><td>Entitlement for incapacity or death that arose out of or was attributable to service</td></tr>
<tr><td>Any other service in the Defence Force</td><td colspan="2">Eligibility for compensation under the Commonwealth Employees' Compensation Act 1930</td><td>—</td><td>—</td></tr>
</table>

* Benefits were cumulative: a person with eligibility for a higher level benefit was also eligible for any of the benefits listed below that level (but not *vice versa*). However, if a person was eligible for

compensation under the CEC Act, they were not eligible for benefits under the Repatriation Act. MRCA (or VEA) equivalent refers to the service type that gives rise to the same or similar benefit.

By amendment of the Repatriation Act, eligibility for World War 2 service was brought to an end on 30 June 1951. This coincided with the end of the Interim Forces: the last two-year enlistment in those Forces having been on 30 June 1949. As a consequence, the following categories of service were specified in the legislation in relation to service in the Defence Force from 1 July 1951:

Eligibility for service rendered on or after 1 July 1951, as at that date

<table>
<tr><th>Nature of service</th><th colspan="2">Benefits</th><th>MRCA equivalent</th><th>VEA equivalent</th></tr>
<tr><td rowspan="4">Service as a member of a unit allotted for duty in an operational area</td><td colspan="2">Eligibility for Service Pension</td><td rowspan="4">Non-warlike service
Peacetime service</td><td>Warlike service
Qualifying service
Warlike service</td></tr>
<tr><td>Entitlement for incapacity or death due to an occurrence that happened during service</td><td rowspan="3">Eligibility for:
• War Pension ('Disability Pension'),
• War Widow's Pension,
• Orphan's Pension
• Medical treatment, etc.</td><td>Operational service
Non-warlike service
Peacekeeping service</td></tr>
<tr><td>Entitlement for aggravation of pre-existing condition</td><td rowspan="2">Hazardous service
Defence service</td></tr>
<tr><td>Entitlement for incapacity or death that arose out of or was attributable to service</td></tr>
<tr><td>Any other service in the Defence Force</td><td colspan="2">Eligibility for compensation under the Commonwealth Employees' Compensation Act 1930</td><td>—</td><td>—</td></tr>
</table>

Service with the Far East Strategic Reserve

In 1956, eligibility for service in Korea and in the Malayan Emergency under the Repatriation Act was brought to an end. A Defence Department document[32] states:

> '3. From the time following the "cease fire" in Korea, the question of withdrawal of the operational benefits was raised and on 29th June, 1955, recommendations were made to Cabinet for withdrawal of the above operational benefits in respect of the Korean area. In Minute No. 75(VP) of 7th March, 1956, Cabinet decided that in view of the impending withdrawal of the main body of the existing force and the non-operational role envisaged for the members who would remain, the special benefits in respect of the Korean operations should cease to apply as from the time of arrival of the main body at the first port of call in Australia, the specific date to be agreed upon by the Minister for Defence and the Minister for Repatriation.
>
> 4. The question of similar withdrawal in regard to Malaya was held in abeyance pending consideration of the conditions of service to apply to the Strategic Reserve.'

While Australia still had a substantive commitment in Malaya, the circumstances of service were not considered to be equivalent to those applying during the height of the Emergency, and so a separate Act was passed to provide certain limited Repatriation benefits only: the *Repatriation* (*Far East Strategic Reserve*) *Act 1956* (the FESR Act). This Act commenced on 1 September 1957. It is noted that conditions in Malaya had improved to the extent that, on 27 July 1955, the Treasurer and the Minister for Defence tendered a joint submission to Cabinet on 'Conditions of Service for the Australian Contingent of the Strategic Reserve' recommending that families be permitted to join members in Malaya.[33] However, Cabinet decided not to approve the proposal that families join members in Malaya at that time.[34] The role and purpose of the Strategic Reserve was explained in a Minute of the Defence Committee of Cabinet dated June 1957, as follows:[35]

> 'The stationing of our forces in Malaya and Singapore as part of the Commonwealth Strategic Reserve is advantageous to Australia, despite uncertainty about the degree of co-operation the Malayans will offer under the Defence Agreement in an emergency. The Australian contribution to this Reserve should remain as approved after the Malayan Independence in August, 1957. Subject to satisfactory safeguards, which are at present being negotiated, Australia should agree that Australian Forces should continue to assist in emergency operations against the terrorists if a request to this end is made by the Federation Chief Minister. The position should be kept under review in the light of future developments in Malaya and Singapore.'

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[32] Australian National Archives, series A816, barcode 1567420, Department of Defence File, 'Commonwealth Far East Strategic Reserve - conditions of service for Australian Service Personnel - TS 734'.

[33] Australian National Archives, series A816, barcode 1567420, Department of Defence file, 'Commonwealth Far East Strategic Reserve - conditions of service for Australian Service Personnel - TS 734', at folios 140-144.

[34] Decision No. 550 of Cabinet, dated 29 July 1955. Ibid, at folio 169.

[35] Australian National Archives, series A1838, barcode 842097, Department of External Affairs file, 'British Commonwealth planning - Commonwealth Strategic Reserve - including BDCC(FE) [British Defence Coordination Committee (Far East)', Part 7, at folio 371. This was approved by Cabinet on 11 June 1957 in Decision No. 811 (folio 351).

The following categories of service were specified in the legislation in relation to service in the Defence Force from 1 September 1957:

Eligibility for service rendered on or after 1 September 1957, as at that date

<table>
<tr><th>Nature of service</th><th colspan="2">Benefits</th><th>MRCA equivalent</th><th>VEA equivalent</th></tr>
<tr><td rowspan="2">Service as a member of a unit allotted for duty in Malaya (known as 'Malayan Service')</td><td>Entitlement for incapacity or death due to an occurrence that happened during Malayan service</td><td rowspan="2">Eligibility for:
• War Pension ('Disability Pension'),
• War Widow's Pension,
• Orphan's Pension
• Medical treatment, etc.</td><td rowspan="2">Non-warlike service
Peacetime service</td><td>Operational service
Non-warlike service
Peacekeeping service</td></tr>
<tr><td>Entitlement for aggravation of pre-existing condition</td><td>Hazardous service
Defence service</td></tr>
<tr><td>Any other service in the Defence Force</td><td colspan="2">Eligibility for compensation under the Commonwealth Employees' Compensation Act 1930</td><td>—</td><td>—</td></tr>
</table>

Special Overseas Service

In 1962 legislation was enacted to provide Repatriation benefits for members of the Defence Force who rendered 'special duty' in a 'special area' outside Australia. The *Repatriation (Special Overseas Service) Act 1962* (the SOS Act) came into operation on 28 May 1963. The FESR Act ceased to operate in relation to service rendered on or after that date. Essentially, the SOS Act provided identical benefits to that which had been provided under the FESR Act, but by permitting the prescription by regulation of 'special areas', it was capable of application to service other than in Malaya. Thus, the following categories of service were specified in the legislation in relation to service in the Defence Force from 28 May 1963:

Eligibility for service rendered on or after 28 May 1963, as at that date

<table>
<tr><th>Nature of service</th><th colspan="2">Benefits</th><th>MRCA equivalent</th><th>VEA equivalent</th></tr>
<tr><td rowspan="2">Service as a member of a unit allotted for special duty in a special area (known as 'Special Service')</td><td>Entitlement for incapacity or death due to an occurrence that happened during special service</td><td rowspan="2">Eligibility for:
• War Pension ('Disability Pension'),
• War Widow's Pension,
• Orphan's Pension
• Medical treatment, etc.</td><td rowspan="2">Non-warlike service
Peacetime service</td><td>Operational service
Non-warlike service
Peacekeeping service</td></tr>
<tr><td>Entitlement for aggravation of pre-existing condition</td><td>Hazardous service
Defence service</td></tr>
<tr><td>Any other service in the Defence Force</td><td colspan="2">Eligibility for compensation under the Commonwealth Employees' Compensation Act 1930</td><td>—</td><td>—</td></tr>
</table>

A number of Special Areas were prescribed in Repatriation (Special Areas) Regulations. The first, being the Southern Zone of Vietnam, then the Northern part of Malaya, next were certain areas of Borneo, then the sea adjacent to Vietnam. Each area had separate commencement dates.

Allotment of units for special duty was determined by the relevant arm of the Defence Force in the same way as it had been done for Korean and Malayan service in the 1950s. A Military Board Instruction,[36] dated 22 April 1966, set out the criteria that were being applied at that time by the Army in the allotment of units for special duty. It stated:

[36] MBI 216-1 of 22 April 1966.

'4. Definitions of "special duty" and "special service" are contained in Section 3 of the Act; the conditions under which an area may be declared a "special area" are given in Section 4 of the Act. These definitions are explained in the following paragraphs.

5. A special area is an area declared by regulation to be a special area by reason of warlike operations or a state of disturbance e in or affecting the area, from a specified date which may be retrospective. …

6. Special duty is duty in a special area relating directly to the warlike operations or state of disturbance which caused the declaration of the area as a special area.

7. Special service is service by a member when he is outside Australia and he or his unit is allotted for special duty, while:

a. in a special area;

b. travelling to a special area from:

(1) Australia (commencing from the date of departure from the last Australian port of call); or

(2) a place outside Australia (commencing from the date of allotment); or

c. travelling from a special area to:

(1) Australia (terminating on arrival at the first Australian port of call); or

(2) a place outside Australia (terminating on arrival at that place unless he or his unit is allotted for special duty in his new station).

…

Principles Governing Allotment for Special Duty

13. The criterion for allotment for special duty is that the duty must meet the definition in paragraph 6.

14. Units and/or members whose duty in a special area relates directly to the warlike operations or state of disturbance in that area are to be allotted for special duty while so employed.

15. Whenever possible, units and/or members are to be informed before the commencement of a mission or visit whether or not they are to be allotted for special duty.

16. A visitor to a special area performing duties associated with those of his posting in his parent unit is not to be allotted for special duty unless exceptional circumstances are considered to warrant such action. Any case in doubt is to be referred to AHQ(DPS) for decision – before movement if possible.

17. Military attaches and their staff are not normally allotted for special duty but where this is considered necessary the authority will be issued by AHQ.

Authorities Empowered to Allot for Special Duty

18. The allotment of units for special duty is reserved to AHQ …

19. The allotment of members, groups of members or visitors … may be made by:

a. Commander Australian Army Force FARELF for members proceeding within, or from, Malaya, Singapore and Borneo;

b. Commander Australian Army Force Viet Nam for members proceeding within, or from, Viet Nam; or

c. AHQ(DPS) for members proceeding from elsewhere. …'

In 1965, the SOS Act was amended, in light of Operation Claret activities in Indonesian Kalimantan, to provide that pension would be payable upon incapacity or death if the person was serving in an area *other* than a special area and the incapacity or death resulted from an occurrence that happened as a result of action of hostile forces, or while the member was engaged in warlike operations against hostile forces.[37]

In 1968, in light of the nature of the military operations in Malaya, Borneo and Vietnam, Cabinet agreed that service pension eligibility was appropriate for such service. The SOS Act was amended, retrospective to 28 May 1963, to deem special service in a special area to be service in a 'theatre of war' for service pension purposes under the *Repatriation Act 1920*.

By the end of 1968, the following categories of service were specified in the legislation in relation to service in the Defence Force from 28 May 1963:

Eligibility for service rendered on or after 28 May 1963, as at the end of 1968

Nature of service	Benefits		MRCA equivalent	VEA equivalent
Service as a member of a unit allotted for special duty in a special area (known as 'Special Service')	Eligibility for Service Pension		Warlike service	Qualifying service Warlike service
Service as a member of a unit allotted for special duty in a special area (known as 'Special Service') or	Entitlement for incapacity or death due to an occurrence that happened during special service or as a result of hostile action or warlike operations	Eligibility for: • War Pension ('Disability Pension'), • War Widow's Pension,	Non-warlike service Peacetime service	Operational service Non-warlike service Peacekeeping service

[37] Indonesian Kalimantan was not included within any of the 'special areas', and for international relations reasons it was not intended to do so.

Service outside Australia when engaged in warlike operations against hostile forces	Entitlement for aggravation of pre-existing condition by special service	• Orphan's Pension • Medical treatment, etc.		Hazardous service Defence service
Any other service in the Defence Force	Eligibility for compensation under the *Commonwealth Employees' Compensation Act 1930*		—	—

In September 1971, the *Commonwealth Employees' Compensation Act 1930* was replaced by the *Compensation (Commonwealth Government Employees) Act 1971*.

Defence (peacetime) service eligibility under the Repatriation Act

On 2 December 1972, the Whitlam Government was elected with a promise to bring National Service to an end. On 6 December 1972, the Deputy Prime Minister, Lance Barnard, announced that any conscripts were free to leave the Defence Force, but if they chose, instead, to complete their term of National Service, they would be entitled to certain Repatriation benefits with effect from 7 December 1972. It was also announced that any members of the Defence Force who completed three years continuous effective full-time service would be entitled, upon completion of those three years service, to certain Repatriation benefits with effect from 7 December 1972. The purpose of these extensions of eligibility was to encourage retention of members in the Defence Force.

In 1973 the Repatriation Act was amended to provide for these additional categories of eligible service. Originally, it was the Government's intention to cease concurrent eligibility under the *Compensation (Commonwealth Government Employees) Act 1971* for those covered for the same service under the Repatriation Act, but during the drafting process, the Government decided to retain concurrent eligibility and, instead, offset any compensation received for injury or death under the *Compensation (Commonwealth Government Employees) Act 1971* from any pension payable under the Repatriation Act for the same injury or death.

From 12 January 1973, the Defence Force was no longer engaged in any special overseas service. Eligibility for the last of the special areas was closed off on 11 January 1973. This meant, as at the end of 1973, that the following categories of service were specified in the legislation in relation to service in the Defence Force from 12 January 1973:

Eligibility for service rendered on or after 12 January 1973, as at the end of 1973

Nature of service	Benefits		MRCA equivalent	VEA equivalent
Completion of term of National Service or Completion of 3 years effective continuous full-time service or If required period of continuous full-time service was not completed, service terminated due to incapacity or death	Entitlement for incapacity or death arising out of or attributable to defence service Entitlement for aggravation of pre-existing condition by defence service	Eligibility for: • War Pension ('Disability Pension'), • War Widow's Pension, • Orphan's Pension • Medical treatment, etc.	Peacetime service	Hazardous service Defence service
Any service in the Defence Force	Eligibility for compensation under the *Compensation (Commonwealth Government Employees) Act 1971*		—	Defence service

Peacekeeping service

In 1981, the Repatriation Act was amended to provide eligibility for members of Peacekeeping Forces, for service on or after 1 November 1981. This legislation was originally designed to ensure Repatriation eligibility for service with a proposed Peacekeeping force (the United Nations Transitional Assistance Group in Namibia[38]) and to cover any other peacekeeping operations to which the Government decided to give eligibility in the future. The legislation originally provided:

> ' "Peacekeeping Force" means a Force raised or organized by the United Nations or another international body for the purpose of—
>
> (a) peacekeeping in an area outside Australia; or
>
> (b) observing or monitoring any activities of persons in an area outside Australia that may lead to an outbreak of hostilities,
>
> being a Force that is designated by the Minister, by notice published in the *Gazette*, as a Peacekeeping Force for the purposes of this Division;
>
> "peacekeeping service", in relation to a person, means service with a Peacekeeping Force outside Australia, and includes—

[38] While Australian participation in this Peacekeeping Force (UNTAG) had been discussed in Cabinet since the late 1970s, it was not until 1989 that it eventuated.

(a) any period after his appointment or allocation to the Peacekeeping Force during which the person was travelling outside Australia for the purpose of joining the Peacekeeping Force; and

(b) any period of authorized travel outside Australia by the person after he ceases to serve with the Peacekeeping Force,

but does not include any period of service or travel before 2 November 1981.

(2) For the purposes of the definition of 'peacekeeping service' in sub-section (1)-

(a) a person who travels from a place in Australia to a place outside Australia shall be deemed to have commenced to travel outside Australia when he departs from his last port (or airport) of call in Australia; and

(b) a person who travels to Australia from a place outside Australia shall be deemed to be travelling outside Australia until he arrives at his first port (or airport) of call in Australia.

(3) A notice designating a Force for the purposes of the definition of 'Peacekeeping Force' in sub-section (1) may specify a date (not being a date earlier than 2 November 1981) on and after which that Force is to be, or to be deemed to have been, a Peacekeeping Force for the purposes of this Division.'

However, in 1982, the words, 'by the United Nations or another international body' were omitted from the definition of Peacekeeping Force,[39] and coverage for Peacekeeping Forces was extended to include Peacekeeping service rendered before November 1981.[40]

Also in 1982, the FESR Act and SOS Act were amended to include entitlement provisions similar to those in the Repatriation Act for World War 2 service, extending entitlement to pension for incapacity or death that 'arose out of or was attributable to' Malayan service or special service, rather than merely incapacity or death that resulted from an occurrence that happened during such service.[41]

By the end of 1982, the following categories of service were specified in the legislation in relation to service in the Defence Force at that time:

Eligibility for service rendered as at the end of 1982

Nature of service	Benefits		MRCA equivalent	VEA equivalent
Peacekeeping service outside Australia as a member of a designated Peacekeeping Force	Entitlement for incapacity or death due to an occurrence that happened during Peacekeeping service	Eligibility for: • War Pension ('Disability Pension'), • War Widow's Pension,	Non-warlike service	Operational service Peacekeeping Service

[39] Amendment by section 4 of the *Repatriation Amendment Act 1982*, Act No. 20 of 1982.

[40] Amendment by section 42 of the *Repatriation Legislation Amendment Act 1982*, Act No. 100 of 1982.

[41] These amendments were made as a result of a High Court case, *Repatriation Commission v Law* (1981) 147 CLR 635, which substantially narrowed the Commission's previous interpretation of the 'occurrence' test.

Completion of 3 years effective continuous full-time service or If 3 years continuous full-time service was not completed, service terminated due to incapacity or death	Entitlement for incapacity or death arising out of or attributable to defence service Entitlement for aggravation of pre-existing condition by defence service	• Orphan's Pension • Medical treatment, etc.	Peacetime service	Hazardous service Defence service
Any service in the Defence Force	Eligibility for compensation under the *Compensation (Commonwealth Government Employees) Act 1971*		—	Hazardous service Defence service

Hazardous service

The concept of 'hazardous service' was introduced into the *Repatriation Act 1920* in June 1985 as part of amendments that changed the standard of proof to be applied in decision-making under that Act.[42]

Prior to the 1985 amendments, the Repatriation Act provided that a claim under the Act had to be granted unless the Repatriation Commission was 'satisfied beyond reasonable doubt' that it should not be granted. The High Court held that the Commission bore a heavy onus of disproving claims to the criminal standard of proof,[43] and that a claim could be granted without any evidence pointing to a connection between the veteran's incapacity or death and eligible service.[44] The Government sought to overcome those High Court judgments in two ways. First, it sought to modify the application of the criminal standard of proof to veterans' claims by introducing a requirement that the evidence had to raise a 'reasonable hypothesis' of a connection to service. Secondly, it introduced a two tiered scheme that restricted the modified 'beyond reasonable doubt' standard of proof to claims for disability and dependants' pensions for those who had rendered particular types of service. All other claims, and claims in respect of any other type of service, were to be determined according to the civil standard of proof, that is, to the decision-maker's 'reasonable satisfaction' or the 'balance of probabilities'.

In introducing the two-tiered system, it was necessary to identify the types of service to which the more beneficial standard would apply, and the types of service to which the civil standard would apply. The Government chose to apply the more beneficial standard to two types of service that were already recognised in the legislation, namely, 'active service' (now

[42] Section 25 of the *Repatriation Legislation Amendment Act 1985*, Act No. 90 of 1985, which commenced on 6 June 1985, amended section 107J of the *Repatriation Act 1920*, permitting the Minister for Defence to make a written instrument determining particular service to be 'hazardous service' for the purposes of the application of the more beneficial standard of proof to claims for disability pension or dependant's pension relating to such service.

[43] *Repatriation Commission v Law* (1981) 147 CLR 635.

[44] *Repatriation Commission v O'Brien* (1985) 155 CLR 422.

known as 'operational service') and 'peacekeeping service' (which was first recognised in Repatriation legislation in 1981[45]). This meant that 'war service' within Australia during the World Wars that did not involve combat with the enemy[46] and peacetime defence service rendered since 7 December 1972 would attract only the civil standard of proof. As a matter of policy, it was considered that some types of peacetime defence service might also warrant the application of the more beneficial standard of proof, and so a category of defence service, known as 'hazardous service' was created for that possibility.[47] No attempt was made to specify the characteristics of such service in the legislation.

A letter, dated 16 August 1985, from the Minister for Veterans' Affairs' Private Secretary[48] to the Senate Standing Committee for the Scrutiny of Bills, gives some indication of the Government's thinking at the time of the introduction of the concept of 'hazardous service' into the Repatriation Act in 1985. The letter stated:[49]

> 'In some circumstances, it might be possible to define [hazardous service] by a generic description of the service (e.g. parachuting duties), at other times on the basis of service with a specific Defence Force group (e.g. service with the Special Air Services Regiment), or by a description of particular incidents (e.g. neutralising an unexploded device).'

When the Repatriation Acts were repealed and replaced by the *Veterans' Entitlements Act 1986*, the concept of 'hazardous service' was retained. Notably, the link to the policy origin of hazardous service was also retained (and emphasised) by placing the power to make a determination of hazardous service within the section of the Act that concerns the standards of proof[50] rather than placing it in parts of the Act concerning service eligibility.[51]

The first Ministerial determination of 'hazardous service' was not made until 1991. The service covered by hazardous service determinations under the *Veterans' Entitlements Act 1986* is set out in the following table.

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[45] Eligibility for Repatriation benefits for peacekeeping service was introduced into the *Repatriation Act 1920* by the *Repatriation Acts Amendment Act 1981*, Act No. 160 of 1981, with effect from 1 November 1981.

[46] Now known as non-operational 'eligible war service'.

[47] Section 107J of the *Repatriation Act 1920*.

[48] John Engledow.

[49] Quoted in Senate *Hansard*, 28 November 1985, in a report of the Senate Standing Committee for the Scrutiny of Bills.

[50] Section 120 of the *Veterans' Entitlements Act 1986*.

[51] For example, it could have been placed in section 68, which defines defence service and peacekeeping service, or in former section 5 (now section 5B or 5C), which contained various service eligibility provisions.

Hazardous service under the VEA

Service	Period
Iran-Iraq – service in the waters of Gulf of Iran and the Gulf of Oman West of line joining Rass-El-Hadd and the southern end of the Iran-Pakistan border, and the countries littoral to those waters, to a maximum distance inland of 50 km from the high water mark.	17 November 1986 to 28 February 1989
Gulf War I – transit from last port of call in Australia or the last port of deployment to the operational area.	2 August 1990 to 9 June 1991
Gulf War I – in Iraq and Turkey – service as part of Operation HABITAT providing humanitarian aid to Kurdish refugees in Iraq and in the area of Turkey south of latitude 38° North.	From 7 May 1991
Gulf War I – service in the former operational area after cessation of the period of operational service.	9 June 1991 to 31 March 1996
Afghanistan – service with the United Nations Office for Coordinating Assistance to Afghanistan (UNOCA) or the United Nations Mine Clearance Training Team (UNMCTT) in Afghanistan.	From 8 June 1991
Cambodia – service in the area comprising Cambodia and the areas in Laos and Thailand that are not more than 50 kilometres from the border with Cambodia.	From 8 October 1993
Mozambique – service as part of United Nations humanitarian operations while in the area comprising Mozambique.	From 12 July 1994
Haiti – service while in the area comprising Haiti, as part of the United States of America led Multi-national force operating in that area.	From 17 September 1994
Arabian Gulf, Gulf of Oman and Northern Arabian Sea – service in Multinational Maritime Interception Force – Op Damask.	From 1 April 1996
Iraq – service as part of Operation BLAZER with UN Special Commission for the destruction of Weapons of Mass Destruction in Iraq, while in Iraq.	From 2 July 1991
Yugoslavia – service of members of the ADF while on exchange with forces of other countries.	From 24 January 1997

'Hazardous service' was regarded as a category of service lower in status to that of 'operational service'. The only advantages that differentiated hazardous service from other defence service were the more beneficial standard of proof and the omission of the minimum 3 year period of service. Operational service not only imported these advantages, but also included the 'occurrence' test for entitlement to pension. The 'occurrence' test had been regarded as a very important advantage under Repatriation legislation and was available to members who had rendered 'active service'.

The fact that hazardous service was regarded as lower in status and importing lesser benefits than operational service is evidenced by the fact that it was applied to service in the same area that applied to the First Gulf War, but after that area ceased to be an 'operational

area' for the purpose of operational service.[52] It was also applied to travel to that operational area by ADF members who were not necessarily 'allotted for duty'[53] in that operational area.[54]

[52] Instrument of Minister Billson dated 19 July 2006, which was taken to have commenced on 7 May 1991, at paragraphs b(i) and b(ii).

[53] The only members to have rendered operational service in the operational area in item 10 of Schedule 2 to the *Veterans' Entitlements Act* 1986 were those who were the subject of an instrument of allotment issued by the Vice Chief of the Defence Force for the purposes of the Repatriation Commission under the Act: see section 6C and paragraph 5B(2)(b) of the *Veterans' Entitlements Act 1986*. Merely serving in an operational area does not mean that the member has rendered 'operational service'. The effect of this hazardous service instrument was to deem a person to have rendered hazardous service when travelling into the operational area, whether going there to render operational service or not.

[54] Instrument of Minister Billson dated 19 July 2006, which was taken to have commenced on 2 August 1990, at paragraphs b(i)(1) and b(i)(2).

While clearly, the legislation required an element of danger for the characterisation of service in a 'theatre of war', danger was also recognised as a policy element in the characterisation of 'operational service'. In a speech to the House of Representatives on 8 November 1990, The Hon. Ben Humphreys, Minister for Veterans' Affairs, said:[55]

> 'The special benefits under the Act available to persons who serve on operational service are in recognition of the special dangers associated with operational service.'

[55] Second Reading Speech to the Veterans' Affairs Legislation Amendment Bill 1990.

Media Release

Gary Punch, Minister for Defence Science and Personnel
Frank Walker, Minister for Administrative Services

EMBARGOED: 2PM, 19 APRIL 1994

NEW AWARDS FOR FORGOTTEN VETERANS AND CIVILIANS

The Minister for Defence Science and Personnel, the Honourable Gary Punch MP, and the Minister for Administrative Services, the Honourable Frank Walker QC MP, today announced that the Government had accepted the Report of the Committee of Inquiry into Defence and Defence Related Awards, headed by General Peter Gration.

The Committee, appointed in May last year to advise on awards to defence personnel and certain civilian groups, included Major General "Digger" James, National President of the RSL, Dr Michael McKernan, Ms Clare Petre and Mr Noel Tanzer.

The Inquiry was the first stage of a two-stage review of all aspects of the Australian system of honours and awards.

"Tens of thousands of ex-service personnel and civilians who have never been awarded a medal for their service to the nation will now get an award," Mr Punch said.

"These include people who served and supported our nation's efforts during the Second World War through to current members of the Australian Defence Force.

"It is a belated but heartfelt thanks from a grateful nation," he added.

The Government agreed to all but one of the Committee's 40 recommendations, including:

- the establishment of a Civilian Service Medal 1939-45 to cover service in organisations like the Australian Women's Land Army, the Northern Australian Railways, the Voluntary Aid Detachments and the Civil Constructional Corps. Members of these organisations served in Australia in arduous circumstances subject to military like arrangements and conditions of service in support of the war effort;

- the extension of the Vietnamese Logistic and Support Medal to civilian surgical and medical teams and other persons for service during the Vietnam War;

- the examination and rectification of anomalies that relate to service on Labuan Island and in the Far Eastern Strategic Reserve during the Malayan Emergency in the 1950's; and

- the establishment of a new Australian Service Medal 1945-75, similar to the existing Australian Service Medal, which recognises service in prescribed peacekeeping and non-warlike operations. The Medal will be awarded to various groups who did not receive any Australian Imperial award for certain service but who by the standards of today, would qualify for an award. These include:

    - veterans of the British Commonwealth Occupation Force in Japan up to the middle of 1947

    - service in Korea from the signing of the Armistace in 1953 until the last Australian troops were withdrawn in 1957

    - certain service in the Thailand-Malaysia border areas from 1960-66

    - certain service in Thailand, including at Ubon airbase from 1962-68

    - service in Papua New Guinea from 1951 until independence in 1975

    - Australian service personnel involved in certain UN peacekeeping and multinational operations in India, Pakistan, West New Guinea and other operations.

Mr Punch said that the Government had issued instructions for design of new medals to start immediately.

"The new awards, which have yet to be established, will be issued as early as next year.

"People who have a claim to some existing awards may be able to receive their medals even sooner," he said.

Mr Punch thanked the many ex-service groups who took an interest in the work of the Committee and who provided the members with information and assistance.

Mr Walker paid tribute to the Committee's work.

"The Committee has put in an enormous effort, receiving over 800 submissions and undertaking comprehensive consultations with ex-service groups and individuals across Australia. The Government sees the public consultation aspect of the inquiry as central to its success.

"The Committee has made an enduring contribution to the Australian system of honours and awards, not only in its recommendations, but in the way it approached its mandate.

"It established ten guiding principles to assist its deliberations. These principles will find currency beyond the life of the Committee's own work to help guide decision-makers in the future," Mr Walker said.

"Some of the issues raised by the Committee will be considered by the second stage of this comprehensive review of the Australian system of honours and awards.

"I will announce shortly the composition of the that Committee together with its terms of reference," he concluded.

CANBERRA 18 April 1994

Contact: Mr Lembit Suur
Awards and National Symbols Branch
Department of Administrative Services
(06) 275 3914 (BH)
(06) 251 3138 (AH)

Mobile 015 296 154

Attachments: Addresses of medal issuing authorities
Summary of Report recommendations and Government response

Buying the Report

Copies of the Report are available from Commonwealth Government Bookshops Australia-wide, or by calling the AGPS Phone Shop on (008) 020 049, or by writing to AGPS Mail Order Sales at GPO Box 84, CANBERRA ACT 2601.

The Report retails at $14.95 but a special $2 discount is offered to RSL members, who will need to produce evidence of membership or write to AGPS Mail Order Sales.

ATTACHMENT 1

Medals Issuing Authorities

NAVY

Staff Officer (Medals)
Directorate Naval Personnel Services
D-3-14
Russell Offices
CANBERRA ACT 2600

ARMY

Medals Section
Soldiers Career Employment Manpower Agency
Central Army Records Office
360 St Kilda Road
MELBOURNE VIC 3001

AIR FORCE

Department of Defence (Air Force Office)
PO Box E33
Queen Victoria Terrace
CANBERRA ACT 2600

Attention AR 3 (E-3-14)

CIVILIAN SERVICE

Medals Validation Unit
Awards and National Symbols Branch
Department of Administrative Services
GPO Box 1920
CANBERRA ACT 2600

RECOMMENDATIONS AND GOVERNMENT RESPONSES

RECOMMENDATION	RESPONSE
Australian Service Medal 1945 -75	
CIDA recommends the establishment of an Australian Service Medal 1945 - 75 to recognise service in a prescribed peacekeeping or non-warlike operation for the period 1945-75 where recognition has not previously occurred.	Agreed
Syrian Campaign	
CIDA recommends that the Government agree that all those participating in the Syrian campaign should receive the Africa Star as well as the 1939-45 Star and for those who did not receive the Africa Star for prior or subsequent service that the Government examine whether there exists executive authority in Australia to deem service in Syria to be qualifying service for the award of the Imperial Africa Star.	Agreed
Northern Australia	
CIDA recommends that the area of the Northern Territory north of latitude 14° 30'S should be considered an operational area for the period 19 February 1942 to 12 November 1943 and that the Government examine whether there exists executive authority within Australia to issue the Imperial 1939-45 Star for service in this area in this designated period.	Agreed
2/110 General Transport Company	
CIDA proposes that the service of the 2/110 General Transport Company and other issues relating to the administration of awards discussed at Chapter 11 be examined by Defence in consultation with the Administrative Review Council.	Agreed
Civilian Service Medal 1939-45	
CIDA recommends that a new and distinctive Civilian Service Medal 1939-45 be instituted in the Australian system of honours and awards, to sit below the proposed new Australian Service Medal 1945-75. This award should be made to members of designated civilian groups not previously recognised by an existing World War II award, including the AWLA, NAR and perhaps the CCC who served in Australia in arduous circumstances in an organisation subject to military-like organisation and conditions of service in support of the war effort from 3 September 1939 to 2 September 1945. There may be other groups that fall into a similar category, including those members of the VAD who did not become members of the Australian Army Medical Women's Service (AAMWAS). The qualifying period should be 180 days of service.	Agreed

ATTACHMENT 2

RECOMMENDATION	RESPONSE
Japan	
CIDA recommends the awarding of the new Australian Service Medal 1945-75 with clasp 'Japan' for service with the Australian forces in the occupation of Japan from the period 3 September 1945 to 30 June 1947, with a qualifying period of 90 days	Agreed
Korea	
CIDA recommends the awarding of the new Australian Service Medal 1945-75 with clasp 'Korea 1953-57' for service in Korea from 28 July 1953 (signing of the armistice) until the withdrawal of Australian troops on 26 August 1957 , with the relevant qualifying period of 30 days.	Agreed
Malayan Emergency 1948-60	
CIDA was made aware of Australian ex-servicemen who were recruited to serve as police lieutenants in Malaya and participated in actions against communist terrorists. CIDA understands that members of Civil Police forces and other prescribed groups could qualify for the Imperial General Service Medal (GSM) clasp 'Malaya' under certain conditions. The Committee recommends that the Interdepartmental Committee on Honours and Awards is an appropriate process by which claims by persons who rendered such service can be verified against the qualifying criteria for the GSM	Agreed
Labuan	
CIDA recommends that service with the RAAF on Labuan Island between 8 March 1951 and 7 June 1957 should qualify for the GSM clasp 'Malaya', subject to meeting the qualifying period of service prescribed for the award.	Agreed
Far East Strategic Reserve	
CIDA recommends that the Government continue to pursue with the British Government the eligibility of RAN vessels serving in the Far East Strategic Reserve for the Imperial Naval General Service Medal (NGSM) clasp 'Malaya' with a view to identifying those HMA ships, if any, which qualified for the award.	Agreed

ATTACHMENT 2

RECOMMENDATION	RESPONSE
Malaysia post 1960	
CIDA recommends the awarding of the new Australian Service Medal 1945-75 with clasp 'Thailand-Malaysia border' to those Australian troops serving in anti-terrorist operations between 1 August 1960 and 16 August 1964 inclusive on the Thailand-Malaysia border with a qualifying period of 30 days.	Agreed
CIDA also recommends that those RAAF personnel who took part in operations in support of ground forces in the Thailand- Malaysia border area in the same period should qualify for the new Australian Service Medal 1945-75 with clasp 'Thailand-Malaysia border', with the relevant qualifying service being one operational sortie. In addition, any member of air crew who in the period 17 August 1964 to 30 March 1966 flew an operational sortie in the Thailand-Malaysia border area but did not otherwise qualify for an award of the GSM 'Malay Peninsula' should also qualify for the new Australian Service Medal 1945-75 clasp 'Thailand-Malaysia border'.	Agreed
Thailand	
CIDA recommends that Australian personnel at the Royal Thai Air Force Base at Ubon be recognised through the new Australian Service Medal 1945-75 with clasp 'Ubon'. The relevant qualifying period should be 30 days.	Agreed
CIDA recommends that members of 2 Field Troop Royal Australian Engineers and other personnel who served in Ban Kok Talat between January 1964 and May 1966 should also be awarded the new Australian Service Medal 1945-75 with clasp 'Ubon' with the relevant qualifying period of 30 days.	Agreed
Vietnam	
CIDA believes that the service rendered by HMAS *Vampire*, HMAS *Quickmatch*, HMAS *Quiberon* and HMAS *Queenborough* seems comparable for the award of the RAS Badge.	Noted
CIDA believes that the evacuation of casualties from a war zone should be considered an operational activity for the purposes of the Vietnam Medal and recommends that a medical evacuation sortie over Vietnam or Vietnamese waters by air crew and nurses should be regarded as qualifying service under the terms of paragraph 7(11) of the Royal Warrant governing the Vietnam Medal.	Agreed

ATTACHMENT 2

RECOMMENDATION	RESPONSE
CIDA recommends that civilian surgical and medical teams and other civilian groups who served in Vietnam under Government jurisdiction and in support of the Australian national effort be eligible for the Vietnam Logistic and Support Medal (VLSM) under the prescribed conditions.	Agreed
Recognition of Overseas Humanitarian Service	
CIDA recommends that the Committee charged with investigating Stage 2 (the non-Defence elements) of the comprehensive review of the Australian system of honours and awards explore further whether service by civilian volunteers serving overseas in hazardous areas should receive formal recognition by a medal.	Agreed
PNG	
CIDA recommends that service in the Territory of PNG from the formation of the Pacific Islands Regiment until the independence of PNG on 16 September 1975 be recognised through the award of the new Australian Service Medal 1945-75 with clasp 'PNG' with a qualifying period of 180 days. This applies to Australian nationals of all services including RAN personnel posted to HMAS *Tarangau* and attached vessels.	Agreed
CIDA suggests that Defence consider all the circumstances in relation to service in PNG post - 1975, and would not object should a decision be made to proceed with an award.	Noted
CIDA has been unable to establish why the matter relating to the Vanuatu General Service Medal has not progressed since 1989 and believes the Australian Government should accept the offer made by the President of Vanuatu.	Agreed
Peacekeeping and other operations	
CIDA recommends that service from 13 August 1948 to 13 February 1975 with the UN, including the Military Group in India and Pakistan (UNMOGIP) and the UN India/Pakistan Observer Mission (UNIPOM) be recognised through the award of the new Australian Service Medal 1945-75 with clasp 'Kashmir', with a qualifying period of 90 days, the same as that established for the 'Kashmir 'clasp for the current ASM, for service since 14 February 1975.	Agreed
CIDA recommends that Defence examine other United Nations and multi-national operations with a view to establishing, in the light of CIDA's recommendation on service in UNMOGIP and UNIPOM, whether equivalent service has been rendered in other operations. Where it has been, it should also be recognised through an award.	Agreed

ATTACHMENT 2

RECOMMENDATION	RESPONSE
CIDA recommends that service by Australian personnel with the UN Temporary Executive Authority (UNTEA) force in West New Guinea during the period 1 October 1962 to 1 May 1963 should be recognised through the award of the new Australian Service Medal with clasp 'West New Guinea', with a qualifying period of 30 days.	Agreed
Foreign awards	
CIDA encourages individuals who were offered or hold unofficially foreign awards and who believe that under the 1989 Guidelines for the Wearing and Acceptance of Foreign Awards, they may be entitled to receive them officially, to apply using the process specified.	Agreed
CIDA recommends that in addition to encouraging individuals to apply or re-apply through the foreign government concerned, the relevant government departments and the Honours Secretariat at Government House exercise practical ways in which foreign awards made in the past be re-examined for acceptance in the light of the 1989 Guidelines, with primary emphasis on those from the Vietnam War. This should include consideration of whether the Prime Minister or the Minister for Administrative Services as the Minister responsible for the Australian honours system can be given a discretion to waive the requirements of paragraph 2 of the 1989 Guidelines for the Wearing and Acceptance of Foreign Awards in certain circumstances, e.g. where a former allied government has ceased to exist.	Agreed
Order of Australia	
CIDA believes the issues relating to the Order of Australia are complex and that its terms of reference do not extend readily to examine matters relating to relativities between the General and Military Divisions of the Order of Australia. It recommends that this issue be examined by the Committee appointed to conduct Stage 2 of the review of the Australian system of honours and awards.	Agreed
CIDA welcomes the advice of the CDF and encourages Defence Chiefs to ensure that awards in the Order of Australia are based only on merit against the criteria laid down in the Constitution of the Order.	Noted
CIDA notes the advice from CDF that any previous instructions issued with the ADF linking rank to the level of award have been withdrawn.	Noted

ATTACHMENT 2

RECOMMENDATION	RESPONSE
CIDA believes that greater flexibility should be introduced into the granting of awards in the Military Division of the Order so that recently retired members of the ADF can be recognised for their contribution to the Defence Force. The current prescription that only serving members of the Defence Force may be recognised through the Military Division of the Order of Australia could work unfairly in denying recognition to people who are worthy of an award	Agreed Government agrees, but has decided that implementation is to be deferred until after Stage Two of the Honours Review reports, so that this and any other changes that may be necessary to the Constitution of the Order of Australia can be processed together.
CIDA believes that there would be advantage in making public the process by which nominations in the Military Division are formulated, handled and approved, and recommends that the Defence Force pursue this in consultation with the Secretary of the Order.	Agreed
CIDA recommends that the words 'and other persons determined by the Minister of State for Defence' be inserted at Section 20(1) after the words 'Members of the Defence Force' to permit nominations to be made to the Military Division of the Order, of members of accredited philanthropic associations.	Agreed Government agrees, but has decided that implementation is to be deferred until after Stage Two of the Honours Review reports, so that this and any other changes that may be necessary to the Constitution of the Order of Australia can be processed together.
CIDA believes that there may be bilateral and regional benefits to the nation if outstanding service to the ADF and to Australia's defence relations rendered by foreign nationals is recognised under the Military Division of the Order.	Agreed
Conspicuous Service Awards	
CIDA recommends that the issues relating to the CSC and CSM should be examined by the CDF in 1996, at which time these awards would have been in place for a period of five years.	Agreed
Defence Long Service Awards	
CIDA believes there is no place for an award based on rank in the Australian system of honours and awards.	Agreed
CIDA believes that postnominals should be reserved for awards that recognise outstanding service rendered by an individual or some outstanding act of bravery or valour. They should not be awarded for diligent service based on a time qualification.	Agreed
CIDA recommends an early implementation of a single long service award for all members of the ADF.	Agreed

ATTACHMENT 2

RECOMMENDATION	RESPONSE
Order of Precedence Issue	
CIDA believes that in future schedules of the Order of Precedence, a footnoted entry could assist to clarify that this also applies to Imperial efficiency and long service awards.	Agreed
Officers and Instructors of cadets	
CIDA believes that officers and instructors of cadets should be included with civilian uniformed groups eligible for the National Medal, on the same basis as those groups. Aggregation of part-time service should be allowed, as should back counting of service which has not been recognised through some other long service award. Permanent and Reserve members of the ADF should be excluded from the class of cadet officers and instructors eligible for the National Medal.	Not agreed Government has decided to refer this issue for consideration by the Stage Two Honours Review, so that claims by this group can be considered along with claims from other groups for recognition of community service.
Administrative Review	
CIDA recommends that Defence examine its internal decision making processes and guidelines leading to the awarding of service medals in consultation with the Administrative Review Council.	Agreed

REPORT OF THE COMMITTEE OF INQUIRY INTO DEFENCE AND DEFENCE RELATED AWARDS

Who established the Inquiry and why?

On 28 February 1993, the then Minister for Administrative Services, Senator Nick Bolkus and the then Minister for Defence Science and Personnel, Mr Gordon Bilney, announced the Government's intention to hold a public inquiry into Australia's system of honours and awards.

On 27 May, 1993, the then Minister for the Arts and Administrative Services, Senator Bob McMullan and the then Minister for Veterans' Affairs and Minister for Defence Science and Personnel, Senator John Faulkner, announced the inquiry would be conduced in two stages.

The inquiry was in response to a large number of submissions from ex-service people and the general community.

The Committee was particularly concerned with those who have received no recognition or perhaps inadequate recognition for their service.

It became apparent to the Committee that the depth of feeling expressed by some about the lack of recognition, through a medal or award, stemmed from feeling that society had failed to appreciate or acknowledge the sacrifice they had made to serve Australia.

What were the terms of reference for the Inquiry?

1. Examine claims for recognition of categories of service;

2. Identify any categories of service, including those which involved non-Defence personnel in operational areas, which we considered should be recognised by an Australian award;

3. Examine the appropriateness of extending the eligibility of existing awards for such purposes;

4. Consider the need, if any, to introduce additional awards to recognise service in past defence-related activities of either a warlike or non-warlike nature;

5. Consider any other relevant matters in relation to defence-related awards; and

6. Make appropriate recommendations.

The Committee was not to inquire into honours and awards of gallantry or meritorious or distinguished service for individuals or units for which appropriate award procedures existed or now exist, nor was it to be concerned with entitlements under the Veterans' Entitlements Act.

Who was on the Committee?

. General Peter Gration, AC OBE recently retired Chief of the Australian Defence Force, and Vietnam war veteran (Chair)

. Major-General WB "Digger" James, AO MBE MC highly decorated Korean and Vietnam War veteran and Chairman of the National Advisory Council of the Vietnam Veterans' Counselling Service; Mr Noel Tanzer, former Secretary of the Department of Administrative Services

. Dr Michael McKernan, Deputy Director Australian War Memorial, Canberra

. Ms Claire Petre, social worker and journalist active in community organisations, including as Board Member of ACOSS

. Mr Noel Tanzer, AC former Secretary of the Department of Administrative Services

How was the Inquiry conducted?

The Committee received 800 written submissions. The cut-off date for submissions was 6 August 1993, but the Committee accepted submissions until the end of September 1993, when it began consultations with applicants. The Department of Defence also referred many submission it had received in recent years relating to honours and awards.

The Committee held consultations with almost 150 people, representing 80 veterans, ex-service and other organisations, groups and individuals in each Australian capital city and in Newcastle.

The Committee also held discussions with the Commonwealth Departments of Administrative Services, Defence, Veterans' Affairs, Foreign Affairs and Trade, and the Prime Minister and Cabinet, the Headquarters of the Australian Defence Force, the Australian War Memorial, the Office of the Official Secretary to the Governor-General, the British High Commission, the Canadian High Commission and the Embassy of the United States of America.

The Committee developed ten principles as a framework for considering the submissions. The principles helped answer such questions as when a medal should be awarded, and how to deal with Imperial and civilian awards.

What were the major recommendations made by the Committee?

The Government agreed to the 39 of the Committee's 40 recommendations, including:

- the establishment of a Civilian Service Medal 1939-45 to cover service in organisations like the Australian Women's Land Army, the Northern Australian Railways, the Voluntary Aid Detachments and the Civil Constructional Corps;

- the examination of how certain Australian Imperial awards can be extended to recognise service during the Second World War in the Syrian campaign and in the Darwin areas during the period of the Japanese bombings;

- the extension of the Vietnamese Logistic and Support Medal to civilian surgical and medical teams and other persons for service during the Vietnam War;

- the examination and rectification of anomalies that relate to service on Labuan Island and in the far Eastern Strategic Reserve during the Malayan Emergency in the 1950s; and

- the establishment of a new Australian Service Medal 1945-75, similar to the existing Australian Service Medal, which recognises service in prescribed peacekeeping and non-warlike operations. The Medal will be awarded to various groups who did not receive any Australian Imperial award for their service but who by the standards of today, would qualify for an award. These include:

    - veterans of the British Commonwealth Occupation Force in Japan up to the middle of 1947

    - service in Korea from the end of the Korean War until the last Australian troops were withdrawn in 1957

    - certain service in the Thailand-Malaysia border areas from 1960-66

    - certain service in Thailand, including at Ubon airbase from 1962-68, and service in Papua New Guinea from 1951 until independence in 1975

    - Australian personnel involved in certain UN peacekeeping and multinational operations, including in India, Pakistan and West New Guinea.

The one remaining recommendation, that the National medal be awarded to instructors of cadets, has been passed on to the Stage II Committee for further consideration.

How many people now qualify for medals?

The recommendations mean some 150,000 people who served their country and have previously been unrecognised will now receive an award.

How can people get their medals?

Work on designing the new medals will start immediately. The new awards will be issued next year. People who have a claim to an existing award may be able to receive their medals very soon. Claims for awards whould be address to the organisations listed in the attachment to the media release.

What are the next steps in the Review of the Australian Honours and Awards system?

The next step will be the second, and final, stage of the review of Australia's system of honours and awards. The members of the second stage Committee and terms of reference will be announced shortly.

COMMITTEE OF INQUIRY INTO DEFENCE AND DEFENCE RELATED AWARDS

COMMITTEE MEMBERS

General Peter Gration AC OBE (Chairman)

Former Chief of Defence Force
Currently Chairman of the Civil Aviation Authority

Major General "Digger" James AO MBE MC

Former Korean War Veteran and Director General of Army Health Services
Currently National President of the Returned and Services League of Australia

Ms Clare Petre

A person with a strong background in community organisations and public administration

Mr Noel Tanzer AC

Former Secretary of the Department of Administrative Services

Dr Michael McKernan

Deputy Director of the Australian War Memorial
Historian

REPORT OF THE COMMITTEE OF INQUIRY INTO DEFENCE AND DEFENCE RELATED AWARDS

BRIEF BIOGRAPHIES OF PERSONS ELIGIBLE FOR AWARDS

MR J R (ROSS) MULLINS - DEFENCE OF DARWIN

Mr Mullins was a member (Lance Sergeant) of the 19th Australian Heavy Anti-Aircraft Battery (AIF) which assisted in the defence of Darwin from the Japanese during World War II. Bombing and strafing raids against Darwin commenced on 19 February 1942 (243 killed, 350 injured) and 62 separate air raids followed through to 12 November 1943.

Mr Mullins' duties during the defence of Darwin were to operate the static 3.7 inch anti aircraft guns in Port Darwin as well as support the 40mm bofors crews and radar operators of the 19 Australian Heavy Anti Aircraft Battery gun sites at various locations in Darwin, such as the Darwin Oval, Fannie Bay and McMillans.

MRS PEGGY WILLIAMS - AUSTRALIAN WOMENS' LAND ARMY

The Australian Womens' Land Army (AWLA) was established in July 1942 under the Directorate of Manpower to provide labour assistance to the rural industries in their production of food. In October 1944 there were some 3 086 AWLA personnel engaged in such tasks. However, unlike the AWAS, WRANS and WAAF, the AWLA was not a Womens' Auxiliary and was not afforded the benefits and services that subsequently applied to members of these services.

Mrs Williams wanted to join the Womens' Australian National Service (WANS) but she was under 18 years of age. Instead she forged her father's signature and joined the AWLA. After undertaking some general training, e.g. hygiene, marching and exercises, and having a medical examination, the women were allocated to various work places in the country. They lived in dormitories in the townships and were driven out to nearby farms each day, returning to the dormitories each night. Mrs Williams was posted to Leeton, NSW.

The women performed the tasks that men who had joined the Armed Forces would have done. In some cases they worked even harder as the farmers tested their will.

MR BILL IVINSON AND MR DICK GRAHAM - NORTHERN TERRITORY RAILWAY

After the first attack on Darwin by Japanese aircraft on 19 February 1942, the Army took control of the North Australian Railway (NAR) and hastened the upgrading and consolidation of the railway line between Birdum and Darwin (approximately 500 km of line). The NAR's headquarters, locomotive depot and workshops were relocated from Darwin to Katherine. The activities of the NAR included facilitating civilian and medical evacuations, supply support operations for the military forces stationed in Darwin and maintaining open links between Alice Springs and Darwin.

The NAR comprised civilian and armed services personnel. Mr Ivinson and Mr Graham were civilian volunteers who worked on the railway and travelled to various work sites during World War II. Mr Ivinson travelled to Katherine in 1941 with other volunteers to enlist in the NAR.

COLONEL DAVID CHINN RL - UNTEA, WEST NEW GUINEA

From 18 November to 25 December 1962 Australia sent a detachment of eleven Australian Defence Force personnel to serve with the United Nations Temporary Executive Authority (UNTEA) in West New Guinea. Colonel Chinn was a member of 16 Army Light Aircraft Squadron which went to West New Guinea.

Colonel Chinn now works at the Australian War Memorial in a voluntary capacity.

GROUP CAPTAIN ROBERT A REDFERN MVO (RAAF RETIRED)

Group Captain Redfern served at the Royal Thai Airforce Base Ubon, Thailand during the periods October-November 1963, February-March 1964 and February-March 1965 in an engineering role in support of 79 Squadron.

During these periods Group Captain Redfern was separated from his family who were located in Malaya.

TO FEDERAL PRESS GALLERY

ATTACHMENT D

Media Release

The Hon Bruce Scott MP

Minister for Veterans' Affairs • Minister Assisting the Minister for Defence • Federal Member for Maranoa

Wednesday, 9 May 2001 Min 129/01

15 000 NEW MEDAL ENTITLEMENTS FOR SOUTH EAST ASIAN SERVICE

Up to 15 000 veterans who served in Singapore and Butterworth, Malaysia between 1971 and 1989 are set to be awarded the *Australian Service Medal*, the Minister Assisting the Minister for Defence, Bruce Scott announced today.

Mr Scott said this latest announcement on medal entitlements follows the Government's acceptance of recommendations arising from the *Review of Service Entitlement Anomalies in Respect of South-East Asian Service 1955-75*, and a further review of the medal entitlements of those Defence personnel who served in Singapore until 1975 and in Butterworth until 1989 – the year in which the communist insurgency in Malaysia officially ended.

"These medal entitlements recognise the vital role that Australian servicemen and women have played in the stability and security of South East Asia during a period of significant tension," he said.

"The Department of Defence has received many thousands of applications for medals since the Review's findings were announced last year.

"I would ask all those who have submitted applications to be patient. The applications are being processed as quickly as possible."

Mr Scott said the Government was determined to ensure proper recognition of the service and sacrifice of its servicemen and women in the defence of their country, and in assisting in the maintenance of peace and security of countries much less fortunate than Australia.

"As the Coalition promised in its 1996 election policy, the Federal Government is committed to monitoring the issue of military awards and will ensure that any genuine anomalies that are brought to its attention, are rectified as quickly as possible."

Media Contact: Mark Croxford 02 6277 7820 or 0408 645 787

Attachment to Min 129/01

15 000 NEW MEDAL ENTITLEMENTS FOR SOUTH EAST ASIAN SERVICE

BACKGROUND INFORMATION

In addition to the awards announced today, previously announced awards resulting from the *Review of Service Entitlement Anomalies in Respect of South-East Asian Service 1955-75* and the follow-on Review include:

- Australian Active Service Medal (AASM) 1945-75 with Clasp 'Malaya' for service by the Royal Australian Navy in support of operations in Malaya during the period 2 July 1955 to 31 July 1960

- AASM 1945-75 with Clasp 'Thai-Malay' for land operations during the period 1 August 1960 to 16 August 1964 and Royal Australian Air Force (RAAF) air operations during the period 17 August 1964 and 30 March 1966 on the Thai-Malay Border

- AASM 1945-75 with Clasp 'Thailand' for service in Thailand at Ubon Air Base and with 2 Field Troop, Royal Australian Engineers, in Operation 'Crown' during the period 25 June 1965 to 31 August 1968

- qualifying criteria for all operations that earned entitlement to the AASM 1945-75 or current AASM standardised to conform with modern criteria for warlike operations, which is basically, 'one day or more or the posted strength of a unit allotted (or assigned) to and serving in an operational area, one operational sortie into the area, 30 non-operational sorties or 30 days for visitors'

- introduction of a separate Clasp 'SE Asia' to the Australian Service Medal (ASM) 1945-75 and current ASM, for land service during the period 1955-89 in certain areas of South-East Asia outside of the Malayan Emergency 1955-60, Thai-Malay Border operations 1960-66, Indonesian Confrontation 1962-66 and South Vietnam 1962-73

Also approved by the Governor-General were extended entitlements for:

- ASM 1945-75 with Clasp 'Korea' for service with the British Commonwealth Forces Korea in Japan and Okinawa during the period 29 April 1952 and 26 August 1957

- ASM 1945-75 with Clasp 'Middle East' for service with 78 Wing RAAF for duties in Malta during the period 9 July 1952 to 1 December 1954

- ASM 1945-75 with Clasp with Clasp 'SW Pacific' for:

- War Grave Unit activities in Borneo, Labuan Island and Ambon during the period 25 November 1946 to 10 November 1956

- RAAF activities on Cocos Island with No 2 Airfield Construction Squadron during the period 18 November 1951 to 24 January 1954

Applications may be made by letter or on the form available on the Department of Defence web site at http://www.defence.gov.au/dpe/dpe_site/resources/index.htm, and addressed to:

Navy Medals Section Queanbeyan Annex Department of Defence CANBERRA ACT 2600	Air Force Medals Section Queanbeyan Annex Department of Defence CANBERRA ACT 2600	Army Medals Section GPO Box 5108BB MELBOURNE VIC 3001
Ph: 1800 808 073	Ph: 1800 623 306	Ph: 1800 065 149

Media Releases

PRIME MINISTER

ADDITIONAL BENEFITS FOR VETERANS, GOVERNMENT RESPONSE TO CLARKE REPORT

I am pleased to announce the Australian Government's response to the Clarke Committee's report on veterans' entitlements.

After extensive consultation with the veterans' community and with Government Members and Senators, I am announcing a package of measures which gives more veterans access to the disability pension; enhances the disability pension; provides rent assistance to war widows in addition to income support supplement; and almost doubles the veterans' funeral benefit.

The package is worth $267 million over five years. It is evidence of the strength of the Government's commitment to its veteran community.

The Government has decided on eight measures.

It has exempted the veterans' disability pension paid by Centrelink from the means test applied to income support payments. This measure will benefit about 19,000 veterans and cost $100 million over five years.

The Government has decided to index the above general rate component of the disability pension by the Consumer Price Index or Male Total Average Weekly Earnings, whichever is higher. This will benefit 45,000 veterans and will cost $66 million over five years.

The Government also has decided to extend rent assistance to war widows, which will benefit 11,500 widows and is worth $73 million over five years.

It also has decided to increase the funeral benefit from $572 to $1,000 at an estimated cost of $27 million over five years. An estimated 14,500 veterans stand to gain from the additional assistance.

The Government has extended access to the disability pension to surviving veterans involved in the Berlin Airlift; to those involved in minesweeping; and to aircrew of the RAAF's No.2 Squadron, who served on the Malay-Thai border.

And the Government has decided to grant an ex gratia payment of $25,000 to surviving Prisoners of War of the North Koreans, or their widows, for the

extraordinary hardship they suffered.

The Government also had decided to respond positively to the needs of those affected by the British Atomic Test programme when the outcomes are available of the Australian Participants in the British Nuclear Test Programme – Cancer Incidence and Mortality Study.

The Government will continue to provide special recognition and comprehensive assistance to those who have served Australia in times of war, at personal risk of injury or death from an armed enemy.

In keeping with this approach, we have accepted the Clarke Report's recommendation that there be no change in the incurred danger test for Qualifying Service. However, we reject the view that this test has been interpreted too narrowly.

Further detailed statements will be made by the Minister for Veterans Affairs, the Hon Danna Vale MP.

02 March 2004

The Hon. Danna Vale MP
Minister for Veterans' Affairs
Speech
2 March, 2004

ATTACHMENT F

The Hon Danna Vale MP
Minister for Veterans' Affairs

Response to the Clarke Committee Report on Veterans' Entitlements
Statement by the Minister for Veterans' Affairs, the Hon Danna Vale, MP

Today the Australian Government announced its response to the Report of the Review of Veterans' Entitlements - the Clarke Report.

I established the Clarke Committee to honour the Government's election commitment to an independent review of anomalies in veterans' entitlements and the level of benefits and support to veterans receiving the disability pension.

Since the report was published, the Government has thoroughly considered its recommendations and acknowledged a range of views expressed by veterans and ex-service organisations, our Defence and Veterans' Affairs Committee and our party room. The report, and the Government response, have been subject to intense scrutiny.

I thank the members of the Review Committee - His Honour, Mr Justice Clarke, Air Marshal Doug Riding, Dr David Rosalky, and their Secretariat, the many veterans and organisations that made submissions to the review, and the wider veteran community for its interest and support.

This Government has placed a high priority on meeting our obligations to those who serve in the defence of Australia.

Since coming to office in 1996, we have increased spending on Veterans' Affairs from $6.4 billion to $10 billion in the federal Budget for 2003-04.

Much of this increased spending has been due to the Government's recognition of the growing and changing needs of Australia's veterans, war widows and widowers as they become older.

This is demonstrated by growth in veterans' health spending, where Government funding has increased from $1.7 billion in 1996 to a record $4.1 billion this year.

We have worked to meet the needs of our ageing veteran community, by:

- extending the Gold Card to Australian veterans aged over 70 years with Qualifying Service;
- introducing veteran partnering contracts with private hospitals to broaden the availability of quality hospital care; and
- helping veterans and war widows to continue living at home through programs such as Home Front and Veterans' Home Care.

We also have met our commitment to the health of younger veterans and their families by our Government's response to the Vietnam Veterans' Health Study.

Our aim is to maintain and protect the central services and benefits that veterans value so highly and to continue to address those areas of greatest need, in consultation with the ex-service community.

The Clarke Report is the Government's second major review in the Veterans' Affairs portfolio to be brought to the Parliament.

The first - the Mohr Review - resulted in recognition and increased entitlements for a significant number of Australian service personnel who served in South-East Asia between 1955 and 1975, including more than 2, 600 members of the Far East Strategic Reserve.

Last year the Government introduced the Military Rehabilitation and Compensation Bills into the House.

These Bills are the Government's detailed response to the findings of the inquiry into the Black Hawk disaster and the recommendations of the Tanzer Review of Military Compensation.

They were developed with extensive consultation with the veteran and defence force communities and, I am pleased to say, were passed by the House and are now before the Senate.

The Bills bring together the best elements of the Military Compensation Scheme and the Veterans' Entitlements Act to create a single scheme for all Australian Defence Force members who are injured or who lose their lives during future service.

In keeping with these initiatives, the Government's response to the Clarke Review also will benefit the veteran community.

We have carefully worked our way through the Committee's 109 recommendations to a response that maintains Australia's fair and consistent repatriation system.

The Government has accepted some recommendations and rejected others.

The Government will be providing an additional $267 million over the next five years to implement the recommendations that we have accepted.

The recommendations can be usefully grouped into five broad areas:

1. service eligibility;
2. access to the Gold Card;
3. benefits for Totally and Permanently Incapacitated (TPI) and disability benefit recipients;
4. rehabilitation; and
5. other measures.

I shall address each of these themes in turn and I have attached the Government's response to each of the 109 recommendations.

Service Eligibility

Perhaps the most fundamental issue before the Committee was the issue of service eligibility. Sixty-five of the 109 recommendations within the report relate to this issue.

In all, 38 of the 65 recommendations on eligibility suggested no change to the current provisions under the VEA. We have accepted these recommendations.

The type of service a veteran has rendered is at the centre of the veterans' entitlements system and accounts for differences in benefits and services received by individuals across the veteran community.

Traditionally, Australia has provided a special level of benefit for veterans with *Qualifying Service* - that is, those who have faced the risk of personal harm from an enemy - as opposed to *Operational Service*.

Today, the concept of *Qualifying Service* has been replaced by *Warlike Service*, defined as operations where the application of force is authorised for specific military objectives and where there is an expectation of casualties.

In the current system, such entitlements include access to the service pension at age 60 and free health care provided through the Gold Card at age 70.

I say, quite clearly, this Government will protect the integrity of Qualifying Service to continue to give special recognition - and benefits - to those who serve their country at risk of personal injury or death from an armed enemy.

So we endorse and accept the Committee's recommendation that there be no change in the statutory test for Qualifying Service.

However, we reject the Committee's view that the 'incurred danger test' has been interpreted too narrowly by the courts and administrators.

Public support and confidence in the generosity of our Repatriation System depends on the 'incurred danger test' remaining objective. We would create anomalies if we were to confuse a state of readiness, or presence in a former enemy's territory, with the real and tangible risks of facing an armed and hostile enemy.

The Government therefore does not accept the Committee's recommendations for an extension of Qualifying Service for certain service in Northern Australia during World War II and in the British Commonwealth Occupational Forces.

The Government accepts the recommendation to extend Qualifying Service to aircrew of No 2 Squadron RAAF, who served on the Malay-Thai border between 1962 and 1966.

The Government also accepts the Committee's recommendation to extend Operational Service, the equivalent of Non-Warlike Service, to members of the RAAF directly involved in the Berlin Airlift.

The Government also accepts that Operational Service eligibility be extended wherever Qualifying Service has been recognised.

The immediate beneficiaries of this decision are the small group of minesweeping personnel who have Qualifying Service under the VEA but not Operational Service.

Extension of Operational Service will give them access to the disability pension.

The Government accepts the Committee's recommendation to extend an ex-gratia payment of $25,000 to all surviving prisoners of war held captive during the Korean War,

or their widows or widowers, who were alive on 1 July 2003. This is in recognition of the extremely inhumane conditions they endured.

The Government has rejected the Committee's recommendations relating to British Commonwealth and Allied (BCAL) Veterans.

These recommendations would significantly change the firmly established principle that each BCAL country maintains responsibility for its own veterans.

The recommendations also would extend benefits to BCAL veterans which are not available to some Australian veterans with similar service. Further, acceptance would grant Qualifying Service to some BCAL veterans without them meeting the incurred danger test required of other BCAL veterans.

The Government will respond positively to the needs of those affected by the British Atomic Tests programme when the outcomes of the Australian Participants in the British Nuclear Test Programme - Cancer Incidence and Mortality Study, are published later in the year.

The Government also recognises that today's military forces are concerned that personnel deployed on operations to meet the Government's national security objectives have such service properly classified. Such classification needs to be based on the extent to which ADF members are exposed to danger.

Hazardous training for any Defence personnel is best remunerated in base pay and conditions and service allowances.

The Government is reviewing the criteria for determining classification of current service and deployments.

Access to Gold Card

The Clarke Committee made 10 recommendations in relation to access to the Gold Card.

The Gold Card is highly valued by the veteran community, offering access to free comprehensive health care for eligible veterans, including medical and hospital treatment, allied health care, community nursing and support at home through Veterans' Home Care.

Currently, more than 273,000 members of the veteran community hold a Gold Card.

Many veterans have received the Gold Card on the basis of their health needs as determined by their level of disability.

For example, the Gold Card is issued to all veterans receiving the Disability Pension at or above 100 per cent of the General Rate, including the TPI pension, the Intermediate Rate and the Extreme Disablement Adjustment.

The Gold Card also is provided to a veteran who receives the Disability Pension at or above 50 per cent of the General Rate, and who also is receiving any amount of the Service Pension.

As a result of initiatives in 1999 and 2002, the Government has extended the Gold Card to all Australian veterans and mariners aged 70 years or over who have Qualifying or Warlike Service from any conflict.

Ex-prisoners of war also receive the Gold Card, as do war widows and widowers, who are compensated for the loss of their partners as a result of their service.

The Committee received many submissions urging further extension of the Gold Card to different groups.

The Government has accepted all of the Committee's recommendations that there be no further extensions of the Gold Card.

The Government has already rejected the Committee's recommendation that future Gold Card entitlement be means tested. A benefit granted in recognition of incurring danger from an enemy should not discriminate among veterans on the basis of wealth or income.

TPI and Disability Benefits

A range of submissions addressed the adequacy of benefits and support available to Totally & Permanently Incapacitated and other veteran disability benefit recipients.

There has been considerable public questioning of the merits of the Committee's recommendations for a fundamental restructuring of TPI and veteran disability benefits.

The Government does not accept the model favoured by the Committee but instead addresses the key issues of concern to veterans, that is, the treatment of the disability pension at Centrelink and indexation arrangements.

From September this year, we shall introduce a *Defence Force Income Support Allowance*, to be paid by the Department of Veterans' Affairs to eligible veterans receiving income support from Centrelink.

The allowance will eliminate the difference between a veteran's Centrelink benefit and the amount they would receive if their disability pension was assessed under the Veterans' Entitlements Act.

More than 19,000 disability pensioners who receive their income support from Centrelink will benefit from this change and on average will receive an additional $40 a fortnight.

However, veterans in need, such as a single TPI recipient on an aged pension with no other income, will be eligible to receive an additional $257.60 a fortnight.

This would take the total amount of financial assistance provided through income support and the TPI pension to a single veteran who earns no other income to $1,215.40 a fortnight.

This figure does not include the value of pharmaceutical and other allowances, nor the cost of health care provided by the Gold Card.

On adequacy, for those with Qualifying Service, the Clarke Committee concluded that the TPI benefit package was broadly adequate over the veteran's lifetime.

The total benefit of TPI pension, combined with maximum service pension, currently equates to 91 per cent of post-tax Male Total Average Weekly Earnings (MTAWE) for a single veteran and 109 per cent for a couple.

Of course, this will now also be true for those veterans without Qualifying Service who receive income support from Centrelink, who will now receive the *Defence Force Income Support Allowance*.

From March 2004 the portion of disability pension above the general rate will be indexed to MTAWE in a similar fashion to the service pension. The Government considers it fair that those veterans who can no longer work because of their service related disabilities have the economic loss component of their disability pension maintained in line with a wage index.

Rehabilitation

The Committee emphasised the importance of rehabilitation for veterans with accepted disabilities. However, the Government rejects the recommendations for compulsory rehabilitation under the VEA.

No veteran will be forced to participate in rehabilitation under the VEA.

However, the Government, will continue to promote existing programs, including the Veterans' Vocational Rehabilitation Program, Heart Health and the Men's Health Peer Education Project, which have been warmly welcomed by many veterans.

The Military Rehabilitation and Compensation Bills before the Senate include a strong rehabilitation focus.

This emphasis ensures that after injury or illness people are assisted to pursue all options which may assist them and their families.

The guidelines for rehabilitation under the new Scheme will be developed in close consultation with veteran and defence force organisations.

The Government will remain open to new ideas that the ex-service community may wish to suggest that would assist those who may wish to pursue rehabilitation under the VEA.

Other measures

Some 11,000 war widows and widowers will receive an increase in their income support payments as a result of the Government's decision to pay rent assistance in addition to the ceiling rate of income support supplement.

This will mean up to an additional $94.40 a fortnight for eligible war widows and builds on the Government's action in lifting the ceiling rate of the income support supplement in 2002.

The Committee's recommendation for an increased contribution towards funeral costs has been accepted. The maximum funeral benefit will be increased from $572 to $1 000.

Our Government has committed an additional $267 million over the next five years to address concerns raised by the veteran community during the review.

I take this opportunity to again thank those members of the ex-service community for their important contribution to this review process.

ATTACHMENT G

Feeney/2011: 031807
Schedule No:
CDF/OUT/2011/448

Australian Government
Department of Defence

MINISTERIAL SUBMISSION

Routine / Priority

Date Dept Approved:	Date Rec in Office	Date Due:
09 MAY 2011	10 MAY 2011	20 MAY 2011

Office of Senator the Hon David Feeney
Parliamentary Secretary for Defence

For Action: Senator Feeney
For Info: Minister for Defence
Copies to: Secretary, VCDF, CN, CA, CAF, FASMEC, DEPSEC DS, HOSC, HPC

Subject: Defence response to the Defence Honours and Awards Appeals Tribunal Report into recognition for members of Rifle Company Butterworth for service in Malaysia between 1970 and 1989

Purpose:
That you note the recommendations of the Defence Honours and Awards Appeals Tribunal and that you agree to release the draft media release announcing the Government's acceptance of the recommendations of this Report.

Key Points:

1. On 22 Mar 11 you wrote to me enclosing four Reports that you had received from the Defence Honours and Awards Appeals Tribunal. You sought advice on the implementation and announcement aspects and welcomed any other comments I had about the issues raised in the Reports. These Reports related to:
   a. *Inquiry into recognition of service with the Commonwealth Monitoring Force – Rhodesia 1979-80* (Rhodesia);
   b. *Inquiry into recognition for Defence Force personnel who served as peacekeepers from 1947 onwards* (Peacekeepers);
   c. *Inquiry into recognition for members of Rifle Company Butterworth for service in Malaysia between 1970 and 1989* (RCB); and
   d. *Inquiry into unresolved recognition issues for Royal Australian Air Force personnel who served at Ubon between 1965 and 1968* (Ubon).
2. This submission will address the Tribunal Report into recognition for members of Rifle Company Butterworth for service in Malaysia between 1970 and 1989. The Tribunal has recommended that:

   Recommendation 1: No change be made to the medallic entitlements which currently attach to service with Rifle Company Butterworth in the period 1970 to 1989.

   Recommendation 2: No change be made to the medallic entitlements which currently attach to service with any other unit of the Australian Defence Force at Butterworth in the period 1970 to 1989 or since 1989.
3. While the recommendations specific to service in Butterworth between 1970 and 1989 are consistent with the Defence position that no further medallic recognition be provided, the recommendation that no further recognition be provided for service at Butterworth since 1989 has been made outside the Tribunal's Terms of Reference for this particular inquiry.
4. There is no significant consequence of this recommendation and it is therefore considered sufficient that the findings of the Tribunal be accepted by Government. However, it does highlight that vigilance will be required in the future to ensure any recommendations of the Tribunal that

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have not been made in accordance with their Terms of Reference are properly scrutinised.

5. Defence is not required to take any action in regard to this Report however, it is normal practice that you issue a media release announcing the Government's acceptance of the Tribunal's findings and to publicly release the Report. A draft media release and talking points are attached.

Recommendation:

That you:

i. **Note** the recommendations of the Defence Honours and Awards Appeals Tribunal Report into recognition for members of Rifle Company Butterworth for service in Malaysia between 1970 and 1989.

Noted / Please Discuss

ii. Agree that the Government accept the Tribunal's findings.

Agreed / Not Agreed

iii Agree to the attached media release.

Agreed / Not Agreed

Approved By D.J. HURLEY LTGEN A/CDF 9 May 2011	
Contact Officer: Mr Pat Clarke	**Phone:** 02 6266 1009
Primary Addressee David Feeney 17/5/11	
Information Addressee Noted / Please Discuss Stephen Smith / /	/ / / /

Resources:

6. N/A.

Consultation

7. N/A.

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Attachments:

A. Media release and talking points – *Defence Honours and Awards Appeals Tribunal Report – Inquiry into recognition for members of Rifle Company Butterworth for service in Malaysia between 1970 and 1989*

DEFENCE HONOURS AND AWARDS APPEALS TRIBUNAL REPORT – INQUIRY INTO RECOGNITION FOR MEMBERS OF RIFLE COMPANY BUTTERWORTH FOR SERVICE IN MALAYSIA BETWEEN 1970 AND 1989

MINISTERIAL TALKING POINTS

- **On 11 March 2010 the then Parliamentary Secretary for Defence Support referred the matter of recognition for members of Rifle Company Butterworth for service in Malaysia between 1970 and 1989 to the Tribunal.**
- **The inquiry has been completed and the Australian Government has accepted the recommendations in the Tribunal's report.**
- **The Tribunal recommended that:**
  - **<u>Recommendation 1:</u> No change be made to the medallic entitlements which currently attach to service with Rifle Company Butterworth in the period 1970 to 1989; and**
  - **<u>Recommendation 2:</u> No change be made to the medallic entitlements which currently attach to service with any other unit of the Australian Defence Force at Butterworth in the period 1970 to 1989 or since 1989.**
- **The report of the inquiry into recognition for members of Rifle Company Butterworth for service in Malaysia between 1970 and 1989 can be accessed on the Defence Honours and Awards Appeals Tribunal website at:**

<u>www.defence-honours-tribunal.gov.au</u>

Drafted	Name	Appointment	DTG
TPs drafted by	*Helen Gouzvaris*	*AD Policy (DH&A)*	*14 Apr 11*

Clearance	Name	Appointment	DTG
Subject Matter Expert	*Mr Pat Clarke*	*Director (DH&A)*	
Group/Service 1 Star or above	*BRIG Peter Short*	*DGBCSS*	
	This information is consistent with advice provided to the Minister by other means (E.g. QTB, MinSub etc) *(To be completed by 1 Star or above)*		***Yes / No / Not Applicable*** *(Delete which ever is **not** applicable)*
Strategic Communications Adviser			
ASCAM or delegate	*Rod Dudfield*	*DCAM*	*9 May 11*

Minister	Name	Appointment	DTG
Ministerial Action: *(To be completed by ASCAM)*			
Forward to/Cleared by			

For Information	Name	Appointment	DTG
Regional Manager Public Affairs			

MINISTERIAL - MEDIA RELEASE

Parliamentary Secretary for Defence Media Release

Defence Honours and Awards Appeals Tribunal Report – Inquiry into recognition for members of Rifle Company Butterworth for service in Malaysia between 1970 and 1989

The Parliamentary Secretary for Defence, Senator David Feeney, today announced the Government's response to the recommendations of the independent Defence Honours and Awards Appeals Tribunal inquiry into recognition for members of Rifle Company Butterworth for service in Malaysia between 1970 and 1989.

The Tribunal has recommended that:

> Recommendation 1: No change be made to the medallic entitlements which currently attach to service with Rifle Company Butterworth in the period 1970 to 1989.
>
> Recommendation 2: No change be made to the medallic entitlements which currently attach to service with any other unit of the Australian Defence Force at Butterworth in the period 1970 to 1989 or since 1989.

"The Australian Government accepts the Tribunal's findings. The inquiry into this matter and the Tribunal's report demonstrates the Governments commitment to the independent review of Defence honours and awards issues," Senator Feeney said.

"I acknowledge that members of Rifle Company Butterworth and others who served at Butterworth during this period may be disappointed by these recommendations", Senator Feeney said.

The Tribunal's full report is available at www.defence-honours-tribunal.gov.au. Further information on Defence honours and awards is available at www.defence.gov.au/medals.

Please use the clearance boxes below.

Drafted	Name	Appointment	DTG
TPs drafted by	*Helen Gouzvaris*	*AD Policy (DH&A)*	*14 Apr 11*

Clearance	Name	Appointment	DTG
Subject Matter Expert	*Mr Pat Clarke*	*Director (DH&A)*	
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Strategic Communications Adviser			
ASCAM or delegate	*Rod Dudfield*	*DCAM*	*9 may 11*
Minister	Name	Appointment	DTG
Ministerial Action: *(To be completed by ASCAM)*			
Forward to/Cleared by			

For Information	Name	Appointment	DTG
Regional Manager Public Affairs			

ATTACHMENT H

Department of Defence media release

26 July 2011

Defence Honours and Awards Appeals Tribunal Report – Inquiry into recognition for members of Rifle Company Butterworth for service in Malaysia between 1970 and 1989

The Government's response to the recommendations of the independent Defence Honours and Awards Appeals Tribunal inquiry into recognition for members of Rifle Company Butterworth for service in Malaysia between 1970 and 1989 was released today.

The independent Tribunal recommended that:

> Recommendation 1: No changebe made to the medallic entitlements which currently attach to service with Rifle Company Butterworth in the period 1970 to 1989.
>
> Recommendation 2: No change be made to the medallic entitlements which currently attach to service with any other unit of the Australian Defence Force at Butterworth in the period 1970 to 1989 or since 1989.

The Australian Government has accepted the independent Tribunal's findings. The inquiry into this matter and the Tribunal's report demonstrates the Government's commitment to the independent review of Defence honours and awards issues.

The Tribunal's full report is available at www.defence-honours-tribunal.gov.au. Further information on Defence honours and awards is available at www.defence.gov.au/medals.

Media contact: Defence Media Operations 02 6127 1999 or 0408 498 664

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ATTACHMENT I

FOR PRESS
TUESDAY 2ND MARCH, 1965

RAAF PR S3869/65

STATEMENT BY THE HONOURABLE PETER HOWSON, MP, MINISTER FOR AIR

NEW RAAF HOSPITAL AT BUTTERWORTH MALAYSIA

A RAAF hospital is to be established at the RAAF Base, Butterworth, Malaysia.

The Minister for Air, Mr Peter Howson, said today that the hospital would be known as No 4 RAAF Hospital, Butterworth.

Mr Howson said that with the decision to close down the British Military Hospital at Taiping early in 1965, it had been found necessary to provide alternative hospital facilities for RAAF, RAF, Australian and British Army personnel and their dependants in the area.

It had been decided to extend the existing sick quarters at RAAF Base, Butterworth, to form a hospital, and the main extensions were expected to be completed by the end of February, 1965.

Mr Howson said that the new hospital would be a RAAF unit under RAAF Command staffed jointly by RAAF, RAF and British Army personnel.

The hospital would absorb the medical and dental sections of Base Squadron, Butterworth.