



**Rifle Company Butterworth Review Group
&
Rifle Company Butterworth Veterans' Group
RESPONSES TO DHAAT QUESTIONS**

Throughout consideration of these questions and any other to arise subsequent to these notes, it is essential that all parties keep in mind the PERIOD of time over which these events occurred – 1970-1989. Practice, procedures and technical reference for today might well be quite different.

“The policy of the legislation and the public interest and will seem to me to demand that every reasonably available inference should be drawn in favour of the veteran.”

David Norman Ahrenfeld v Repatriation Commission
[1990] FCA 319, para 49.

“The absence, paucity or inadequacy of official records on the subject should not be held against the applicant...”

David Norman Ahrenfeld v Repatriation Commission
[1990] FCA 319, para 56.

1. Service classifications for ADF management purposes.

“All nature of service reviews are considered in the context of the legislation and policies at the time of the activity or operation under review.”¹

2. Service classifications for Defence honours and awards purposes.

“All nature of service reviews are considered in the context of the legislation and policies at the time of the activity or operation under review.”²

3. Service classifications for DVA purposes.

DVA classifications rely on a determination of service by the Minister for Defence.

¹ NOSB, *Background Paper Parliamentary Petition Dated 3 March 2014 Rifle Company Butterworth 1970-1989*, 28 April 2014, para 108.

² NOSB, *Background Paper Parliamentary Petition Dated 3 March 2014 Rifle Company Butterworth 1970-1989*, 28 April 2014, para 108.

3.1 Has service on RCB deployments been declared as “non-warlike” for DVA purposes?

No

3.2 On 4 October 2007 then Minister Billson advised the RCB Review Group that he was prepared to declare RCB service as “hazardous” under section 120 of the Veterans Entitlements Act 1986. Was that declaration made? If not, why not?

In 2007 then Minister Brian Billson declared that service with the Australian Rifle Company Butterworth (RCB) between 1970 and 1989 was non-warlike (15 November 1970-6 December 1972) or hazardous (6 December 1972-31 December 1989) service under the VEA. Minister Billson signed determinations to that effect on 18 September 2007.³ Unfortunately a purported administrative error meant those determinations were never entered into the register of legislative instruments and therefore had no effect.⁴ In 2009 the Department of Defence were in the process of rectifying that oversight and including the ADG's and RAAF police, who had been inadvertently omitted from the original determinations. However, the Department of Veterans' Affairs and the Repatriation Commissioner improperly intervened in that process and pressured the Department of Defence to overturn Minister Billson's decision citing concerns that any upgrade of service to RCB would have a significant impact on DVA's budget. The Repatriation Commissioner was adamant that Defence should not deviate from the findings of the Clarke review.⁵ By 2011 DVA were successful in having Minister Billson's determination overturned by Defence and both have insisted since that RCB service was never anything but peacetime.⁶

4. Legal basis of Australian presence on Air Base Butterworth (ABB).

4.1 During the period of RCB deployments was ABB

- **An Australian air Base;**
- **A Malaysian air Base; or**
- **A joint Malaysian/Australian air Base?**

Initially ABB was RAF, then RAAF, then RMAF. However, RAAF was essential to running the base, in particular the Integrated Air Defence System. See Russell Linwood's Submission 066 Annexes D - Strategic Planning and K - Shared Defence Arrangements for evidence trail of this sequence.

The 2014 Defence background paper to the petitions committee provides a brief summary of the airbase history from para 10 and is available on the data stick provided by RCBRG at document number 20140428.

³ See RCBRG Database documents 20070918 (hazardous) and 20070918A (non-warlike).

⁴ Bayles, N., *Proposed Reclassification of Service by Rifle Company Butterworth (1970-1989)*, Repatriation Commission Minute, January 2010, DVA FOI 30170 attached.

⁵ Rolfe, B., Commissioner, Letter to BRIG David, Nature of Service Review, CP4-3-163, 1 February 2010, DVA FOI 30170 attached.

⁶ Nature of Service Branch, *Report on Rifle Company Butterworth and ADF Nature of Service Classification*, 14 October 2011, RCBRG database documents 20111014 & 20111014A.

Also document number 19760910 *Review of RAAF Presence at Butterworth* 10 September 1976 highlights that the assistance of the RAAF in running ABB was essential for the Malaysia's war effort against the CT (in particular see para 4c).

4.2 During the periods of RCB deployments, what was the legal basis under which RAAF asset and personnel were based at ABB? – please provide relevant documents.

FPDA, then Bilateral Agreement (Exchange of Notes between Australia and Malaysia). See Russell Linwood's Submission 066 Annex D - Strategic Planning and Annex K - Shared Defence Arrangements for related documents.

The Exchange of Notes is available on the RCBRG database at number 19711201. See in particular:

Para 1 (1)(C)

Annex 3 – Status of Forces

Section 2 – Security

Section 4 – Carriage of Arms

4.3 During the periods of RCB deployments, what was the legal rights and obligations of the ADF to protect the RAAF assets and personnel at ABB? - please provide relevant documents such as the Joint Defence Plan OPOD 1/71. Annex A to OPOD 1/71 (Sep 71) Legal aspects of a shared defence situation in the defence of ABB or similar.

See Russell Linwood's Submission 066 in Annex F – Operational Directives (where every known order/directive is listed with cross reference to the original documents stored on the USB submitted as an Enclosure) and Annex K - Shared Defence Arrangements.

5. Purpose of RCB Deployments.

5.1 Does Defence now contend that the sole or primary purpose of RCB deployments was training:

- for RCB personnel;
- for Malaysian defence personnel; or
- jointly with Malaysian defence personnel?

Defence to answer.

5.2 Does Defence agree that the sole or primary purpose of RCB deployments was the protection of Australian personnel and assets based at ABB? If not, what does Defence say was the sole or primary purpose?

Defence to answer.

5.3 In what overseas countries other than Malaysia did the RAAF have assets and personnel based during the period of RCB deployments?

Ubon (THAI), Singapore, RAAF Unit Hong Kong, and Vietnam (In Vietnam, some US bases also had RAAF assets deployed to them). Also during the period of RCB deployments the RAAF had assets and personnel deployed overseas on Peacekeeping Missions in the Middle East, India, and Northern Africa.

5.3.1 In each such case, were Australian Army assets and personnel deployed for the protection of those RAAF assets and personnel?

No Australian **Army** units protected any of these. Foreign troops did, and RAAF ADG at Ubon. Australian Army assets and personnel were not deployed for the protection of peacekeeper RAAF assets and personnel because the extant threat and RAAF mission did not warrant such deployment.

5.3.2 What was the status at each relevant time of Air Force's Airfield Defence Guard mustering? Why was infantry deployed for the defence of an airbase in lieu of the Air Force mustering who (now) are responsible for air base security?

Until 1983, the RAAF Airfield Guard capability was lodged in four individual Rifle Flights based at four separate RAAF Airbases within Australia (RAAF Bases Amberley, Williamtown, Richmond, and Fairbairn). The Rifle Flights each comprised a Flight headquarters and three Rifle Sections with numbers, organisation, weapons, and equipment similar to that of an Infantry Rifle Platoon. In 1983 the four Rifle Flights were brought together and formed No 2 Airfield Defence Squadron (2AFDS); the squadron order of battle (ORBAT) was then raised as a Squadron Headquarters, Four Rifle Flights, and a Support Flight. From 1983 2AFDS provided RAAF with a rapid deployment capability of an equivalent Infantry Rifle Company for the protection and security of deployed RAAF assets and personnel. 2AFDS trained in role-specific tasks aligned with the protection and security of RAAF Vital Assets and Personnel e.g. Aircraft and Aircrew. In 1992 this capability was further expanded with the raising of two additional airfield defence squadrons based on reserve personnel, each with cadres of regular force airfield defence guard personnel.

Australian Army assets were deployed for the defence of an airbase, in this instance Air Base Butterworth, because RAAF in the early 1970s did not possess the capability, nor capacity, to provide Airfield Defence Guards at equivalent company strength required to meet the task of providing a continuous 24/7 quick reaction force (QRF) of platoon strength and Vital Asset Protection (VAP) for the airbase Vital Points (VPs). It was not until 1983 that RAAF raised the capability that would enable RAAF Airfield Defence Guards to be able to undertake the role of RCB. However, RAAF with only one airfield defence squadron still did not have the capacity to provide continuous, permanent 24/7 QRF and VAP for the airbase without being heavily reliant on Army support.

On several occasions, an RAAF Rifle Flight from 2AFDS was attached to RCB for three-month rotation under command of the respective Infantry Rifle Company.

5.4 Following the period of RCB deployments, in what overseas countries other than Malaysia has the RAAF had assets and personnel based?

Since the RCB deployments, RAAF has deployed assets and personnel to Cambodia, Somalia, Kuwait, East Timor, Afghanistan, UAE, Iraq, Iran, and Syria.

5.4.1 In each such case, were Australian Army assets and personnel deployed for the protection of those RAAF assets and personnel?

On several of these deployments Australian Army assets and personnel were deployed for the protection of RAAF assets and personnel. On other deployments the protection of RAAF assets and personnel was provided by a joint force of Australian Army and RAAF Airfield Defence Guard assets and personnel.

5.5 Apart from major exercises, at any RAAF base in Australia, from 1970 to date, has the Australian Army provided protection for RAAF assets and personnel?

- If yes, which bases, when and for what reason?
- In each such case, were the rostering of Army personnel the same as those for RCB personnel during the period of RCB deployments?

Defence to answer.

6. Threat to ABB security.

6.1 From time to time during the period of RCB deployments:

6.1.1 Was there an operative declaration of a state of emergency or similar by the Malaysian Government?

Yes. See Russell Linwood's Submission 066 in Annex E – Malaysian Emergency Legislation. See also the RCBRG submission, beginning at para 125.

6.1.2 Did the Malaysian Government enact or authorise the use of special security powers?

Yes. See Russell Linwood's Submission 066 in Annex E – Malaysian Emergency Legislation. See also the RCBRG submission, beginning at para 125, particularly para 129.

6.2 During the period of RCB deployments:

6.2.1 What from time to time was the assessed security risk to Australian assets and personnel at ABB?

See Russell Linwood's Submission 066 in Annexes D - Strategic Planning, F - Operational Directives, J -Intelligence Sources/Enemy and K – Shared Defence Arrangements, right hand columns.

Over the years Defence has moved from denying that there was any danger at all (“no war or emergency existed”) to claiming that “...the level of threat was consistently assessed as LOW”.⁷ However, various documents assessing the threat

⁷ See for instance: Griggs, R.J., Vice Chief of the Defence Force, Letter to RCB veterans, April 2018; it is a common statement through many of the Defence documents. Document 20180422 of RCBRG database.

to Butterworth at the time employ adjectives ranging from 'low', to 'increased likelihood'⁸, to 'definitely'⁹, to 'likely'¹⁰.

The use of such adjectives has however been roundly condemned as being unhelpful in determining service when all that is required to meet the threshold is 'risk' itself. As Justice Clarke explained:

"What should be emphasised is that the practice of focussing on 'imminent' risk of harm has led to inconsistency between decisions and reliance on fine points of distinction to justify decisions in cases where the factual circumstances are almost identical to those in earlier cases but the result is different."¹¹

The Full Court of the Federal Court has also weighed in on this topic and found that:

"In applying such a provision, therefore, it is desirable to eschew the use of adverbs and adjectives, that is to say, not to read into the provision words which are not there. In referring to the word "danger", Administrative Appeals Tribunals have used adjectives such as "real", "actual" and "substantial". But the word "danger" stands for itself. If a serviceman incurs danger from hostile enemy forces, that circumstance is sufficient to satisfy the statutory requirement. It is indeed the specified requirement. No adjective can enlighten that concept. When applying the word "incurred", some Administrative Appeals Tribunals have used the expression "reasonable expectation". But, again, the word "incurred" is an ordinary word of the English language. It has a dictionary meaning and is used in that sense. Other words should not be substituted for it."¹²

The "specified requirement" under the policy and legislation pertaining to the time of RCB service was when "...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..."¹³ It follows therefore that the only "assessed security risk" required to find that RCB should have been allotted and thereby gave *warlike* service is exposure "...to potential risk...from...hostile forces..." and that has been well established even in the documents provided by Defence.

Given the importance of the incurred danger test to the nature of RCB service the Tribunal must consider well established legal precedent on this issue. To assist the Tribunal the RCBRG has produced a summary of Federal Court cases dealing with this issue and other relevant matters. This document is at Attachment A.

⁸ JIO, 2 October 1975, *JIO Assessment of Threat and Likely Method of Attack*, 554/9/33(87), as Annex A to: Rowland, 7 October 1975, *Security of Butterworth*, addressed to 'Minister', para 16. Document 19751007 of RCBRG database.

⁹ ANZUK Intelligence Group (Singapore), Note No. 1/1971, 30 November 1971, *The Threat to Air Base Butterworth up to the End of 1972*, Singapore, 1971, para 54. Document 19711130 of RCBRG database.

¹⁰ *Ibid.*, para 57.

¹¹ Clarke, J, *Report of the Review of Veteran's Entitlements*, January 2003, para 11.52.

¹² Davies, Wilcox and Foster JJ, *Repatriation Commission v Walter Harold Thompson* [1988] FCA 212, para 8.

¹³ Cabinet Minute, Decision No, 1048, Submission No. 834, *Principles on which Eligibility for War Service Homes Loans is determined and the Consequences of their continued application on the Demand for Loans – Examination and Report by Inter-departmental Committee*, Melbourne, 7 July 1965, Recommendation 1. Document 19650707 of RCBRG database.

6.2.2 What from time to time was the assessed consequence of an attack on Australian assets and personnel at ABB?

See Russell Linwood's Submission 066 in Annexes D - Strategic Planning, F - Operational Directives, J -Intelligence Sources/Enemy and K – Shared Defence Arrangements, right hand columns which provide the evidence.

Some documents located by RCBRG describe concerns about the consequences of attacks that apply to the entire period of deployments:

“To ignore the threat of attack is to risk an extremely high loss in terms of assets with attendant military ignominy, and in terms of political, psychological gains for the CTO.”¹⁴

“...the obvious and immediate effects from rocket mortar and other forms of attack... [would be] the death and injury to personnel and families. Damage to aircraft and facilities will provide substantial political/psychological propaganda [sic] to the CTO.”¹⁵

The briefing the above quote is taken from then goes on to discuss the “personnel effects” under three categories:

Political within Australia – agitation for withdrawal from Butterworth, such withdrawal being described as “...politically advantageous to the CTs and potentially damaging to Australia’s prestige in SEA.” Para 12a.

Morale in Butterworth – an unknown number of families could demand repatriation to Australia. Para 12b.

Likely effect on LECs [Locally Employed Civilians] – after the first attack local employees could be expected to absent themselves from work for several days, possibly requiring bringing in a civilian workforce from Australia. Para 12c.

Para 13 then goes on to discuss how increased levels of preparedness for attack or construction of defence works could also precipitate the morale and LEC effects described above.

7. Preparation of RCB personnel.

7.1. What instructions were issued from time to time for the content of briefing to be provided to RCB personnel before deployment to ABB from either Singapore or Australia?

Russell Linwood's Submission 066 in Annex F - Operational Directives. For deployments from Australia, only the RCB Company Commanders got to see those during their pre-deployment briefings, and some of those classified documents were accessible at ABB itself under control of the RAAF Int Officer. Refer to Testimonials by Company Commanders.

7.2. What pre-conditions had to be met by Army personnel before deployment

¹⁴ McNamara, N.P., *Butterworth Security*, 564/8/28, 14 October 1975, para 3.

¹⁵ Department of Air, *Brief for DCAS Concerning Security of Butterworth*, 564/8/28, Late 1975, para 12, RCBRG database 19750915 and 19750915A.

with RCB?

For both periods of deployment (FESR (1 Nov 70 to 29 Aug 73) and then direct from AS (29 Aug 73 onwards) the requirement was Draft Priority 1 as it was at the time each coy deployed. This DP1 was the same as for Vietnam service deployment.

7.2.1. Additional training?

Huge obligatory pre-deployment training specific to airfield defence, security including riot control. RCBs trained for mission-specific tasks, they did not just pack up and go to Malaysia for training. See examples in [Russell Linwood's Submission 066](#) in Annex M – The issue of training.

7.2.2. Physical fitness?

DP1 standard.

7.2.3. Provisioning and equipment standards?

DP1 standard, war scales for everything.

7.2.4. Consent to posting?

No such thing as 'consent to posting'. You got deployed unless under-age or a compassionate Left Out of Battle (LOB).

7.2.5. Current will (or acknowledgment of decision not to complete)?

Mandatory part of DP1 admin.

7.2.6. Numbers of medically qualified or trained personnel?

Extra medics were assigned for the AS-based deployments, and ALL ranks did extensive further first aid and casualty evacuation training.

7.3. Did these pre-conditions, or any of them, differ from the pre-conditions for deployment on peacetime service in Australia? If so, in what respects?

Yes. Only DP1 ready troops were deployed with an RCB for the obvious reason; they were being deployed to an area where an armed conflict was underway. The rest of the Army continued 'as they were', being in a peacetime mode. Only the SASR was kept at a high stage of readiness, and from 1980, one battalion of the Operational Deployment Force. Most of the Army was NOT at DP1 status.

7.4. Why were RCB personnel required to undergo jungle training before deployment, given that their RCB responsibility was confined within the boundary of ABB?

No Mounting Instruction known listed jungle training as a pre-requisite. Not all RCBs to deploy underwent 'jungle training' before they went. But they all DID complete the QRF-specific prescribed training program mandated by Headquarters Fieldforce Command the Mounting Authority for RCB, of which there are several examples in [Russell Linwood's Submission 066](#) Annex M – The issue of training. Further, RCB responsibilities were NOT confined within the boundary of ABB. The operational tasks included protection and evacuation of RAAF MQ dependents, most of whom

resided on Penang Island, NOT the base. And those at the base were OUTSIDE the perimeter fence on the west side of the North-South main road. Although RCB weren't supposed to get involved in offensive action outside the ABB perimeter.

ROE applied everywhere RCBs went outside the wire for ANY reason, including when RCB troops travelled to ranges outside of ABB for live-firing training where weapons and live ammunition were carried by all ranks. On such occasions all ranks were reminded of the potential for CT ambush and ROE were highlighted. Refer to Attachment B (2 pages) – statutory declaration of Anthony Howard Jensen, and submission 067 by Lieutenant Colonel Graeme Mickelberg.

7.5. What pre-conditions must be met by Army personnel assigned to garrison duty within Australia?

Any military person can be, and was, rostered as a duty officer/a duty NCO/or the guard. NO personnel were "assigned to garrison duty" in AS. Cities, such as Townsville, might be referred to as "garrison towns" and personnel were posted there but were not "assigned to garrison duty" as such. They did not need to be DP1 to be posted to a "garrison town". Certainly, apart from training, such postings never involved the carriage of weapons let alone live ammo except for RACMP in the course of their policing duties, and paying officers/pay guard in the era we paid all ranks with cash.

8. Situation on RCB deployment.

8.1. What instructions were issued from time to time for the content of briefing to be provided to RCB personnel upon arrival at ABB?

Only Defence can answer this. However, the large number of monthly RAAF Security briefs refer to these briefings. See Russell Linwood's Submission 066 Annex J – Intelligence sources/Enemy. The Tribunal is also referred to the statutory declaration of WGCdr (RETD) Gary Penney at Appendix D of the RCBRG submission.

8.2. What instructions were issued from time to time for the content of briefing to be subsequently provided to RCB personnel during their period at ABB?

Defence to answer.

8.3. Was the application of military discipline during RCB deployments the same as that for peacetime service in Australia?

No.

8.3.1. If not, what was the nature and reason for any difference?

WOWS. The requirements of the Army Law Manual were in force the entire time. RAAF had no power of discipline over the RCB, other than the requirement for obedience of lawful general orders; RCB remained under command of Army the entire time.

While deployed as part of RCB, Australian Army personnel who were charged with a disciplinary offence were issued a charge form reading 'Whilst on Active Service did'. The punishment then imposed, should that soldier be found guilty of the offence, was aligned to the higher table of punishments accorded to the Summary Authority under Active Service Conditions. The enhanced discipline under WOWS

was in force because, in the face of a hostile threat, such increased discipline was required.

8.4. While on RCB deployment:

8.4.1 Could RCB personnel be accompanied by spouses or children?

No. RCB was unaccompanied for the entire period. However, during both the Malayan Emergency and Konfrontasi – both wars – AS troops, including Army troops were accompanied. Those earlier deployments were for a two-year term.

8.4.2. Were RCB personnel required to live on base?

Yes. All ranks lived under spartan conditions; officers and WO/SNCO were billeted in the messes when not on duty. The OC had a special phone in his quarters.

8.4.3. Were RCB personnel permitted to leave ABB while not on duty? If yes, on what conditions?

Yes. Leave release varied with the threat level. Sometimes there were curfews and confined to barracks e.g. Chinese New Year, CT anniversaries. It should be noted that Australian Army personnel deployed for operational reasons to Nui Dat Vietnam were permitted in sub-units to a 3-day R&C rest period accommodated at the Peter Badcoe VC Facility in the ALSG Base at Vung Tau. Troops deployed at the ALSG Base at Vung Tau were allowed daily leave into the town, restricted by curfew timings.

8.5 During the period of RCB deployments:

8.5.1 Were some RAAF personnel required to live on base?

Yes, all single personnel were required to live in on-base quarters. All Aircrew, Airfield Defence Guards, Unit executive personnel and other essential base personnel were required to live in on-base married quarters and accommodation blocks. Some of these personnel were also housed in married quarter areas adjacent to the airbase.

8.5.2. Were some RAAF personnel permitted or allowed to live off base?

RAAF personnel were not permitted to live off-base if they were single. Married personnel not designated as being required to live on-base were required to live in RAAF procured married quarters within designated married quarter areas. These married quarters were located in enclaves on Penang and in close proximity to the airbase. This was also the case during the first Emergency.

No RAAF personnel or their families were permitted to secure private rental accommodation.

Australian civilian teaching staff employed at the RAAF School Penang were housed collectively at the Eastern and Oriental Hotel on Penang.

8.5.3. Were RAAF personnel living on base permitted to leave ABB while not on duty?

Yes. Same as Army.

8.6. What security arrangements were provided for RAAF personnel who did not live on base?

Periodic armed escort of the Penang to ABB daily buses, and MQ patrolling by both RAAF police and RCBs who were always armed and carried live ammo. Families Protection Plan. The off-base married quarter areas were subject to regular 24/7 patrols by RAAF Service Police based on Penang and at Butterworth.

8.7. What plans were in place for the extraction of families from Malaysia in the event that it was required?

Plan Downstairs (19660615), and the ABB Families Protection Plan (OP Order 2/70, 19720508). These are both in the primary documents supplied. Use 'Find' function in the Summary of documents.

There was regular activation of full base personnel re-call to duty during stand-down periods. On those occasions the RCB was stood-to, as were all Base RAAF Airfield Defence elements, RAAF Service Police, and RAAF Base Combatant Personnel Flights; this also required the full activation of the Base Ground Defence Operations Centre. These recalls were based upon exercise generated threats that related to incidents posing a threat to the airbase, assets, and personnel.

Personnel were also involved in 'war-gaming' the possible evacuation of families from Malaysia, this included input from elements from the Base Airfield Defence, RCB, RAAF Service Police, 4 RAAF Hospital, and the Base Executive.

8.7.1. Who was responsible for the maintenance of this plan?

OC RAAF Butterworth.

8.7.2. Was this plan updated regularly, rehearsed, trialed or enacted?

Defence to answer.

8.7.3. What 'trip-wires' would likely have generated a decision to evacuate families from Malaysia?

Defence to answer. RCB task was helping to carry out any evacuation as ordered.

8.7.4. On balance, and noting the numbers of dependents involved (approx. 2800), how long might this operation have taken, and what sort of lead time would have been required to prevent families from being exposed to unacceptable levels of risk?

Defence to answer.

8.8 During the period of RCB deployments:

8.8.1. Are there any records of hostile intrusions onto or attacks on ABB?

None known to be documented. Several RCB veterans report actual contacts in Statutory Declarations, and the RAAF assessments listed unauthorised entries.

8.8.2. Are there any records of RCB personnel being injured or killed during deployment?

Yes. We have the full list of Fatal Non-Battle casualties (Attachment C). None would have died had they not been deployed. There will be no reliable data on Non-fatal Non-Battle Cas, but a yardstick is that Russell Linwood's B Company 1 RAR alone had quite a few and one had to be medevaced to AS. The only possible way to answer this question is to review the RCB individuals' med docs, OR 4 RAAF Hospital records who treated all blue and green casualties, and many dependents.

8.9. Were RCB personnel issued with weapons any different to those issued to Army personnel on duty in Australia? If yes, what were those differences and why did they occur?

No. War scales weapons, with BOTH first line war stock ammo AND a training line issued ADDITIONAL to first line ammo scale of issue. TOBIAS (night vision and movement activated sensor system trialled in the 1970s) was additional kit.

8.10. Did the service records of any RCB personnel contain a form AAB83 (or any other form) annotated "WOWS" or "whilst on War Service" or similar?

Yes. Some records were, but most not. For example, Russell Linwood's AAB 83 shows nothing about being in Malaysia. Our database has several primary examples of AAB 83 with WOWS and emplane/deplane data for some RCB veterans.

8.11. Is there a nexus between a disciplinary environment (*Whilst on War Service*) and the physical environment to the extent that WOWS disciplinary standards apply exclusively to warlike situations?

WOWS discipline WAS in effect. Mounting instructions show this. Russell Linwood's post-deployment report (Document 19820216 contains an Annex listing all offences heard under the WOWS and includes punishments allowed only under that caveat (up to 28 days detention). All such disciplinary outcomes were upheld by AS-based Defence Legal authorities at the time.

See the discussion of this point by Professor Dale Stephens at Appendix H of the RCBRG submission:

"Finally, my attention was drawn to Field Force Command Staff Instruction No. 2/79 dated 6 July 1979, that confirmed that section 54 of the then applicable version of the Defence Act applied to the RCB. Section 54 stipulates that such a deployment expressly occurred under the conditions of 'war like service' for the purposes of discipline, thus activating various offences that can only be charged when on 'war like' service."

8.12. What records are there of RCB personnel:

8.12.1 conducting training of Malaysian military personnel;

None. RCB did NOT train Malaysian personnel.

8.12.2. engaging in joint training with Malaysian military personnel;

Only a small number of times. *Harangaroo* was one of the exercises, and they only started well after the 1973 deception kicked in. See right hand column of Russell Linwood's Submission 066 Annex -C – Tour of Duty Database for known examples of such exercise. Even then a QRF was retained at ABB.

8.12.3. engaging in training away from ABB separately from Malaysian military personnel;

At Pulada field firing range, Langkawi Island (bombing range) and small arms range at Kulim. A mortar range at Sungei Petani was used by at least two RCBs who took mortars. We have photographs and their parent battalion names. Such were Support company acting as a Rifle Company, and ALSO carrying their mortars. None of these live firing training activities involved the MALs other than checking in via their Range Control Officer. Range sentries were always armed with live ammo and applied the ROE to resist CT attack and loss of high-value weapons and ammo.

8.12.4. undertaking duty other than training away from ABB? – please provide details

None known. Given our primary task was to maintain max QRF capability on the ABB, from 1973 on RCBs only left the base for live firing, or the very few ‘arranged’ exercises.

8.13. What Rules of Engagement were issued to RCB personnel from time to time?

See Russell Linwood’s Submission 066 Annex G – Rules of Engagement. Shooting people is explicitly, potentially and likely to be lethal: rules can say ‘try to shoot to wound’, but that is totally unrealistic when all soldiers are taught to shoot centre-centre. Note also that every QRF also carried machine guns and automatic rifles (M16A1 and later, the F88).

8.13.1. How did such ROE differ from those issued to Army personnel in Vietnam or other conflicts?

The ROE were close to identical for RCB as in Vietnam (e.g., Nui Dat Base and Vung Tau Base) which were static defended localities. The Tribunal is referred to Submission 053 Lieutenant Colonel Gary McKay MC (Retd) in which it is stated that RCB’s ROEs were “...not dissimilar to those used on operations in South Vietnam...”. The Tribunal should also refer to the discussion of ROEs in the opinion of Professor Dale Stephens at Appendix H of the RCBRG submission.

**8.13.2. Are ROE issued to Army personnel on garrison duty in Australia?
How do such ROE differ from those issued to RCB personnel?**

No. The only time live ammo and rifles were carried by soldiers on a defence base was when they acted as an armed pay guard. This was during the time when ADF personnel were paid in cash and the pay guard were issued a ROE that explained what they were to do if threatened by a thief. In MAL, EVERYONE was armed, and in the case of conveyed ammo and/or weapons, designated people carried live ammo to protect them. Remember that the CT had obtained most of their weapons from captured sources. See Russell Linwood’s Submission 066 Annex A – Linwood Testimonial.

8.14. In the C2 arrangements of the day, how would ROE REQUESTs or equivalent have likely been handled/processed?

There is no evidence 'ROE REQUESTS' (variation requests) were ever made. All RCBs carried out the ROE in force at the time.

8.15. Who within the ADF “owned” the RCB ROE/OFOF; who was accountable for processing ROE REQUESTs or equivalent?

For both Army and RAAF, it was the highest commanders to issue their Operations Orders and Instructions that contained the ROEs. Firstly, it was RAAF, then Army's ALSO kicked in later. This is readily demonstrated in Russell Linwood's Submission 066 Annex F – Operational Directives and Annex G – Rules of Engagement.

8.16. Noting that the RCB OFOF limited the ability to engage beyond the base perimeter, is there any evidence that off-base operations, such as guarding the Mirage crash site approx. 5km North of ABB in Apr 1974, any of the detachments to Pulada, or transits to and from the range, generated an ROE REQUEST for amended ROE?

No known evidence. We DO, however, have photos of the crash and RCB troops being deployed to guard the site, protect RAAF recovery personnel and help with recovery.

8.17. Are Australian ROE seen as guidance or as direction to Commanders?

ROEs are directives. Not 'guidance'.

8.18. Is the inherent right of self-defence (including the ability to employ lethal force) an artefact of ROE/LOAC/National/International/Other Law?
• **Is an Australian civilian, for example, able to employ lethal force in self-defence subject to similar provisos/limitations) just as the RCB could?**

Jurisdictions in Australia will have slightly varying self-defence laws (for instance what, if any, force may be used to defend property). Generally however, the requirement for “reasonable proportionality” – you can't shoot someone just because they are trespassing for instance – did not apply to RCB which *could* shoot trespassers simply for not stopping when challenged.

8.19. Under the December 1978 OFOF, what level of force was available to the RCB to protect the base and its personnel (i.e., distinguishing between individual/unit self-defence and the right to protect others; and removing the inherent right of self-defence from consideration)?

ROEs for ABB sentries and patrols were for initial response, as is the case for all ROEs. If the enemy avoided or overcame a sentry and/or a patrol and penetrated into the base the RCB would be deployed to counter the enemy's penetration and attack it, initially with the QRF and up to the full company as required. In such a situation the ROE in that combat engagement became lethal. RCB was under operational control of the RAAF Commander as the operational directive specified.

8.20. In other words, did the RCB ROE provide for the use of lethal force in the defence of others?

Yes. RCB was part of the Shared Defence arrangements inside the perimeter wire, and ALSO in the MQ areas where civilian dependents and locally engaged civilians lived and worked.

8.21. Where do the RCB ROE (OFOF) sit on the ‘spectrum’ of OFOF options?

The Tribunal should refer to the discussion of ROEs in the opinion of Professor Dale Stephens at Appendix H of the RCBRG submission.

8.22. Noting that the M60 GPMG was routinely deployed as part of the QRF, how likely is it that the weapon could have been confidently employed in accordance with the ROE, particularly with respect to the requirement to ‘shoot to wound’?

Recall the RCB was a combat infantry unit deployed as a Quick Reaction Force to fight to protect the ABB assets and personnel. They were not sentries or patrols on the “front line” but were, in defence deployment terminology and tactics, held in reserve to counter enemy penetration into ABB to launch a counter-attack to kill or capture the enemy. Most likely an enemy ground attack would occur at night. The battle will be a firefight and the machine gun’s firepower is critical to success.

One does not use a machine gun to ‘wound’. The mere inclusion of the MGs as authorised weapons in even the smallest QRF (Section strength) let alone an entire company which has 11-12 real machine guns indicates their use was permitted. The GPMG M60 was an area weapon that had a cyclic rate of fire of up to 650 rounds per minute and would not usually be employed to engage point targets.

8.23. What should the Tribunal make of the size and nature of the RCB weapons holdings (including HEAT and Anti-Armour weapons and ammunition), particularly as it relates to the ROE?

This question of anti-armour/direct fire weapons using HEAT reinforces the fact that the RCB was there to fight with up to its full assets. Companies also had hand grenades and M203 40mm HE, although these were NOT carried by the normal QRF. But, like the 66mm and 84 mm HEAT ammo, were in the ammo dump not far away and able to be got at quickly.

RCB’s ammo allocation reflected a War Scales allocation to complement the weapons allocation as addressed in response to Question 8.9 above. Further, subject to changes in the tactics and weapons the CTs might employ, that might become apparent from intelligence collected, a requirement could arise for the QRF to carry other weapons in addition to rifles and GPMG.

**8.24. Throughout the duration of the deployment, how often was the RCB executive briefed/re-briefed on relevant changes to tactical environment?
How and when were these briefs conducted?**

The RCB OCs received classified briefings prior to leaving AS (from 1973 onwards) by the Mounting Authority.

The OC was updated on arrival at ABB, this was also a classified briefing and briefing material could not be removed from its location. The OC was included in the RAAF commander’s weekly meetings that included the RAAF Ground Defence Officer (GDO). The RCB command were also regularly briefed following monthly briefings from the local MAF Brigade Commander and his executive. These briefs were conducted by RAAF Airfield Defence Personnel in conjunction with the RAAF Service Police, and the Australian Army Ground Liaison Officer based at Butterworth.

The GDO usually briefed the entire RCB soonest after arrival. The RAAF GDO and the Army Ground Liaison Officer (GLO) and the OC RCB were a permanent three-way 'connect'.

Sometimes, changed states of 'Alert' led to special briefings. These are illustrated as having happened in the regular Security Reports listed in Russell Linwood's Submission 066 Annex -J – Intelligence sources/Enemy. These same reports were stated by Defence to 'not exist' as recently as 2018. Our database shows all available ones found.

The Tribunal is also referred to the statutory declaration of WGCDR (RETD) Gary Penney at Appendix D of the RCBRG submission, which discusses the conduct and content of these briefings.

8.25. Were there any MAF Liaison Officers assigned to the RCB on a standing basis?

Not to our knowledge. During Russell Linwood's command for example, he never met or spoke to an MAL officer, only the GDO and GLO, by order. The MAL had their own Officers/SGTs/OR mess/lines and RCB did not mix with them other than to wave at each other occasionally, or on rare occasions, talk in the GDOC if it was activated. Other company commanders making submissions to the Tribunal will have their own experiences; these are expected to be similar/same.

However, at times there were Malaysian soldiers attached down to the section level, primarily for interpreter functions (see Submission 001 – Mr Michael-Connolly).

8.26. Did the RCB have any Liaison Officer positions embedded within the MAF?

No. It was a concern Russell Linwood raised on arrival; surely the two armed forces on the base should have LOs, but that was NOT the case. RCBs only 'interacted' with the MAL forces if the GDOC was activated. Only the RCB was capable of providing a force that could 'manoeuvre' and respond at short notice to bring significant fire on a target. The MAL Handau and RAAF dog squads/police were small patrol/sentry in nature and lacked the capability to 'manoeuvre' (except for an attack dog being unleashed to take on a single intruder or identified enemy).

8.27. What was the mandated degree of weapons readiness for RCB personnel while on duty?

The QRF's (and anyone else's when leaving the base carrying weapons) degree of weapon readiness was always 'on order' from their immediate superior (normally the section commander). QRFs, standing patrols, sentries and ambush patrols were in the ACTION condition (magazine loaded and weapon cocked). QRFs always carried live ammo including 100 rounds of link belts of ball ammunition for the M60 and the MAG58 as well, which was the standard 1 in 5 tracer. Some RCBs had the magazine-fed Bren Gun 7.62mm, but that was still a machine gun. Outside the perimeter fence, red-taped magazines of ball ammo were carried by designated persons, even on the few exercises undertaken.

8.28. What was the degree of weapons readiness as it applied to live rounds?

There is no difference between live ammo and blank when one refers to 'degrees of weapon readiness'.

8.29. Was QRF temporal and tactical performance assessed by RCB staff (observers)?

There were no 'observers' as such. No one that was separate to the QRF and just standing around watching. The duty officer concerned called out the QRF at least twice per shift and the QRF itself never knew if it was a drill or not. That means that anyone in the area not attached to the QRF was a potential threat and in danger of being engaged by the QRF.

QRFs were, however, observed by their chain of command. The duty officer would accompany the QRF to the VP in a tactical manner and observe/assess. Sometimes, Coy HQ staff took part at times as well, but again, as part of the QRF. We are unaware of any formal 'observation' by anyone outside the RCB of the QRF deployments every night.

8.30. Were there routinely observers on the ground at Key Points throughout QRF drills?

As above, when they travelled as part of the QRF. Always the duty officer in charge of the QRF accompanied it. From time to time, other people watched all sections conduct their initial daylight 'walk through' battle drills of deployments out to the many VPs. A great concern was a 'green on blue' accidental engagement at night (with Malaysian guards/patrols). There were no radio comms between the RCB/QRF and the deployed MALs in the sentry posts or observation towers, so very high vigilance was exercised to maximise the 'friend' identification between the two forces and to reduce the chance of a 'green on blue' clash.

8.31. When were weapons issued (e.g., 0800 daily for the duration of QRF duty vs continuous access)?

Weapons were issued 24/7 for the duty QRF section and usually, the parent platoon that was also on short notice to move. Extra ammo and the storeman were in the armscote and available for access. The assigned QRF section/platoon was on one minute's notice to move.

8.32. How often, given normal scheduling limitations, might any given RCB member have performed QRF duties, perimeter patrols ?? or any other armed activity (not including training)?

This is not easy to answer, especially given the total length of RCB deployments. One of the QRF tasks was a morning clearing patrol of the perimeter. It is also confirmed that at times, the QRF patrolled sections of the perimeter fence as a result of an alert. At times of high alert RCB also manned weapons pits on the likely enemy approaches to the base (see Attachment D – statement by Lieutenant Colonel Phillip James Charlesworth, Submission 053 by Lieutenant Colonel Gary McKay MC, and Submission 089 by Lieutenant Peter Michelson). Such was, of course, high risk due to the danger of 'green on blue' as the Malaysians were not well trained and quite jumpy, but this was part of the operational necessity of being the QRF. Everyone in rifle platoons took turns in section-sized QRFs, and everyone else in the supporting platoon/HQs took part some time to cover gaps, increase firepower capability, gain experience of the ground where the many Vital Points were. ABB was a large base and there were a large number of VPs. The primary evidence includes a map of the base that shows these, and a large copy was in the RCB lines in the OC's office and the Duty Room. On occasions, RCBs were confined to the ABB because of

heightened alert, meaning EVERYONE was technically on QRF duty. To try to say 'how often' might a soldier be on QRF is problematic. THAT was the core business; training and admin was subservient to that need.

8.33. On average, what proportion of the three-month tour would have been dedicated to other tasks/events including other individual or collective training, administration or leave?

This varied. Most RCBs took no part in training exercises, but when not on QRF roster, carried out task-specific training including RAAF-sponsored demonstrations of their airframes, ammunition, Search and Rescue apparatus, physical conditioning and local security of the RCB lines themselves. The 'best' way to answer this is 'as for 8.32. above'.

For RCB, as with other operational deployments, including Vietnam and subsequently, Army troops are required to continue to train to maintain skill levels. Such training included live firing, etc with the objective of maintaining operational readiness.

8.34. Were only those on QRF/Perimeter patrolling duties at any given time armed?

No. Except when it was safe enough to be on leave, and then only in certain areas, all personnel off-base carried weapons. Even when training off base with blank ammunition some live ammo was also carried in case of enemy contact or encounters with wild animals. On base carriage of weapons for other than the immediate QRF varied with the threat level.

There are examples in submissions and stat decs of examples of armed duties other than QRF/Perimeter patrolling. For instance see:

Submission 001 – Mr Michael-Connolly: standing patrols (this is a fixed position early warning group beyond the main defensive position).

Stat Dec – Mr Mark Anthony Butler: ambush patrol (Attachment E)

Submission 049 – Mr Leslie Ray: guarding downed Mirage beyond the airbase.

8.34.1. How were Lines Piquets armed?

RCB lines picquets carried pick handles and a radio, in pairs, not firearms. The QRF section and its parent platoon was always billeted in the lines and they could provide any firepower locally if required. The actual QRF was in a special facility of its own. See photos in PowerPoint provided in Russell Linwood's Submission 066.

8.35. Noting the above, how many days of a tour on average would an RCB member have carried a firearm?

Daily unless on leave or in hospital.

8.36. Is the extent to which the RCB was (permanently) armed a fair indication of the direct threat to the base? If not, why not?

RCB was permanently armed irrespective of the threat level. Only the number of troops assigned to immediate QRF (minimum section) status varied.

8.37. Noting that the ROE version attached to several submissions (Annex C Appendix 3 to AS RIFLE COY USOs) is dated December 1978, please provide copies of all versions of the ROE issued during the period of RCB deployments.

Abundant evidence in Russell Linwood's Submission 066 Annex -G – Rules of Engagement.

8.38. Was every member of the RCB required to read and sign the USOs regularly?

No. there are no known records and RCB officers consulted do not recall there being 'USOs' which we interpret to mean 'Unit Security Orders' – there were none. If 'USO' means Unit Standing Orders, these did exist. There were RCB Unit Standing Orders which included the ROE as well, depending at what time an RCB deployed. We have evidence of 1978 Standing Orders in our database, and earlier references (Russell Linwood's Submission 066 Annex F - Operational Orders). From the early 1970s Unit Standing Orders were read out on parade, and copies posted on all noticeboards in the lines. People did not sign such things in those days; that might be a current practice, but not then. Some/most RCBs also had job aids issued to all ranks with the Challenging procedures in the MAL language. These are quite specific. Such has not ever been done, to most RCB veteran officers' knowledge, in Australia.

8.39. Are there any indications that the Mirage accident (A3-18) in Apr 74 was the result of CT activity having regard to:

- **Mission profile;**
- **Failure modes/indications;**
- **Likelihood of damage being sustained on departure?**

Only Defence (RAAF) can answer the one about a Mirage accident in 1974. We have photos though of RAAF Mirage and at least one MAL F5E crashes.

8.40. What is the view of the Defence Force Safety Bureau in relation to bullet holes in the aircraft as reported in Submission 49 by Mr Les Ray?

Defence to answer.

Also included with this document at Attachment F is a document prepared by RCBRG entitled *Comparison of Operational Service Entitlements and Medallion Awards* which compares post-Vietnam service in areas other than Malaysia.

Raymond Fulcher

Stan Hannaford

Chair RCB Review Group

RCB Veterans' Group

Ph: 0435 003 713

Ph: 0437 770 912

Email: fulcher_ray@yahoo.com.au

Email: shannaford8@bigpond.com

19 September 2022

Summary of Federal Court Cases

Attachment A

David Norman Ahrenfeld v Repatriation Commission [1990] FCA 319; 101 ALR 71 (29 August 1990) [Einfeld J]		
Facts	Legal Principles	Application to RCB
<p>Claimed under Repatriation Act 1920, determined under VE (Transitional) Act 1986. Question of what is 'operational service' as defined in s6 and its application to s120. Section 6 says basically ADF who served in Australia during WWII in circumstances that should be treated as service in actual combat against the enemy shall have rendered operational service. Section 120 deals with the standard of proof required (ie beyond reasonable doubt – reverse onus – for operational service).</p> <p>Claimant an RAAF radio operator at a submarine base at Onslow in the Exmouth Gulf (WA) 1943. Japanese raiders in area, some bombing in area but not of the base.</p> <p>AAT found applicant “did not meet the requirements of operational service in that he was not engaged in 'actual combat against the enemy'”. AAT: “the words 'actual combat' clearly impose a positive test...the serviceman must have been engaged in some action to 'combat' the enemy...he must have taken some offensive action as opposed to mere passive defence”</p>	<p>§33 The Tribunal's reasoning (p 5) was that 'actual combat' means 'offensive action' as opposed to 'passive defence' and that the applicant's service fell within the latter category. It seems to me, however, that the activities of armed forces personnel do not easily lend themselves to such a distinction. What in fact exists is a host of different activities, each of which contribute to the 'war effort', with varying degrees of proximity to defeating or frustrating the enemy.</p> <p>§37 The word 'combat' more closely approximates the words 'in the field' in the sense that the meaning of both is related to a specific geographical and qualitative context relating to the actuality of fighting the war.</p> <p>§46 For the Tribunal to employ a definition based on the distinction between 'offensive action' and 'passive defence' seems to me clearly to involve an error of law.</p> <p>§47 In my view, the correct definition of 'actual combat against the enemy' in the context of this Act is 'integral participation in or in activity directly intended for an encounter with the enemy'.</p>	<p>Defence's constant argument that our role was 'defensive only' and didn't extend beyond the fence line implies they have a similar understanding of the need for 'offensive action' as the AAT.</p> <p>Einfeld J has a clearer understanding of the exigencies of military operations than does Defence.</p> <p>We were 'in the field' in the sense imparted by Einfeld J.</p> <p>The QRF, at least, was an 'integral participation in or in activity directly intended for an encounter with the enemy'.</p> <p>Defence have not only ignored 'every reasonable inference in our favour' they have actively used every <i>unreasonable</i> inference to frustrate our claim.</p> <p>The absence of official records stating the actual purpose of RCB deployments should not be used against us, especially since we have clearly identified the government's deception plan with 'official records'.</p>

Summary of Federal Court Cases

Attachment A

<p>AAT: “insufficient evidence as opposed to hypothetical considerations” to permit an affirmative finding on the balance of probabilities.</p>	<p>§49 This legislation provides very important social and welfare rights for persons such as the applicant. It reflects a will and determination by Parliament, and the decent compassionate society it represents, to carry out as generously as possible having regard to the nation's other pressures and priorities from time to time, an obligation to care for people who sacrificed their own priorities in the cause of protecting and saving the country and its people when they were under serious threat. Factual conclusions adverse to the carrying out of these acts of appreciation and gratitude should not be drawn lightly or on the basis of inadequate evidence unable to be fully tested because of the inevitable consequences of the lapse of time. The policy of the legislation and the public interest and will seem to me to demand that every reasonably available inference should be drawn in favour of the veteran.</p> <p>§56 The absence, paucity or inadequacy of official records on the subject should not be held against the applicant...</p>	
---	---	--

Summary of Federal Court Cases

Attachment A

Gordon Percival William Willcocks v the Repatriation Commission [1992] FCA 564; (1992) 111 ALR 639 (1992) 39 FCR 49, (1992) 16 Aar 495 (1992) 28 ALD 646 (26 November 1992) [Cooper J]		
Facts	Legal Principles	Application to RCB
<p>Decision under VEA 1986.</p> <p>Applicant served in 1945 in Singapore repatriating and releasing Japanese POWs. During this time he was attacked or threatened at different times by some of the POWs.</p> <p>Both sides agreed that this was a military operation and that the Japanese could be categorised as ‘the enemy’ and that he had ‘incurred danger’. But, was it an operation against the enemy?</p>	<p>§20 The phrase "naval, military or aerial operations against the enemy" is to be read as a whole. It includes two elements. The first is that there must be some operation which is naval, military or aerial in character. The second is that the requisite operation must be against the enemy. Both elements must be satisfied for the service to constitute "qualifying service" within the meaning of section 36(1) of the VE Act.</p> <p>§25 Accordingly, in my view the word "against" in the phrase "military operations against the enemy" is used in the sense of "in hostility or active opposition to". This is the common meaning and general usage of the word "against" in such a context. The section requires service, inter alia, in military operations against the enemy, in the sense of operations in hostility or opposition to the enemy.</p> <p>§28 The activity of releasing and repatriating prisoners of war cannot be characterised as military operations against the enemy within the meaning of the provision. While they were military operations which involved contact with the enemy, they were not in hostility or</p>	<p>RCB, in its role of defending ABB from communist incursion was in fact engaged in “operations in hostility or opposition to the enemy.” We were not there to repatriate POWs or any other activity marginal to the carrying on of the conflict. We were defending the main operational air base for Malaysian operations.</p> <p>§29 Is included under Legal Principles not because it is one but because it reinforces the decisions in other cases that whether there is ‘qualifying service’ ie <i>warlike</i> service depends not on technical or legislative provisions but on the actual state of affairs on the ground. So the government can acknowledge or not acknowledge that a war occurred but the courts will decide.</p>

Summary of Federal Court Cases

Attachment A

	<p>opposition to the enemy. The situation is properly characterised as one where a veteran was engaged in military operations, which themselves were not operations against the enemy, but in the course of which the veteran had a hostile encounter with the enemy. This is not sufficient to satisfy the relevant provision, for it fails to satisfy both elements in the phrase "military...operations against the enemy".</p> <p>§29 It does not follow that no service after the formal Japanese surrender in Singapore on 12 September 1945 and in the period to 29 October, 1945 will constitute "qualifying service". For example, if it were proven as a matter of fact that a practical state of war or actual hostilities continued in the region after the formal surrender (see Marsh v. Repatriation Commission (1987) 15 FCR 503, 511, 512) any Australian soldiers deployed in the region to quell hostile Japanese forces who refused to accept, or were unaware of, the surrender could properly be described as rendering service in military operations against the enemy.<i>[Obiter]</i></p>	
--	--	--

Summary of Federal Court Cases

Attachment A

Repatriation Commission v Walter Harold Thompson [1988] FCA 212; (1993) 44 FCR 20 (24 June 1988) [Davies, Wilcox and Foster JJ]		
Facts	Legal Principles	Application to RCB
<p>Decision under VEA 1986</p> <p>Respondent served June to October 1944, on Peron Island at the mouth of the Daly River in Anson Bay southwest of Darwin. On the island was a radar post.</p> <p>He was approximately 100 miles from whatever aerial activity might be expected.</p> <p>In brief, Mr Thompson neither saw nor heard any enemy plane, vessel or soldier. The last bombing attack on Northern Australia had occurred in December 1943.</p>	<p>§7 [citing March v Repat] "The expression [theatre of war] is a graphic one referring to military realities ... These are plainly practical concepts."</p> <p>"the statutory definition of 'theatre of war' is looking to practical, rather than juristic concepts. It clearly contemplates an actual, as distinct from a legal or theoretical, state of warfare."</p> <p>§8 In applying such a provision, therefore, it is desirable to eschew the use of adverbs and adjectives, that is to say, not to read into the provision words which are not there. In referring to the word "danger", Administrative Appeals Tribunals have used adjectives such as "real", "actual" and "substantial". But the word "danger" stands for itself. If a serviceman incurs danger from hostile enemy forces, that circumstance is sufficient to satisfy the statutory requirement. It is indeed the specified requirement. No adjective can enlighten that concept. When applying the word "incurred", some Administrative Appeals Tribunals have used the expression "reasonable expectation". But, again, the word "incurred" is an ordinary word of the</p>	<p>Approval of Marsh decision reinforces that the question of whether there was a war is a practical exercise. The government may say that they do not acknowledge the war but the courts have ruled that it is a practical not a theoretical question.</p> <p>The use of adverbs or adjectives, such as 'low' threat is clearly not the law. The courts have been very clear on bureaucracies not curtailing legislative meaning by adding words (such as low).</p> <p>We simply had to have 'incurred danger', which the government admits when they said to the Petitions Committee that they have never denied a threat to the base but it was assessed as low.</p> <p>The Full Court here also undercuts much of the government's minimalizing of the threat where they criticise the AAT for the expression "reasonable expectation".</p> <p>The government may try to latch on to the phrase that a "mere liability to danger" is not included in "incurred danger" by claiming that our situation was a 'mere liability' to danger.</p>

Summary of Federal Court Cases

Attachment A

	<p>English language. It has a dictionary meaning and is used in that sense. Other words should not be substituted for it.</p> <p>§12 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.</p> <p>§13 The danger incurred must of course be more than a merely fanciful danger or a danger so minimal that the rule of de minimis applies. But to say that is not to give a flavour to the word. Rather it is to use it in its ordinary sense.</p>	<p>However the court went on to clarify that remark by saying it meant when "there is a mere risk of danger". That is that there is a risk that a person <i>could</i> 'incur danger'. For example a chance that Thailand might invade Malaysia is not sufficient to satisfy the test.</p> <p>The government may try to argue that ours was a 'mere liability' to danger but their own documents disprove this.</p> <p>Lastly they could argue that the risk we faced was so minimal that de minimis would apply. This is a legal term that can be roughly interpreted as 'the court does not trouble itself with trifles'. It would have to be a threat so low that it almost wasn't a threat for this to apply.</p>
--	---	--

Summary of Federal Court Cases

Attachment A

Repatriation Commission v Mitchell [2002] FCA 1177 (20 September 2002)		Cooper J
Facts	Legal Principles	Application to RCB
<p>Decision under VEA 1986. Appeal from decision of AAT to grant qualifying service.</p> <p>A-A gunner transported by troop ship from Townsville to Horn Island in Torres Straight then to Cape York Peninsula. Japanese mines known to be in area.</p> <p>Served at Higgins Field in A-A battery for about a week, then by ship to Brisbane. Aerial operations against Japanese in PNG conducted from Higgins Field.</p>	<p>§5 Cites AAT decision: 9. <i>"The Tribunal rejects the notion that to satisfy the conditions of 'naval or military operations against the enemy' set out in section 7A a veteran had to be involved in actual combat against the enemy."</i></p> <p>§15 Cites AAT: <i>"The actions of Command at Higgins Field in dispersing aircraft, maintaining anti-aircraft guns in position, and protecting the installations and equipment with armed sentries and roving picquets are I believe consonant not only with sensible precautions, but with the understanding of perhaps unlikely, but always possible, raids launched from aircraft or from submarine landings, or surface carriage of small parties."</i></p> <p>§22 It is the area in or on which military operations are being conducted against the enemy which is generally covered by the phrase "military theatre of operations".</p> <p>§22 Even the phrase "actual combat against the enemy" does not require direct and personal engagement with the enemy and it is sufficient that the conduct in question is an integral participation in an activity intended</p>	<p>Reinforces that you don't even have to see an enemy to be involved in combat operations against them.</p> <p>Dispersing aircraft and protecting installations with armed sentries and picquets is consonant with "perhaps unlikely, but always possible, raids". 'Unlikely', but still gives qualifying service. For RCB we can add in 'building revetments'.</p> <p>'Military theatre of operations', or 'theatre of war', or 'war'. If military operations were being conducted in Malaysia against an enemy then it was war.</p> <p>RCB was "part of the defence of ABB from hostile incursions by CTs".</p> <p>All the reasoning in the AAT decision is legally correct.</p>

Summary of Federal Court Cases

Attachment A

	<p>for an encounter with the enemy, whether offensive or defensive in character: <i>Repatriation Commission v Ahrenfeld</i> (1991) 29 FCR 556 (FC) at 562 - 563.</p> <p>§25 The AAT formed the view on the material available to it, and in particular in its reliance upon the material and findings in the proceedings in <i>Tiplady</i>, that the Torres Strait, including the islands in the Strait, Cape York Peninsula, at least around Jacky Jacky and Higgins Field, and Papua New Guinea was an area in which military and aerial operations were being conducted against the enemy. It has found that Higgins Field was an operational airfield used for conducting aerial operations against the enemy in Papua New Guinea, and at that time against the enemy in Rabaul, and further that it provided refuelling facilities for allied bombing fleets operating north and north west of the Cape coming from or going to Townsville. The Ack Ack anti-aircraft unit was part of the defence system to defend the operations at Higgins Field from hostile aerial attack, as much as the use of sentries and roving piquets were part of the defence of the facility from hostile incursions by Japanese landing parties from the sea. Higgins Field was found by the AAT in <i>Tiplady</i> to be an airfield of strategic importance to the allied bombing fleets, and thus an important operational target to the</p>	
--	--	--

Summary of Federal Court Cases

Attachment A

	<p>enemy; it was also a target within operational range of Japanese forces present in the area at the time.</p> <p>§28 In my view there is no demonstrable error of law in the view taken by, or in the reasoning of, the AAT that there were military and aerial operations against the enemy in the area in which the veteran served in September 1944. Nor is there any demonstrable error of law in the view taken by the AAT that the military service of the veteran in that area, including his transportation within the area, was service rendered in the field in military and aerial operations against the enemy in an area sufficient for the purposes of s 7A(1)(a)(i) of the VEA. Nor is there demonstrable legal error in the reasoning which led the AAT to that view.</p>	
--	---	--

Summary of Federal Court Cases

Attachment A

Thomas Joseph Marsh v the Repatriation Commission [1987] FCA 303 (4 September 1987) [Sheppard, Morling and Beaumont JJ]		
Facts	Legal Principles	Application to RCB
<p>Decision under Repatriation Act 1920. Appeal against decision of single Judge.</p> <p>RAAF leading aircraftsman. On 3/9/45 left Australia for Balikpapan, Dutch Borneo. Performed guard duties at airstrip, of medical supplies on POWs. On 2/9/45 formal Japanese surrender. On 8/9/45, before appellant's arrival at Balikpapan, local Japanese forces surrendered.</p> <p>Repat decision that 'no hostile forces of the enemy' after the surrender therefore no qualifying service.</p> <p>Appellant argued that under international law and various Acts the war did not end until 1951 when formal peace treaties signed.</p>	<p>§28 Nor is the ascertainment of the existence of a state of war under municipal law or international law the relevant criterion for our purposes... However, the rules of international law in this area throw some light on the intended operation of our statutory definition. As Lord McNair and A.D. Watts (The Legal Effects of War, at p.2) remind us, being "at war" is a technical concept referring to a state or condition of affairs, not mere acts of force.</p> <p>§31 His Honour held, correctly, in our opinion, that the statutory definition of "theatre of war" is looking to practical, rather than juristic concepts. It clearly contemplates an actual, as distinct from a legal or theoretical, state of warfare.</p> <p>§33 In our opinion, the practical considerations which dictate the conclusion that the formal termination of the war in 1952 is not determinative of the question whether the appellant "served in a theatre of war", suggest with equal force that the formal surrender in Tokyo on 2 September 1945 is also not decisive for our purposes. Because the relevant inquiry is a practical one, one is</p>	<p>This all goes to the question of whether there was a war in Malaysia at the time. The courts consider this a practical rather than a legalistic or theoretical question.</p> <p>It refers to a state of affairs rather than actual hostilities or use of armed force.</p> <p>So the government can pretend that there was no war but the court will look to see if there actually was one.</p>

Summary of Federal Court Cases

Attachment A

	<p>concerned to see whether, in actual fact, the appellant "served . . . in . . . operations . . . against the enemy . . . in an area, at a time when danger from hostile forces of the enemy was incurred in that area "</p> <p>§34 It is conceivable that the appellant may be able to establish that Japanese servicemen stationed at Balikpapan at the time of the surrender of the Japanese forces in that area on 8 September 1945 refused to accept instructions to surrender and continued for a time to engage in hostile operations against Australian troops. If he can prove that such a state of affairs existed, he may be able to make out a claim to the pension.</p> <p>§35 It follows, in our view, that the preliminary point [that there could not have been 'hostile forces' because of the surrender] should not have been determined adversely to the appellant. It was open to him to demonstrate that, although he did not depart from Australia until 3 September, nevertheless he did, in fact, "serve in . . . operations against the enemy in an area . . . at a time when danger from hostile forces of the enemy was incurred in that area." That is not what the Commission considered. It must follow that the matter must be remitted to the Commission to be reconsidered in accordance with law.</p>	
--	--	--

Summary of Federal Court Cases

Attachment A

Commonwealth of Australia
STATUTORY DECLARATION
Statutory Declarations Act 1959

1 Insert the name,
address and
occupation of
person making
the declaration

I, Anthony Howard Jensen MG
'The Horseshoe Falls'
416 Horseshoe Rd
Mullion NSW 2582

make the following declaration under the *Statutory Declarations Act 1959*:

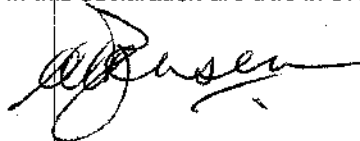
2 Set out matter
declared to in
numbered
paragraphs

- I enlisted at RMC Duntroon in Jan 1963 and after 27 years retired as a Lt Col in Feb 1990. I served in 1 RAR in South Vietnam 1968/69 during which time I was commanding the Mortar Platoon position at Fire Support Patrol Base Coral when we were overrun by a North Vietnamese Army Regiment who killed 5 of my soldiers and wounded another 8. I was awarded the Medal for Gallantry for my actions defending our position that night. I took command of 8 Platoon C Company 1 RAR in July 1968 until Feb 1969 conducting several successful ambushes during that time.
-
- I was posted to command B Company 2/4 RAR in mid 1975. In September 1975 my Company was deployed to RAAF Base Butterworth, Malaysia.
- Our role was to provide a ready reaction force to protect the RAAF Base and RAAF assets on the base against a known Communist Terrorist (CT) threat. I received a briefing from the battalion Intelligence Officer prior to departure and another detailed briefing by RAAF Intelligence on arrival in Butterworth. I received regular Int briefs from RAAF Intelligence each indicating a real CT threat and our need to be on high alert.
- The CT threat against the RAAF base was real. In the months preceding our deployment there had been CT guerrilla activities to the North of Butterworth and on the Thai/Malay border highway project.
- During our time at Butterworth, the nearby Malay Police Station at Sungei Patani was bombed, there were holes cut in the Base fence perimeter on a few occasions and a damaged RAAF Caribou aircraft had to be guarded out on the taxiway as it could not be moved.
- Whilst there we provided a duty platoon responsible for roving perimeter patrols and a vehicle mounted ready reaction section to respond to an incident at any one of a number of Vital Points on the Base. The duty platoon was armed with normal small arms and live/ball ammunition.
- Our Rules Of Engagement (ROE) required us to confirm hostile enemy intent before engaging. To this end each soldier taped live/ball magazines with a two pieces of electrical tape to avoid accidents.
- I do not recall sending operational patrols outside the perimeter. We did use Malay training ranges outside the RAAF base. Platoons carried live/ball ammunition in transit to and from these range activities as a precaution against ambush.
-
- The Rifle Company deployment to protect RAAF Base Butterworth was an operation armed with ball/live ammunition against a real threat from known CT forces with a capacity to conduct destructive raids against human and structural targets.
- This deployment was warlike and entirely different to training in Australia.
-
-

I understand that a person who intentionally makes a false statement in a statutory declaration is guilty of an offence under section 11 of the *Statutory Declarations Act 1959*, and I believe that the statements in this declaration are true in every particular.

3 Signature of
person making
the declaration

3



4 [Optional: email
address and/or
telephone number
of person making
the declaration]

4ahjensen@bigpond.com

5 Place
6 Day
7 Month and year

Declared at ⁵ GRIFFITH, ACT on ⁶ 1 October ^{Friday} of ⁷ 2021

Before me,



8 Signature of
person before
whom the
declaration is
made (see over)

8

9 Full name,
qualification and
address of person
before whom the
declaration is
made (in printed
letters)

9

PATRICIA HELEN BOOTES
ACT PUBLIC SERVANT

10 [Optional: email
address and/or
telephone number
of person before
whom the
declaration is
made

10

Note 1 A person who intentionally makes a false statement in a statutory declaration is guilty of an offence, the punishment for which is imprisonment for a term of 4 years — see section 11 of the *Statutory Declarations Act 1959*.

Note 2 Chapter 2 of the *Criminal Code* applies to all offences against the *Statutory Declarations Act 1959* — see section 5A of the *Statutory Declarations Act 1959*.

Rifle Company Butterworth Fatal Non-Battle Casualties (Correct at 10 Apr 21)

These data include ALL **known** RCB members from the deployment of a rifle coy on 1 Nov 70 to 31 Dec 1989 who ***lost their life*** while posted to RCB.

Date of Death	Name	Rank	Regt Number	RCB Rotation	Parent Unit	Location	Cause/Comments
16 Nov 78	James MILLS	LCPL	1738959	B Coy	6 RAR	TBA	Road/pedestrian accident. Repatriated to AS; died in Royal BNE hospital. Age 27
04 May 84	W R BARNFIELD	LCPL	49785	C Coy	5/7 RAR	TBA	Road/pedestrian accident
10 Feb 89	P B CURTISS	PTE	2303070	A Coy	8/9 RAR	Thailand	Died while on leave. Age 20

Notes:

1. RCB is defined as any member of a rifle company group deployed from 1 Nov 70 until 31 Dec 1989 by various names and including at least one artillery sub-unit (106 Fd Bty) and other non-Infantry "rifle company" groups.
2. Russell Linwood LTCOL (Retd) 0403544866, is the primary researcher; all queries or leads/contributions to him for validation are invited at any time.

Statement by 220969 Lieutenant Colonel Phillip James Charlesworth (Retired)

Regarding Service with Rifle Company Butterworth

My name is Phillip Charlesworth. I joined the Australian Army in January 1971, graduated as a Lieutenant from the Royal Military College, Duntroon in December 1974 and was allotted to the Infantry Corps. I served in the Regular Army for a period of just short of 30 years and in that time served in a range of regimental, training and staff appointments. I left the Service at the rank of Lieutenant Colonel in October 2000.

I assumed my first appointment in January 1975 with the 6th Battalion, the Royal Australian Regiment (6 RAR). I was a platoon commander with D Company (D Coy) and in November 1975, D Coy 6 RAR deployed to Air Base Butterworth in Malaysia as the Rifle Company Butterworth. We replaced B Coy, 2/4 RAR.

First RCB Tour

Pre-Deployment

During our preparation prior to deployment from Australia there was clear emphasis placed on the nature of the role we were to play within the Base. This included the need for key point protection, countering any incursion into the air base perimeter and providing a reaction force to respond to any direct threat to the Base. To reinforce the operational nature of this deployment, it was stressed that weapon handling had to be exceptional as live ammunition was to be carried by all members of the company.

Intelligence briefings prior to deployment outlined the situation in Malaysia at that time with the ongoing CT threat, highlighting multiple incidents around the country especially against police and the Malaysian military personnel and facilities. There was no doubt in my mind that the CTs were the enemy and that our role inside the Base would be predominantly operational.

Pre deployment administration included the preparation of wills and an emphasis on the fact that whilst deployed, we would operate under the Army Act and to that end would be considered to be 'on war service' for the purposes of discipline including penalties available to the Officer Commanding the company, the OC.

On Deployment

Following area familiarization, initial tasking included familiarization with the daily routine. One platoon commander was rostered for duty on a three-day basis and one rifle section (10 soldiers) was detailed as ready or quick reaction force (QRF) for a full 24 hours. The duty section was housed in the main HQ building for that duration and drew live ammunition prior to mounting duty. The section responded to call outs as required or was to respond to any immediate threat to the Base including breaches of the perimeter or engagement from outside

the perimeter. The remainder of the platoon was available to deploy if required to any incident within the Base or as ordered by the OC. To the northern end of the Coy HQ building was the Armscote where the company's weapons and first line of ammunition were stored. A duty storeman, the armourer and those on field punishment occupied this building during working hours.

All soldiers in the rifle platoons carried a full magazine loaded with ball ammunition and covered with red tape. It was stressed that there were limits to what could be done when live ammunition was carried. It was clear to soldiers that they should apply standing operational procedures and verbally challenged incursions by individuals or groups into the Base. If a verbal challenge to stop was not complied with, the Rules of Engagement (ROE) issued to our soldiers permitted them to open fire on the individuals or groups. ROE also permitted our soldiers to open fire in self defence.

During Deployment

In the week before Christmas in December 1975 we received notice of a 'Red Letter Day' which was a credible threat from the CT organization that an air base in Northern Malaysia would be targeted. From my recollection, if the Ground Defence Operations Centre (GDOC) was activated at this time, we were not required to provide duty officers but the company was confined to the Base and placed on standby until the alert ended after Christmas. Of interest was that during this period an attempt was made to attack the RMAF base in Alor Setar, Kedah State about 80 km to our north.

A second 'Red Letter Day' occurred in early 1976 prior to Chinese New Year. Included in the threat brief was information that the CTs possibly possessed a 60mm mortar capability which enabled them to engage anywhere within the Base from a stand-off distance of about 1500 metres. Patrolling by platoon groups occurred during this time within the Base area.

In the lead up to this declaration, RAAF Service Police received reports of unknown personnel in a Muslim cemetery that protruded into the north western Base perimeter, between the RAAF flight lines and the engine test facility. At that time both 3 and 75 Squadron Mirage aircraft were parked in line, with no attempt to stagger them or shield them from direct or indirect fire. It was assessed that the Base could be easily accessed through the cemetery and at its furthest extremity, provided good observation and also unobstructed fields of fire along the flight lines. It was therefore afforded extra attention both from RCB patrols and RAAF Service Police mobile patrols. One RAAF Service Police patrol revealed that an attempt had been made to cut through the fence. It was deduced that any enemy having directly engaged the flight line, could then escape through the cemetery and into the neighbouring kampung. To counter this immediate threat, the RAAF Service Police requested the duty section (one of my sections) to be called out to assist them. The duty section then deployed fully armed and with ball ammunition into the cemetery area outside the wire and set up a position at the entrance to the cemetery covering the approach road and the entrance to a kampung to the north. The

RAAF Service Police and RAAF Ground Defence security dogs and handlers entered the cemetery to search the area up to the entrance and the approaches to the kampung. This activity took place over a two hour plus time frame in the early evening. Once on the ground the section prepared shell scrapes and remained in situ until the search was complete by which time it was dark. They then withdrew through the gap in the fence and returned to the company lines. The fence was repaired but the cemetery remained a point of concern for the duration of the tour.

There were also problems with the kampungs that abutted the perimeter fence at the southern end of the base in some cases right up to the wire. Subsequent company deployments within the Base accounted for this threat.

For the duration of the Chinese New Year Red Letter period the GDOC was activated. This required the presence of a duty officer from the Rifle Company to enable the transmission of information to and from the Company Command Post. The three platoon commanders rotated through the duty officer position until the period expired. A normal period of GDOC duty extended from for 24 hours from 0800 each day. I recall that we had one platoon deployed at night on the ground at the end of the southern Operational Readiness Platform (ORP). These were dug in and fully armed covering internal approaches from the kampung areas to the base along monsoon drains that roughly paralleled the perimeter and ran north/south on either side and under the runway. In addition to patrolling inside the Base area, a standing patrol was positioned to observe the western perimeter fence, particularly the cemetery area. During the day there was also active patrolling inside the Base taking in Key Points and covering the golf course and the south eastern perimeter up to the entrance to the IADS facility. These patrols were also fully armed. The remainder of the company was on short notice to react to an incident, or were on standby in the event that there was a need to move to protect RAAF families either on Penang Island or in the married quarters across from and to the north of the base. There was no stand down or local leave during this period. The Chinese New Year activation ended after several days without further incident.

Additional Information

The golf course area as well as the open areas at the southern end of the base were always of concern as possible points of entry through kampungs that abutted the perimeter fence. Of most concern were those areas that were poorly lit. To minimize the risk of infiltration from these areas a ground sensor array (TOBIAS) was set up in areas that were difficult to observe by night in order to monitor any unusual movement or other activity. The TOBIAS base station was located in the QRF/duty section room in the CHQ building where it was monitored at night.

The D Coy, 6 RAR returned to Australia in late March 1976. We were relieved by A Coy, 6 RAR.

Second RCB Tour

I assumed command of C Company (C Coy) 2nd/4th Battalion, the Royal Australian Regiment (2/4 RAR) in October 1982. We were warned for a deployment to RCB to take place in February 1983. We were to replace D Coy, 5/7 RAR. The pre deployment training was less intense than that which I had undertaken in 1975. However, the nature of the threat was still emphasized and it was clear that the Malaysian armed forces were still engaged with a determined terrorist threat.

Once deployed, it was routine practice to receive intelligence summaries (presumably) provided to the RAAF Base Commander by the Malaysians and shared with us. I do not recall directly receiving any intelligence information from Australia at that time. From my perspective, it was interesting to note that Malaysian ground operations against CT strongholds were taking place within 20 to 30 km from the Base. The RMAF operational tempo was also comparatively high with both 5 and 12 Squadrons RMAF (F-5 fighter/bomber and S-61 Nuri medium helicopter respectively) working multiple sorties often on a daily basis to support operations along the Thai border and within Kedah and Perak States.

It was also noteworthy that revetments and covered bays had been constructed along the old flight line area to protect aircraft from both direct and indirect fire threats. The Muslim cemetery that had previously extended into the Base had also been either removed. Both these security concerns were highlighted as requiring attention by OC D Coy, 6 RAR during the 1975/76 deployment. It was pleasing to see that his recommendations to adopt a more serious approach to the protection of the flight lines had been actioned.

Although the duty officer and QRF requirements remained basically the same, there was no elevation of the threat level warranting activation of the CDOC. However, the operational nature of this deployment was still emphasized and training was conducted consistent with being able to perform any operational task within the Base perimeter or at the request of the Base Commander.

C Coy, 2/4 RAR returned to Townsville in mid May 1983. We were replaced by C Coy, 1 RAR.

General Observations Regarding the Nature of Service in RCB

The nature of service during these deployments to RCB was in my opinion, predominantly operational. At no stage in Australia during almost 30 years of service, can I recall soldiers moving around an Army barracks or Defence facility carrying ball ammunition to counter a threat and yet at RCB it happened every day. Even when moving to ranges in Sungai Petani and Gurun to the north, platoons carried ball ammunition and were required to tactically load their sections, observe convoy procedure and maintain communication between vehicles. In addition, the range sentries provide by Range Control at Brigade HQ in Sungai Petani carried ball ammunition.

The fact that at RCB we were authorized to carry and if necessarily use live ammunition, and that there were ROE in place for such possibilities is a critical indicator. The threat environment was real.

The only time I can recall similar security measures being adopted was as an integrated exchange officer with the US Army based at Fort Leavenworth, Kansas when my team was deployed via US Army SOUTHCOM to conduct training with the Peruvian Army in October 1989. In Peru there was an active anti-government insurgency with the brutal Maoist organization Sendero Luminoso (Shining Path) attacking key government personnel and infrastructure as well as intimidating rural populations. The situation at that time in Peru was not that dissimilar to that which we encountered in Malaysia with the CTs. Military and police personnel and bases were targeted and precautions, including armed guards and ready response units within the bases were employed. Outside life went on as normally as you would expect, but there was always the threat that something could happen.

I have made this statement to the best of my recollection and believe that what has been stated is true. Sections have been supported or corroborated by others who were serving with me.

P. J. Charlesworth

Medan, Indonesia

Commonwealth of Australia
STATUTORY DECLARATION
Statutory Declarations Act 1959

1 Insert the name, address and occupation of person making the declaration

I, ¹ Mark Anthony Butler Senior Training Specialist with BHP of 16 Nutfield Street Bayswater WA

make the following declaration under the *Statutory Declarations Act 1959*:

2 Set out matter declared to in numbered paragraphs

2

In 1977-78 I was deployed to Rifle Company Butterworth Malaysia (RCB) with B Coy 1 RAR. My regimental details were, 1204999 Corporal Mark Butler Section Commander of 3 Section 4 Platoon.

On a weekend day either late 1977 or early 1978 my section was tasked to do a daylight perimeter patrol of the Malaysian Airbase to check the integrity of the perimeter fencing. During this patrol we detected that in several places the wire had been cut enough to allow a person to enter and in one place a fairly large section had been cut out.

Upon return this was reported and later that afternoon I was advised I was to take my section back to this area. I spoke to the 2IC of the Company Captain Hans Fleer DCM who showed me the area on a map of the Airbase. He pointed to a Monsoon drain that was close by and said this would be a good spot. I asked him if I was laying an Ambush or was it a Standing Patrol when I did my Orders. He said use the Ambush ones but you will have the challenge to deliver if anyone comes in.

Before I left the office he told me " you are a bloody good shot Corporal Butler. If anything happens out there make sure you take them out rather than the whole section opening up. Theres a Kampung that way and the boss (OC) doesn't want some Mi Lai Massacre happening" He was smiling but there was no doubt in my mind that if anything happened he didn't want indiscriminant shooting to occur.

Prior to departing the Quick Reaction Force (QRF) area, I briefed the section and we moved into location. I think we were dropped off some distance away by the QRF truck but I cannot be certain. One of my section members took a photo of some of the section which I still have and was publically available. I have attached a copy of the photo as Attachment A. In it I am shown doing a final briefing with the section and in it is a member of the Malaysian Armed Forces. I believe he was there so the Malays knew where we were going but I do not recall if he accompanied us into the location.

Prior to moving into the position near the fence we went to the Action condition (fully loaded) with our personal weapons and moved into the monsoon drain as planned. We remained there for several hours and during that time a person approached the fence from the outside. It was in the vicinity of the cut fence. They stopped there just looking in but did not attempt to enter the Airbase. After a while they moved away. I cannot recall if we only stayed there a predetermined period of time of whether we were told by radio to move back but we left the location during the night and well before dawn.

While this may be considered a non-event because nothing occurred there was a period when the person was at the fence that I thought they may enter. I knew if they did I would have to challenge them with Benhenti Benhenti and if they didn't stop that my Rules of Engagement (ROE) required that I would open fire.

I understand that a person who intentionally makes a false statement in a statutory declaration is guilty of an offence under section 11 of the *Statutory Declarations Act 1959*, and I believe that the statements in this declaration are true in every particular.

3 Signature of person making the declaration

3

4 [Optional: email address and/or telephone number of person making the declaration]

4

mark.butler@westnet.com.au

Mobile number 0400296179

5 Place
6 Day
7 Month and year

Declared at ⁵ Roxby Downs

on ⁶

of ⁷ May 2019

Before me,

8 Signature of person before whom the declaration is made (see over)

8

9 Full name, qualification and address of person before whom the declaration is

9

Proclaimed Police Officer
 S/CIC Tristan Fentley, Roxby Downs Police, 7-11 Buggins St
 Roxby Downs, SA

made (in printed
letters)

10 [Optional: email
address and/or
telephone
number of person
before whom the
declaration is
made

10

Note 1 A person who intentionally makes a false statement in a statutory declaration is guilty of an offence, the punishment for which is imprisonment for a term of 4 years — see section 11 of the *Statutory Declarations Act 1959*.

Note 2 Chapter 2 of the *Criminal Code* applies to all offences against the *Statutory Declarations Act 1959* — see section 5A of the *Statutory Declarations Act 1959*.



ATTACHMENT A.

A stylized handwritten signature in blue ink, featuring a large, sweeping loop at the top and a series of smaller, connected loops below.

MARK BUTCHER

A handwritten signature in blue ink, consisting of a large, elegant loop at the top followed by a series of smaller, connected loops.

Sue Triton Festival,
Leeds City Police

Rifle Company Butterworth Review Group

Principle 3

To maintain the inherent fairness and integrity of the Australian system of honours and awards care must be taken that, in recognising service by some, the comparable service of others is not overlooked or degraded.

Committee of Inquiry into Defence Awards 1993

COMPARISON OF OPERATIONAL SERVICE ENTITLEMENTS AND MEDALLIC AWARDS – RCB (18)

(AS AT 26 AUG 22)

Criteria	Australian Rifle Company Butterworth (1)	Diego Garcia RAAF ground personnel (9)	Ubon RAAF Airfield Defence Guard (2)	Namibia Engineer UN deployment	Somalia HMAS Tobruk and Jervis Bay	Middle East - (incl Iraq) Operations OKRA, HIGHROAD, MANITOU, ACCORDION (4)	Cambodia UN deployment	Rwanda UN deployment (8)
Operational deployment period	2 Nov 1970 – 2 Dec 89	2001 - 2002	1965 - 1968	18 Feb 89 to 10 Apr 90	1992-3	1 Jul 14 ongoing	20 Oct 91-7 Oct 93	Aug 94 to Aug 95
Current award	ASM 45-75 or ASM	AASM	AASM 45-75	AASM and UNTAG medal	AASM	AOSM (5)	AASM and UNAMIC/UNT AC medal	AASM and UNAMIR medal
Initial award	ASM 45-75 or ASM	ASM	ASM 45-75	ASM and UNTAG medal	ASM	AOSM	ASM and UNAMIC/UNT AC medal	ASM and UNAMIR medal
Intelligence Threat Assessment	Yes	Remote possibility from a ground perspective	Yes	Yes	Yes	Yes	Yes	Yes
Closest distance from known enemy	Outside perimeter. No attack	1680 km, across an ocean. No attack	No enemy attacked while AS Air Defence Guards (ADG) were there (2)	Outside perimeter	At sea, docked at Mogadishu on occasions (2). No attack	Outside base perimeter. No attack yet. Many personnel are nowhere near	Mixed with potential hostiles	Outside perimeter, very close at Kibehu, taunting the AS soldiers to open fire

						an enemy, being based in allied countries		
Rules of Engagement	Self-defence, shoot to wound if possible, per ROE	None known for small arms. Very low level enemy air or naval threat	Aircraft provide use of force against aircraft attacking base (7)	UN had no ROE so AS troops used ROE/OFOF for self-defence	Self defence, shoot to kill if necessary	OPSEC, but HAS to be at least self-defence, being an operational deployment	Self-defence, shoot to wound if possible, per ROE	Self defence – no shooting engagements unless on order
Patrol area	RCB patrolled inside perimeter, in conjunction with RAAF Police Dog Teams; permission could be given by RAAF Base Cmdr to patrol outside	No patrols known	ADGs could patrol outside perimeter (7)	Only check points, assembly areas and protection of work locations	Large ocean area plus alongside at Mogadishu	Only inside training area, not outside allied security perimeter	Check points, assembly areas and protection of work locations	Convoy and VP protection. Carried 40mm illum, F89 light machine guns and pers wns
RAAF and RAN Aircraft	Fighters were the prime IADS asset; tasked to stay out of Thai airspace unless cleared. Maintained flight in Singapore. Aircraft conducted patrols over Indian Ocean.	Provide air defence of Diego Garcia base and transiting through it	Limited to Thai airspace providing air defense for the USAF attack aircraft and bombers (7)	No. One RAAF officer on ground duties.	N/A. Ships self-protect and achieve mutual protection with other warships	RAAF acft conducting strike missions, EW, refueling and logistic support	6 Army helos in support (armed?) Helos had an armed protection/QR F platoon in base loc	No combat acft. Med pers only
Expectation of casualties	Possible, and planned for.	No. Base medical	Possible. Base USAF and Thai	Possible, including	Possible. HMAS Tobruk	Possible, and planned for.	Possible. Prime role was	Possible. Prime role was to prov

	Combat medics in RCB, with backup from RAAF & local hospitals. 3 Fatal NBCAS.	facilities available. Nil fatal	medical facilities available. Nil fatal	mines. Nil fatal	had an embarked medical team with surgical capability. Nil fatal	Entire deployable fd hosp is deployed in loc with strategic medevac as for MEAO. Nil fatal	to prov comms spt for UN troops. Nil fatal	med spt for UN troops. Nil fatal
Weapons issued	Full complement of rifle company weapons	Normal small arms for air crew	Small arms (rifle and pistols)	Personal small arms only – pistol, SLR and 7.62mm Bren LMG	Pistols, shotguns, rifles and 50cal machine guns	Multiple by both AS and Iraqi Army (Brigade level weapons), including anti-armour	Pers wpns. Inf coy carried rfl and F89 light machine guns.	Pers wpns. Inf coy carried rfl and F89 light machine guns. Three M113A1s.
Ammunition	Live ammunition all weapons (1)	Gnd staff believed to be unarmed (TBC).	Live (small arms only)	Live (small arms only)	Live per above	Live per above	Live per above	Live. Nil explosive
Within range of enemy weapons	Yes – mortars, small arms & explosives	No	No evidence of any attacks involving Australians (7)	South African Defence Force (who were not “enemy”, intimidated AS troops by firing near them, holing vehicles deliberately at least once	Possibly. Pirates carried RPGs, small arms and up to 12.7mm DshK	Yes – mortars, small arms, MG up to 12.7 mm DshK & explosives	Yes – mortars, mines, small arms & explosives	Yes – mortars, small arms, RPG/SPG 9, MGs to 12.7mm DshK and machetes
Reinforcements considered	Yes, to battalion strength (6)	No	No (Ubon had Thai and USAF defences incl MG bunkers)	No. Part of a UN force that included civilians	Yes	Yes. Operation OCRA is a substantial deployment	Yes. Part of a larger UN force.	Other UN elements
Combat engagements	Yes, by Malaysian army and police. Some green on blue	No	No evidence of any involving RAAF (7)	No. “Not a shot fired”.	No	Not yet	None known	Kibehu came close. AS fired no shots and were not fired upon (no AS troops hit)
Casualties known after deployment	Nil from enemy, but at three Fatal	Nil	No evidence of any. NVA sappers attacked in 1970	None	Nil	None yet	Some NBCas. Nil killed.	Nil Battle Cas

	NBCAS and many injured NBCAS		after AS left					
Allied casualties within 50 kilometers	Yes (3)	Nil	No evidence of any	Possibly other UN troops	No	Yes – Iraqi Army fighting ISIL	Probable, UN casualties, if any, not known	Large numbers of neutrals murdered
Allied casualties within 100 kilometers	Yes (3)	Nil	No evidence of any	Possibly other UN troops	No	Yes – Iraqi Army fighting ISIL	Probable, UN casualties if any, not known	Large numbers of neutrals murdered
Enemy casualties within 50 kilometers	Yes (3)	Nil	No evidence of any	Not yet identified	No	Yes	Probable, depending on definition of “enemy”	Probably, but not caused by AS troops
Enemy casualties within 100 kilometers	Yes (3)	Nil	No evidence of any	Not yet identified	No	Yes	Probable, depending on definition of “enemy”	Probably, but not caused by AS troops
WILL completed before deployment	Yes	Has to be – they were deployed on overseas service	Has to be – they were deployed on overseas service	Standard UN deployment procedure	Yes	Yes	Yes	Yes
Primary task	Protect RAAF aircraft, other assets and personnel inside the perimeter, and apply service protected evacuations from Penang.	Protect RAAF aircraft, other assets and personnel inside the perimeter.	Protect RAAF aircraft, other assets and personnel inside the perimeter.	Supervise the return of refugees, holding of a general election, withdrawal of South African forces and Namibia's transition to independence	Provide logistic (incl healthcare) support to Coalition forces. Nil refugees treated.	Train Iraqi 206 Corps; self-protect	Provide comms spt to UNAMIC/UNT AC	Med elm to provide med spt to UN force. Rifle company with sect of APCs to protect the med force
Allied support	RAAF Police Dog Teams inside the wire, RMAF (Handau) on the	TBA; probably USAF	Substantial Thai and USAF forces	Part of a UN force incl police and civilians	Coalition naval forces; coalition ground forces when alongside	Coalition forces	Rest of UNAMIC/UNT AC (22,000 troops in all)	UNAMIR I and II.

	perimeter, external defence provided by 6 RMAF brigade (army)							
Basis for upgrade of award	See Note 10	See Note 11	See Note 12	See Note 13	See Note 14	See Note 15	See Note 16	See Note 17

NOTES:

1. For RCB, pistols, rifles, automatic rifles, machine guns, sniper rifles, 40mm grenade launchers, 66mm Light anti-tank weapons, 84mm medium anti-tank guns, all with at least a First Line of live ammunition. Hand grenades and Claymore mines included in ammunition stocks stored inside the base. All available at short notice from on-base ammo storage. QRF carried pistols, rifles, automatic rifles and machine guns, ammunition for which was in the QRF area under guard, and frequently carried on both drill and actual callouts inside the base, and carried on order outside the base on some exercises. MGs were also pintle-mounted on RAAF trucks which had spotlight each for many rotations. Dates are the official Communist Insurgency/Second Malaysian Emergency dates listed by the Malaysian Government.

2. In Ubon, the enemy was in another country – Vietnam, a long way away; the Ubon airbase was surrounded by friendly/neutral Thais. There were no identified local enemy and there is no evidence of any ground contacts while RAAF were there. At the **same time** Ubon was garrisoned with ADG, so too was Butterworth, also a support base for Vietnam). In Somalia, RAN operations ranged from being tied up alongside Mogadishu providing logistic/medical support, to patrolling at sea out to 1000+ km off-shore. There was no enemy navy or air threat. Pirates were a low possibility, being the equivalent to land-based criminals that Army was tasked to defend themselves and the Somali population against. Navy had no contacts. Army had only a few contacts, with nil friendly battle casualties.

3. An array of researched Malaysian publications list MAF casualties. See Document Database.

4. Operation OKRA also features a security force based on a rifle company with virtually identical tasks as those carried out by RCB at Butterworth. A similar protective force, called Force Protection Element, is doing the same in Afghanistan at Kabul. Two **other** separate groups are also in the Middle East – including the Air Task Group supporting the RAAF airstrikes and refueling operations based in UAE/Dubai/Qatar, and the second is the SOTG also conducting “training” in unspecified locations. Such service and others in Operation ACCORDION (some support personnel in the Middle East are not even armed) in support of operations in Iraq and Afghanistan attracted/s campaign medals without ever stepping foot in hostile areas or facing any threat different from that by the RCB 1970-89. For example see <https://www.defence.gov.au/Operations/OpAccordion/> where the duties of some of these groups is essentially the same as RCB, and <https://defence.gov.au/Medals/Australian/Since-1975/AOSM-Greater-Middle-East-Operation.asp> . These award decisions are examples of the **Statement of Principles No 3:**

To maintain the inherent fairness and integrity of the Australian system of honours and awards care must be taken that, in recognising service by some, the comparable service of others is not overlooked or degraded.”

5. The Australian Operational Service Medal (OSM) replaced the AASM. The award criteria for the OSM is at: <http://www.defence.gov.au/Medals/Master/docs/Australian/Since-75/AOSM-GMEO-Instrument-2015.pdf> and advised at DEFGRAM 188/2015.

6. RCB Research database Document 19751007 paras 5-6 gives evidence.

7. INQUIRY INTO UNRESOLVED RECOGNITION ISSUES FOR ROYAL AUSTRALIAN AIR FORCE PERSONNEL WHO SERVED AT UBON BETWEEN 1965 AND 1968. 18th February 2011. Item 60. The question then remains as to whether or not this was 'warlike' or 'non-warlike'. Did the squadron face an objective danger? Did they 'incur' danger? Even though no danger eventuated in the sense that there were no actual combat engagements, they were armed for combat and had been told by those who knew more of the situation that danger did exist and they must hold themselves in readiness to meet it, not at some indeterminable time in the future, but at five minutes notice. North Vietnamese sappers attacked after RAAF had left. All RAAF veterans to serve at Ubon were awarded the AASM after upgrade consideration.

8. Medical force protected by 2 and then 2/4 RAR with F88 rifles and F89 LMGs, a section of armoured personnel carriers (armament included 30/50 cal MG combination). Two man crew also had personal weapons.

9. Deployment on 9 Nov 01 of four F18s and air and ground crew from 77 Sqn. Replaced in Feb 02 by same assets from 3 Sqn who RTA Australia 21 May 02. Several scrambles of planes occurred; all false alarms (no enemy). Nil ground threats. "No threat ever materialized" (Defence web site).

10. **RCB.** Still denied recognition of service as 'warlike', despite all of these comparative upgrades/awards. RCB troops served approx. one month for 1 Nov 70-30 Aug 73, then for three months thereafter.

11. **Deigo Garcia.** Recognised as Warlike Service per 20011207 - **Determination of Warlike Service - VEA 86 - OP SLIPPER** (signed by Danna Vale Minister for DVA for and on behalf of the Minister for Defence on 7 Dec 01). See also <http://www.defence.gov.au/Medals/Master/docs/Australian/Since-75/Australian-Active-Service-Medal-ICAT-Instrument-2015.pdf>

12. **Ubon. 2000 Review of Service Entitlement Anomalies in Respect of SE Asian Service 1955-75**, under chap 6. See <http://www.defence.gov.au/Medals/Master/docs/Reviews-Reports/Review-Service-Anomalies-South-East-Asian.pdf>, p73: **Conclusion** ... the period of service at Ubon in the period 1965-1968 was warlike in nature. Their service, most certainly comparable with many other groups of all three services in other similar limited conflicts, should properly be rewarded with the appropriate repatriation and medal entitlements. **Recommendations** It is recommended that RAAF service at Ubon: ... b. in the period 25 Jun 65 until the Squadron was withdrawn on 31 Aug 68 be classified as 'warlike' operational service and that personnel be eligible for the appropriate repatriation and medal entitlements.

13. **Namibia.** 30 days of service with UNTAG from 18 Feb 89 to 10 Apr 1990. See <http://www.defence.gov.au/Medals/Master/docs/Tables/AASM/S303-01-AASM-NAMIBIA.pdf>

14. **RAN ships off Somalia. Inquiry Into Recognition of Australian Defence Force Service in Somalia Between 1992 and 1995**, chaired by Prof Dennis Pearce AO (p7-8): Tribunal found that in the case of both of the RAN Units, their ROE were used to determine the level of their award. In this case, the Ships' ROE were restricted to self defence only (although lethal force was permitted in some circumstances). The Tribunal further found that the use of ROE as the sole criteria for determining the level and classification of honours and awards was flawed. Furthermore, that with the exception of Somalia, medallic recognition principles which began with the lead up to the First Gulf War (1990/91), were based on all assigned ASF units within the AO being treated equally as a part of the ADF Joint Force. The Tribunal found that the recognition for HMA Ships Tobruk and Jervis Bay was inadequate, and recommended upgrade to AASM. Defence opposed this position. See https://defence-honours-tribunal.gov.au/wp-content/uploads/2011/06/Somalia-Report_Public-Release.pdf for full report. One day of service for Naval Component for [Operation Solace](#) from 10 Jan 93 to 21 May 93.

15. **Operation OKRA/HIGHROAD.** Not upgraded; participants have been awarded AOSM from the outset.
16. **Cambodia.** 1 day of service (or 1 sortie) with the UNTAC from 20 Oct 91 to 7 Oct 93. See <http://www.defence.gov.au/Medals/Master/docs/Tables/AASM/S102-01-AASM-CAMBODIA.pdf>
17. **Rwanda.** 1 day of service with UNAMIR - Operation Tamar from 25 Jul 94 to 8 Mar 96. Recognised as Warlike Service per **official Media Release by Minister for Veterans' Affairs The Hon Bruce Billson on 13 Feb 06.** 20060213. See also <http://www.defence.gov.au/medals/Master/docs/Tables/AASM/S79-06-AASM-RWANDA.pdf>
18. **Submarine Special Operations.** CLASSIFIED Special Submarine Operations service from 1 January 1993 to 12 May 1997 (dates TBC) was upgraded in 2019 to operational and qualifying service under the Veterans' Entitlements Act 1986 (VEA), also earning upgrade to the AASM from the ASM (Special Ops).
19. <https://www.defence.gov.au/Operations/OpAccordion/>
20. The AASM was also awarded for the following UN activity with respect to Vietnam 1975:
RAAF activities with TSF Butterworth to UNICEF 29 Mar - 28 Apr 75
RAAF activities with HQEISDET S to UNICEF 29 Mar 0 28 Apr 75

First RAAF mission was 2 April. RAAF acft/personnel relocated to Bangkok on 17 April and last Australian military personnel (RAAF) were evacuated from Saigon on 25 Apr 75.

Update 18

Research Contact:

LTCOL Russell Linwood, ASM (Retd)
0403544866
rlinwood@bigpond.net.au

Lidia

From: [redacted] Peter COL <Peter.[redacted]@defence.gov.au>
Sent: Thursday, 15 October 2009 9:04 AM
To: [redacted] Martin
Cc: [redacted] Fiona; [redacted] Jennifer; [redacted] David BRIG 3; [redacted] Jan LCDR;
 [redacted] Robert LTCOL; [redacted] Brian WGCDR
Subject: RE: RCB AND RAAF SERVICE AT BUTTERWORTH [SEC=IN-CONFIDENCE]

IN-CONFIDENCE

Martin,

thanks for the response. I can't imagine how we got into such a mess.

I will send whatever I have available on the previous briefs etc to see if it makes any more sense to you.

The aim now is to sort it out as quickly and easily as possible before Mr Cross appears on 60 Minutes.

I will speak to BRIG [redacted] and see where we go from here.

regards,

Peter

*Peter [redacted]
 Colonel
 Project Officer NOSB*

*Mobile: [redacted]
 Email: [peter.\[redacted\]@defence.gov.au](mailto:peter.[redacted]@defence.gov.au)*

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

IMPORTANT: This email remains the property of the Australian Defence Organisation 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: [redacted] Martin [mailto:Martin.[redacted]@dva.gov.au]
Sent: Wednesday, 14 October 2009 09:42
To: [redacted] Peter COL
Cc: [redacted] Fiona; [redacted] Jennifer
Subject: RE: RCB AND RAAF SERVICE AT BUTTERWORTH [SEC=IN-CONFIDENCE]

Peter,

While I take your point that your current work is simply designed to correct errors and oversight, it remains that that DVA appears to not have 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.

The email from Jan [s 47E(c), s 47E(d)] on 14 September 2009 was really our first opportunity to comment on the proposal. In the absence of any supporting documentary evidence, we still have not developed a firm Departmental position on the reclassification and rely on the position taken by the Clarke Review. This is the context that underpinned Ric [s 47E(c), s 47E(d)]'s letter to BRIG [s 47E(c), s 47E(d)] of 23 September 2009.

Given DVA's lack of participation in the reclassification up until very recently (notwithstanding the fact that the decision has already been made), 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 that will be reflected in the new instrument - the extra benefits are those that flow from the proposed determination covering a period of nearly 20 years. On this issue of benefits, we can find no record of costings being provided for the proposal that went up to the Minister, and these costings should have been an integral element of the proposal.

If this matter does go forward to the Repatriation Commission, I would hope that the process will not take six months. Would you be able to provide a copy of the report from the 2007 Defence review as this document should form the basis for a submission to the Commission?

Thanks,
MP

From: [s 47E(c), s 47E(d)] Peter COL [mailto:Peter [s 47E(c), s 47E(d)]@defence.gov.au]
Sent: Monday, October 12, 2009 7:38 AM
To: [s 47E(c), s 47E(d)] Martin
Cc: [s 47E(c), s 47E(d)] David BRIG 3; [s 47E(c), s 47E(d)] Robert LTCOL; [s 47E(c), s 47E(d)] Brian WGCDR; [s 47E(c), s 47E(d)] Jan LCDR; [s 47E(c), s 47E(d)] Henrik GPCAPT
Subject: RCB AND RAAF SERVICE AT BUTTERWORTH [SEC=IN-CONFIDENCE]

IN-CONFIDENCE

Hello Martin,

Attached is the latest draft of the MINSUB on RCB and RAAF service at Butterworth. I note that DVA has referred the previous draft to the Repatriation Commission.

As this current process is simply designed to correct errors and oversights in the staffwork provided to Minister Billson in 2007, I am not sure that there are new 'significant potential implications' for benefits under the VEA. My assessment of the current situation is as follows:

- On 18 Sep 07 Minister Billson agreed that the activities of the RCB from 15 Nov 70 to 31 Dec 89 be classified as either non-warlike or hazardous. It appears DVA was consulted during the preparation of this submission.
- While included in the brief to Minister Billson, for some unknown reason the service of the ADGs and RAAF Police who served directly in the defence of the base was not included in the recommendations.
- Consequently the instruments signed by the Minister did not include the ADG and the RAAF Police. (copies attached)
- Apparently the Instruments were not formally 'registered' and so even the RCB warlike or hazardous classification is suspect at best.

By this current action Defence is seeking to:

- Correct the errors that were made in drafting the previous recommendations to include the service of the ADGs and RAAF Police.

- Have the instrument legally registered to provide the eligibility to the benefits that was intended for the RCB, ADGs and RAAF Police. Note, it appears that one hazardous service instrument will suffice.
- Clarify the situation with regard to the Security Guards (Dog Handlers) who changed musterings during this period.

The only additional implication for benefits under the VEA will flow from our recommendation that the start date for this service be brought forward 8 months to 31 Mar 70 (rather than 15 Nov 70) as this was the date that the RAAF and Malaysian authorities took over responsibility for security at Butterworth from the RAF. From this time the ADGs, RAAF Police and Security Guards were directly responsible for the defence of the Base. The RCB arrived in Nov 70 and this was incorrectly used as the start date.

My recommendation to BRIG [REDACTED] is that we progress this MINSUB as the decision has already been made, the additional implications are minor and we need to fix this problem. Based on the consideration of Ubon, waiting another 6 months for the Repatriation Commission to meet is not an option where there has already been Ministerial agreement and we are only fixing a problem.

I would appreciate your advice if my understanding is in any way not correct.

regards,

Peter

Peter [REDACTED]
Colonel
Project Officer NOSB

Mobile: [REDACTED]
Email: peter.[REDACTED]@defence.gov.au

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

IMPORTANT: This email remains the property of the Australian Defence Organisation 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: [REDACTED] Martin [mailto:Martin[REDACTED]@dva.gov.au]
Sent: Wednesday, 23 September 2009 10:06
To: [REDACTED] Jan LCDR
Cc: [REDACTED] David BRIG 3; [REDACTED] Robert LTCOL; [REDACTED] Brian WGCDR
Subject: RE: Nature of Service MINSUB - Rifle Company Butterworth - Request for Comment [SEC=UNCLASSIFIED]

Jan,

Interim response is attached.

The original's in the mail.

Thanks,
MP

From: [REDACTED] Jan LCDR [mailto:Jan [REDACTED]@defence.gov.au]
Sent: Monday, September 14, 2009 11:29 AM
To: [REDACTED] Martin; [REDACTED] Brett MR 2; [REDACTED] Colleen MS; [REDACTED] Michael COL; [REDACTED] David GPCAPT; [REDACTED] Mark MR; [REDACTED] Ken MR
Cc: [REDACTED] Robert LTCOL; [REDACTED] Natalie MRS 1; [REDACTED] Craig MAJGEN; [REDACTED] Steven MR; [REDACTED] Derek MR 1; [REDACTED] Helen MRS; [REDACTED] Lyn MS
Subject: Nature of Service MINSUB - Rifle Company Butterworth - Request for Comment [SEC=UNCLASSIFIED]

UNCLASSIFIED

Good Morning Sir, Ladies and Gentlemen,

Attached is a Ministerial Submission regarding the Nature of Service of personnel serving at RAAF Butterworth. Please note attachments A and B are not included in this email in order to reduce the size of the message.

Comments on your specific areas of responsibility are requested to be sent to Brigadier [REDACTED] (cc LTCOL Bob [REDACTED] and myself) by **23 Sep 09**.

Regards

Jan [REDACTED]
LCDR, RAN
Nature of Service Branch

CP4-3-154
Ph [REDACTED]

IMPORTANT: This email remains the property of the Australian Defence Organisation 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.

IMPORTANT

1. Before opening any attachments, please check for viruses.
2. This e-mail (including any attachments) may contain confidential information for the intended recipient. If you are not the intended recipient, please contact the sender and delete all copies of this email.
3. Any views expressed in this e-mail are those of the sender and are not a statement of Australian Government Policy unless otherwise stated.
4. Electronic addresses published in this email are not conspicuous publications and DVA does not consent to the receipt of commercial electronic messages.
5. To unsubscribe from emails from the Department of Veterans' Affairs (DVA) please go to http://www.dva.gov.au/contact_us/Pages/feedback.aspx, and advise which mailing list you would like to unsubscribe from.
6. Finally, please do not remove this notice.



Australian Government
Department of Veterans' Affairs

ACT OFFICE

BRIG David s 47E(c), s 47E(d)
Nature of Service Review
CP4-3-163
Department of Defence
CAMPBELL PARK ACT 2600

Dear Brigadier s 47E(c), s 47E(d)

Submission regarding the Nature of Service of personnel serving at RAAF Butterworth

Thank you for the email advice of 14 September 2009 from Lieutenant Commander Jan s 47E(c), s 47E(d) concerning the draft Ministerial submission on the proposed determination of hazardous service for the period 31 March 1970 – 31 December 1989.

As this matter involves significant potential implications for benefits under the *Veterans' Entitlements Act 1986* it will need to be considered formally by the Repatriation Commission. While this Department does not presently hold a formal position on this matter, we do not disagree with the views expressed by Justice Clarke in the 2003 *Review of Veterans' Entitlements*, specifically that the training and protection of Australian assets are normal peacetime garrison duties. The draft Ministerial submission would not seem to present a compelling argument for the reclassification of service by Rifle Company Butterworth, and any other material that can be used in support of the case to revise the service classification would be appreciated.

I will write to you again when the Repatriation Commission has considered this matter.

Yours sincerely

Ric s 47E(c), s 47E(d)
Acting National Manager
Rehabilitation, Compensation & Income Support Policy

23 September 2009



Australian Government
Department of Veterans' Affairs

ACT OFFICE

BRIG David s 47E(c), s 47E(d)
Nature of Service Review
CP4-3-163
Department of Defence
CAMPBELL ACT 2600

Dear Brigadier s 47E(c), s 47E(d)

Service at RAAF Butterworth

Thank you for your request (of 22 October 2009 from Lieutenant Commander Noonan) for costings associated with the proposed reclassification of service at RAAF Butterworth during the period 1970–89.

As already advised, we have been unable to locate any policy or costings advice provided by this Department at the time of the Ministerial submission in August 2007. As the decision at this time was taken by the then Minister Assisting the Minister for Defence, our view is that it may be inappropriate to now provide a Department of Veterans' Affairs view that possibly conflicts with this decision. Further, as the Ministerial Submission at hand is essentially correcting earlier errors, we can see no need to provide a Departmental position beyond what was contained in my letter of 23 September 2009.

Similarly, we are reluctant to revisit costings based on assumptions made in 2007. However, we will as soon as possible provide you with costings based on your estimate of 530 personnel over the eight-month period that is the subject of your current submission. Unfortunately, other current workload prevents costings being available by 28 October 2009.

Yours sincerely

Ric s 47E(c), s 47E(d)
Acting National Manager
Rehabilitation, Compensation & Income Support Policy

26 October 2009

Title: PROPOSED RECLASSIFICATION OF SERVICE BY RIFLE COMPANY BUTTERWORTH (1970-89)

Submitted by: Rehabilitation, Compensation & Income Support Policy/Support Division

Category: For Decision

Purpose/Matters for decision: To seek the Commission's view on Defence's proposed reclassification of service

Prior Commission Decisions: Nil

Clearances within the Department:

Corporate Division		/	/
(required if there are issues other than those below)			
*CFO Resources Group	Cleared	/	/
*CIO ICT Solutions Group	Cleared	/	/
Business Integrity & Legal Services		/	/
(required if there are risk/audit/fraud issues)			
*Principal Legal Advisor	Cleared	/	/
Is legislative amendment required?		(Yes/No)	
Contract Advisory Unit (if required)		(Yes/No)	
Support Division (if required)		/	/
Services Division (if required)		/	/
Executive General Manager (if required)		/	/
* mandatory clearances			

Are there any IT System Impacts: No

Consultation with outside bodies: With Defence's Nature of Service Review Branch

Implications for the Military Rehabilitation and Compensation Commission: Nil

Winners/Losers:


Implementation timetable:

Financial Implications (\$'000s):
(Cash)

		10-11	11-12	12-13	13-14
Expenditure:	Departmental	0	0	0	0
	Administered	414,000	435,000	463,000	494,000
Savings:	Total:				
	Departmental	0	0	0	0
	Administered				

Total:

Is this expenditure/savings currently in the Forward Estimates? NO

Prepared by:
Martin 

Authorised by: (signature)
General Manager, (Division)



Australian Government
Department of Veterans' Affairs

MINUTE

REPATRIATION COMMISSION

**PROPOSED RECLASSIFICATION OF SERVICE BY RIFLE COMPANY
BUTTERWORTH (1970-89)**

Purpose

To seek the Commission's view on a proposal by the Department of Defence to reclassify service by Rifle Company Butterworth during the period 1970-89.

Background

The then Minister for Veterans' Affairs (in the role of Minister Assisting the Minister for Defence) signed on 18 September 2007 two instruments concerning service by Rifle Company Butterworth (RCB) - one for non-warlike service for the period 15 November 1970 – 6 December 1972; the other for hazardous service for the period 6 December 1972 – 31 December 1989. The submission that supported these determinations was prepared by Defence and this Department has no record of providing any input to the decision, notwithstanding Defence's advice to the Minister that DVA had been consulted.

Minister Billson agreed that the activities of the RCB from 15 November 1970 to 31 December 1989 be classified as either non-warlike or hazardous. Due to an oversight, the service of the Airfield Defence Guards (ADGs) and RAAF Police who served directly in the defence of the base was not included in the recommendations and the instruments signed by the Minister did not include the ADGs and the RAAF Police. Further, the instruments were not formally registered (as required under the Legislative Instruments Act) and therefore have no legal effect.

The Department has now been approached by Defence's Nature of Service Review Branch (NoSR) for costings attributable to the reclassification from peacetime to hazardous of service by RCB during the period 31 March 1970 – 14 November 1970.

Defence is taking advantage of the need to include the ADG and RAAF Police in the instruments to bring forward the date of effect of the instruments to 31 March 1970, the date that the RAAF and Malaysian authorities took over responsibility for security at Butterworth from the Royal Air Force.

Defence is now proposing that the entire period be declared hazardous service.

Defence's position is that the decision has already been made to reclassify service by RCB; that this current work is simply designed to correct a number of errors that have been identified. On the

basis that the reclassification of service for a period covering some 19 years is a fait accompli, there seems to be little point in opposing the reclassification of similar service for a further eight months.

Issues

There is a concern that Defence have not thoroughly assessed the extent of danger that members of the RCB may have been exposed to during their service; and that the proposed reclassification may have undesired flow-ons to other peacetime ADF activities. Defence's Ministerial Submission (Attachment A) appears to rely more on correcting errors made in the earlier submission rather than providing justification that the RCB service was in fact hazardous in nature. (The 2007 submission is at Attachment B.)

Additionally, the limiting of the reclassification to the RCB may raise questions of consistency and equity for members of other ADF elements stationed at Butterworth during this same time.

Of particular note is that this determination of hazardous service will be the first time this classification has been applied to service prior to 1972. Once again, a precedent may be set for other ADF activities, eg. participation in British Nuclear Tests.

The separation of the period (in Defence's 2007 Ministerial submission) into non-warlike and hazardous service is attributable to then prevailing legal view that hazardous service was not available for service prior to 7 December 1972. While a strict reading of the 1994 amendment that inserted the 'hazardous' provision into the *Veterans' Entitlements Act* indicates nothing to prevent hazardous service being determined in relation to service rendered before 7 December 1972, the intention of the law change was not to allow this type of service before this date.

Promulgation of the decision

As mentioned above, Defence's current task is in part aimed at correcting deficiencies in the work undertaken in 2007, one of which was the failure to register the Ministerial determinations. While the determinations were not formally promulgated, the Minister did write to Mr Robert Cross (Chair, RCB Review Group) on 4 October 2007 and advise of his intention (sic) to declare the service in the period 1970-89 as hazardous.

Clarke Review

The Clarke Review examined this issue and observed that the RCB's tasks were infantry training and after-hours patrolling. Clarke commented that "... training and the protection of Australian assets are normal peacetime garrison duties". Clarke recommended that no further action be taken. This recommendation was accepted by the then Government, and the issue is outside the scope of the Minister's current revisitation of unimplemented recommendations.

Costing

It is estimated that the reclassification of service from peacetime to hazardous for the period 31 March 1970 – 14 November 1970 will cost \$1.8m over four years. This estimate is based on 530 personnel being able to access disability pension at the more generous reasonable hypothesis standard of proof.

We have no record of providing any input or costings to the 2007 submission and are reluctant to estimate the costs for the entire period in case new costs conflict with earlier Defence advice to the Minister.

Recommendations

It is recommended that:

- Defence be advised that the Commission does not oppose any reclassification of service by Rifle Company Butterworth during the period 1970-89;

- the Commissioner write to the Vice Chief of the Defence Force advising of the Commission's view and that the Commission was never provided with an opportunity to comment on the proposed reclassification in 2007, and that steps should be taken to ensure that details of future proposals be notified to the Commission in a timely manner.

Neil Bayles
National Manager, MRCA/Clarke Reviews
Support Division

January 2010



Australian Government

The Repatriation Commission

PRESIDENT
DEPUTY PRESIDENT
MEMBERS

TELEPHONE 02 6289 6200
TELEFAX 02 6289 6204
TELETYPE 02 6289 6203

FACSIMILE 02 6289 6207

BRIG David s 47E(c), s 47E(d)
Nature of Service Review
CP4-3-163
Department of Defence
CAMPBELL PARK ACT 2600

David
Dear Brigadier s 47E(c), s 47E(d)

I have recently been apprised of a proposal by the Department of Defence that service by Rifle Company Butterworth (RCB) be reclassified for a period of nearly 20 years, 1970 - 1989. While I appreciate that the current work is designed to correct errors and oversights in staff work provided to the former Minister Assisting the Minister for Defence in 2007, I have a number of concerns about the process and outcome of this proposal.

As I have said before, the Repatriation Commission does not see itself as having the role of 'second guessing' decisions regarding the nature of service classifications of Australian Defence Force (ADF) operations. These decisions properly sit with the leadership of the ADF. However, 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 be little in the way of justification for the reclassification.

The Clarke Review examined this issue and observed that the RCB's tasks were infantry training and after-hours patrolling. Clarke commented that "... training and the protection of Australian assets are normal peacetime garrison duties", and recommended that no further action be taken. This recommendation was accepted by the then Government, and the issue is therefore outside the scope of the Minister's current revisitation of unimplemented recommendations.

I am also concerned with the apparent lack of consultation leading up to the decision in September 2007 by the then Minister Assisting the Minister for Defence to reclassify RCB service. As I understand, the Department of Veterans Affairs (DVA) can find no record of being consulted in this decision and no record of providing costings attributable to the initial reclassification. Costings have now been prepared for the extension by eight months of the initial period (15 November 1970 - 31 December 1989). The extrapolation of this estimate for the entire period results in a significant level of additional expenditure which rests with DVA and would need to be considered in the usual budgetary processes. DVA expenditure implications attributable to this proposal seem to have not been fully considered.

Lastly, I am anxious about the precedent that will be established through this reclassification, both for other like ADF activities and for other ADF personnel based at Butterworth during the same time.

In closing, I would appreciate from you any further information that may provide reasons for the proposed reclassification so that this matter can be considered fully by the Repatriation Commission in order for it to advise the Minister for Veterans' Affairs. Also, I am happy to discuss administrative arrangements within our respective organisations that will guard against possible consultation oversights in future.

Best regards
Bill Rolfe

Brigadier Bill Rolfe AO (Rtd)
Commissioner

/ February 2010