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8 March, 2023

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## Submission to Inquiry - Mr Kenneth Nevill Marsh

### Part 1 – Name of Inquiry

**Name of Inquiry \***

Inquiry into medallic recognition of for service with Rifle Company Butterworth

### Part 2 – About the Submitter

**Title or Rank \***

Mr

**Given Names \***

Kenneth Nevill

**Surname \***

Marsh

**Post-nominals (if applicable)**

**Street Number and Name \***

[REDACTED]

**Suburb \***

[REDACTED]

**Postcode \***

[REDACTED]

**State \***

[REDACTED]

**Email Address: \***

[REDACTED]

**Primary Contact Number \***

[REDACTED]

**Secondary Contact Number**

**Is the Submission on behalf of an organisation? If yes, please provide details:**

### Part 3 – Desired outcome

**Provide a summary of your submission:**

As given in my initial submission. This is to provide additional evidence that may be relevant to the inquiry.

### Part 4 - Your submission and Supporting Documentation

File Attached: 20091015-EMAILS-FOI-30170 Documents Partial-Release Final redacted.pdf

## Part 5 – Consent and declaration

✓ I consent to the Defence Honours and Awards Appeals Tribunal making my submission publicly available.

✓ I also consent to the Defence Honours and Awards Appeals Tribunal:

- using information contained in my submission to conduct research;
- providing a copy of my submission to a person or organisation considered by the Tribunal to be appropriate; and
- providing a copy of my submission to a person or organisation the subject of adverse comment in the submission;
- using content in my submission in its report to Government.

**The Tribunal will decide which person or organisation is appropriate, and this may include:**

1. persons or organisations required to assist with the inquiry; and
2. persons or organisations with an interest in the inquiry.

✓ I declare that the information I have provided is correct.

**Name**

Kenneth Neville Marsh

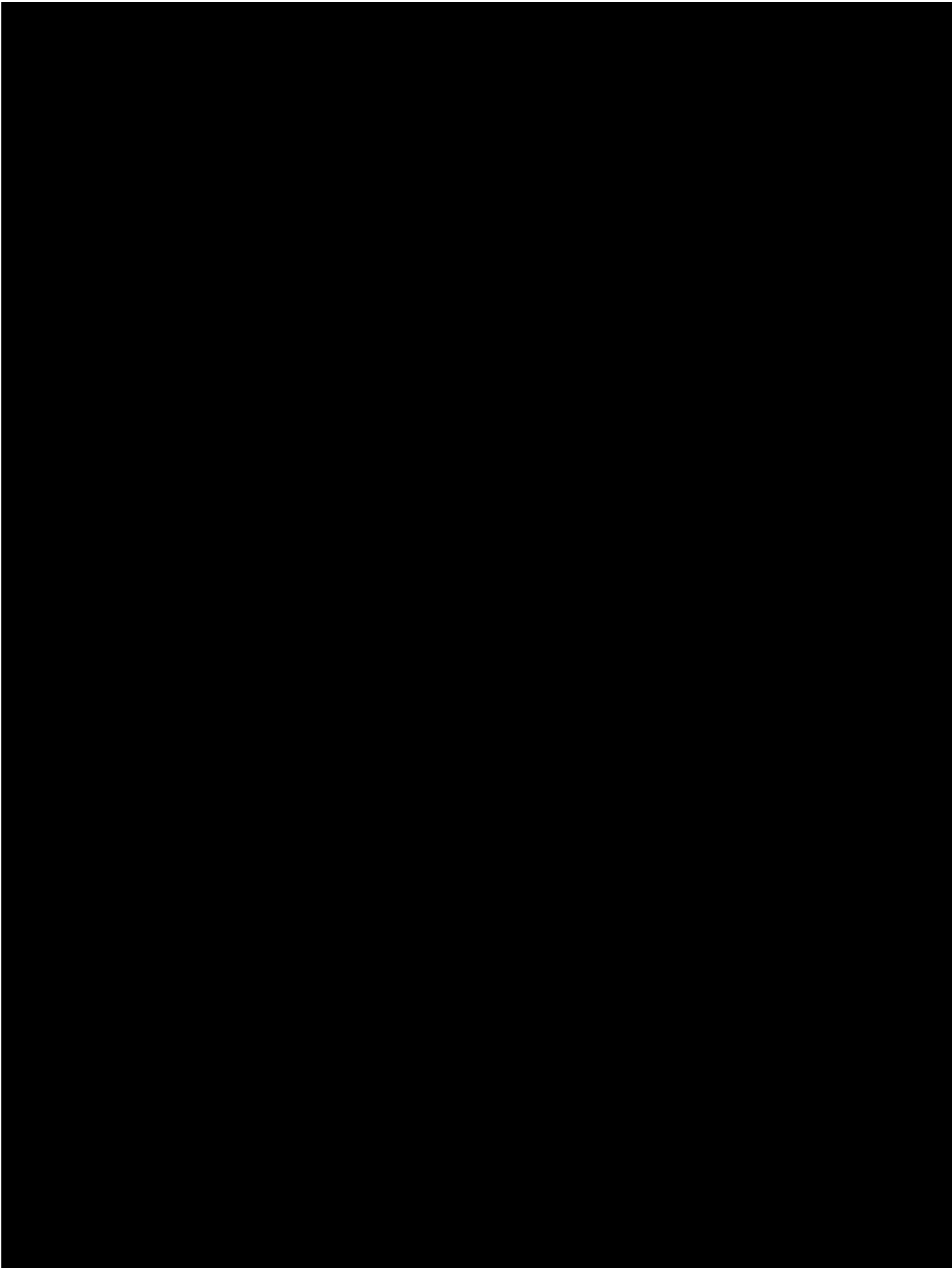
**Date**

08/03/2023

*Mr Kenneth Nevill  
Marsh*

Signed by Mr Kenneth Nevill Marsh

Signed on: 8 March, 2023



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

Lidia

**From:** s 47E(c), s 47E(d) Peter COL <Peter.s 47E(c), s 47E(d)@defence.gov.au>  
**Sent:** Thursday, 15 October 2009 9:04 AM  
**To:** s 47E(c), s 47E(d) Martin  
**Cc:** s 47E(c), s 47E(d) Fiona; s 47E(c), s 47E(d) Jennifer; s 47E(c), s 47E(d) David BRIG 3; s 47E(c), s 47E(d) Jan LCDR; s 47E(c), s 47E(d) Robert LTCOL; s 47E(c), s 47E(d) 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 s 47E(c), s 47E(d) and see where we go from here.

regards,

Peter

*Peter s 47E(c), s 47E(d)  
Colonel  
Project Officer NOSB*

*Mobile: s 47E(c), s 47E(d)  
Email: peter.s 47E(c), s 47E(d)@defence.gov.au*

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**From:** s 47E(c), s 47E(d) Martin [mailto:Martin.s 47E(c), s 47E(d)@dva.gov.au]  
**Sent:** Wednesday, 14 October 2009 09:42  
**To:** s 47E(c), s 47E(d) Peter COL  
**Cc:** s 47E(c), s 47E(d) Fiona; s 47E(c), s 47E(d) 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 [REDACTED] 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 [REDACTED] letter to BRIG [REDACTED] 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:** [REDACTED] Peter COL [mailto:Peter[REDACTED]@defence.gov.au]  
**Sent:** Monday, October 12, 2009 7:38 AM  
**To:** [REDACTED] Martin  
**Cc:** [REDACTED] David BRIG 3; [REDACTED] Robert LTCOL; [REDACTED] Brian WGCDR; [REDACTED] Jan LCDR; [REDACTED] 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

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**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:** 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]

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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:**

<b>Corporate Division</b>		/	/
(required if there are issues other than those below)			
*CFO Resources Group	Cleared	/	/
*CIO ICT Solutions Group	Cleared	/	/
<b>Business Integrity &amp; Legal Services</b>		/	/
(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 Administered	0 414,000	0 435,000	0 463,000	0 494,000
▫ Savings:	Total: Departmental Administered	0	0	0	0
	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: 0220 628555/5236  
DEPUTY PRESIDENT: 0220 628555/5236  
COMMISSIONER: 0220 628555/5236  
FAX: 0220 628555/5236

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