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30 March, 2023

Signed On : <https://defence-honours-tribunal.gov.au>

Submission to Inquiry - Private George Thomas Lovett

Part 1 – Name of Inquiry

Name of Inquiry *

Inquiry into Medallic recognition - Rifle Company Butterworth

Part 2 – About the Submitter

Title or Rank *

Private

Given Names *

George Thomas

Surname *

Lovett

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

[Redacted]

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

No

Part 3 – Desired outcome

Provide a summary of your submission:

A supplementary submission which raises discussion around The Status of Forces Agreement (SOFA) entered into between Malaysia and Australia in futherance to the Five Power Defence Arrangement.

Part 4 - Your submission and Supporting Documentation

File Attached: DHAAT-SOFA.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

George Lovett

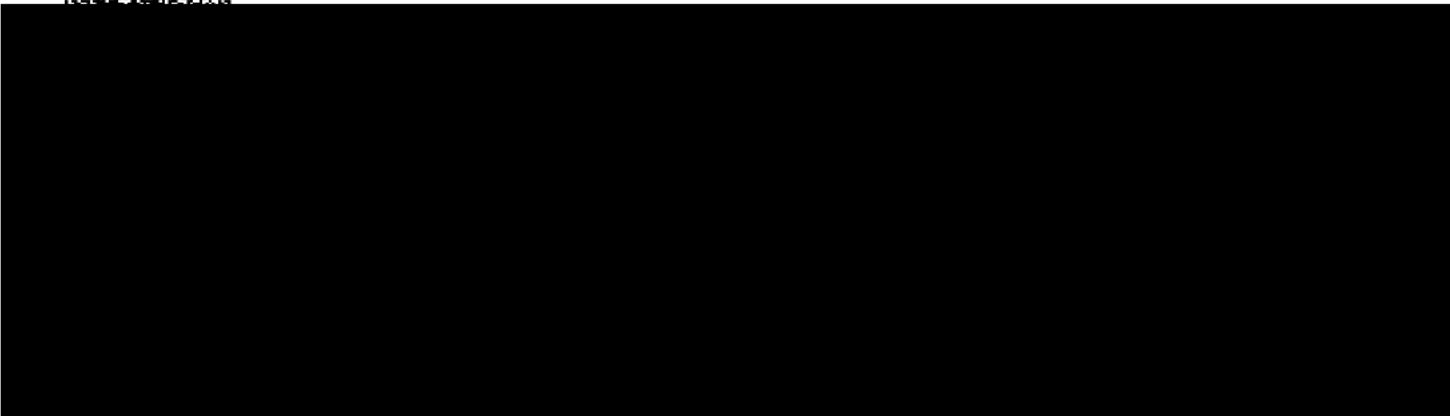
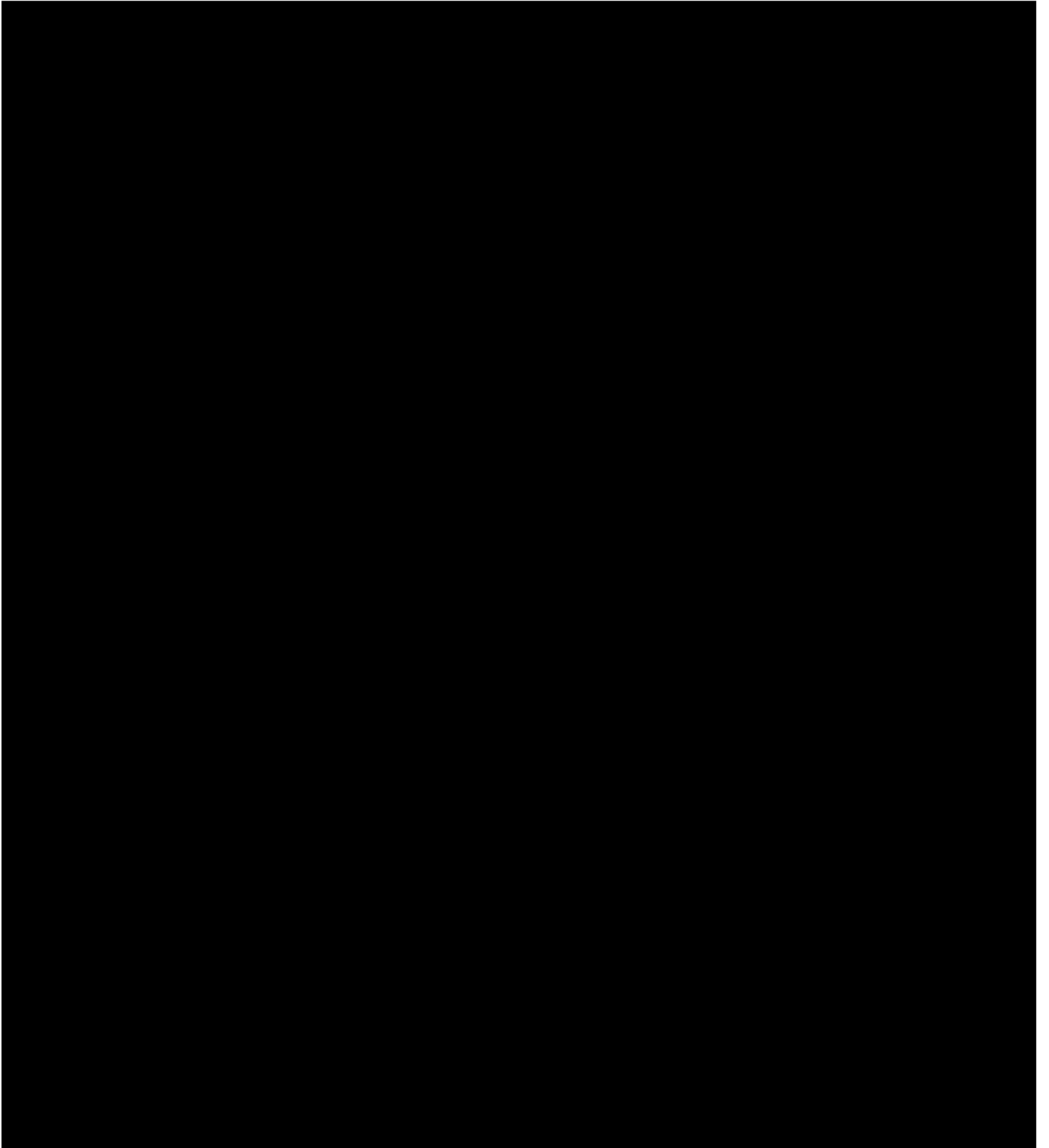
Date

30/03/2023



Signed by Private George Thomas Lovett

Signed on: 30 March, 2023



Inquiry into medallion recognition for service with Rifle Company

Supplementary Submission # 074 A - George Lovett

1. Defence Aid - Status Of Forces Agreement (SOFA)

A supposition being put forward relates to an obligation Australia had in terms of the Status Of Forces Agreement (SOFA) entered into on the 1 December 1971 with a retrospective date of 1 November 1971 as a bilateral agreement (Treaty) between Australia and Malaysia namely as “ An Exchange of Notes which constituted an Agreement in terms of “***Assistance to the Malaysian Armed Forces*** in furtherance of the Agreement on the Five Power Defence Arrangement.

It is contended that Australia fulfilled the obligations set out under Annex 1 of the Agreement to the extent that RCB assisted the Malaysian Forces Operationally in the protection of a vital strategic Air base from which they carried out their counter offensive operations at a time where they were unable to provide the required protection to secure the Air Base from attack by either the CTO or subversive elements. Rcb provided that capability under Operational Orders 1-71 , 1-72 known as the Base Defence Plan.

Annex 1

*“The Government of Australia **shall provide** as may be agreed between the Government of Malaysia and the Government of Australia and on such terms, including terms of payment, as may be agreed.”*

- (a) Personnel to assist in the training and development of the Armed Forces of Australia.*
- (b) Facilities including instructional courses aboard, for training members of the Armed Forces of Australia.*
- (c) Expert advice **and assistance in Operational** and Technical matters*
- (d) Use of facilities for the purposes of the Note.*
- (e) Assistance in the supply of equipment for the Armed Forces of Malaysia.*

The Protective Security duties carried out by Rifle Company Butterworth was of a kind referred to as “Assistance” under ANNEX 1 (c) of the Status of Forces Agreement namely - Assistance in Operational matters.

This Assistance was provided by Australia by way of assistance under Operational Orders 1 / 71 & 1-72 which involved the total internal defence of Air Base Butterworth. Rcb had specialist expert capabilities that allowed it to counter an attack and if required pursue. (Seek and destroy)

The Right to carry arms at Air Base Butterworth was promulgated under the terms of the Status of Forces Agreement.

Section 4

Carriage of arms

Members of an Australian force and members of civil police services mentioned in Section 2(4) above may possess and carry arms when authorised to do so by their orders, except that the members of such civil police when employed outside the installations shall carry arms only with the agreement of the Malaysian authorities.

Whilst the **Exchange of Letters** - FPDA was a consultative arrangement between the Five countries involved to consult with each other in the event of an external threat, the **Exchange of Notes** comprised a separate treaty by way of a Status of Forces Agreement (SOFA) in relation to Defence Aid which obligated Australia to provide “*Assistance to the Malaysian Armed Forces*” at a time when Malaysian Forces were fighting on their own soil against separate Communist Insurgencies in both East Malaysia and West Malaysia known as the Second Malaysian Insurgency (SME). Butterworth Air Base was not exempt from the SME.

There is a clear delineation between the FPDA and the SOFA. One dealing with a consultative arrangement in event of an **external threat** and the other being an Agreement (treaty) to provide Assistance to the Malaysian Forces who were dealing with an **internal insurgency**.

When we consider that the Malaysian Forces were stretched to their operational limits with two separate insurgencies under way in East and West Malaysia, the defensive arrangements put in place as part of the Assistance offered to the Malaysian Armed Forces in terms of Defence Aid at Butterworth Air Base relieved the Malaysian Forces of that responsibility .

RCB were charged with that responsibility. Rcb was involved directly in the insurgency war by providing protective security to one of the primary air bases from which the Malaysians conducted their Operations.

For many year Politicians have cited the Exchange of Letters under the FPDA as the wicket keeper with no further discussion around the Status of Forces Agreement which was made in furtherance to the FPDA.

2/12/2019

Treaties



Australian Government
Department of Foreign Affairs and Trade

Exchange of Notes constituting an Assistance to the Malaysia Armed Forces in the Furtherance of the Agreement on the Five Power Defence Arrangements for Malaysia and Singapore, with Annexes

Australian Treaty Series Number	[1971] ATS 21
Done at Place and Date	Kuala Lumpur, 12/01/1971
Treaty Status (Australia)	In Force
Agreement Type	Bilateral
Country (Bilateral)	Malaysia
Subject of Treaty	Defence Aid Status of Forces Agreements (SOFA)
Entry into Force for Australia, Date and Conditions	11/01/1971, eif retrospective in accordance with notes
Treaty Acceptance	
1. Action and Date	
2. Action and Date	
Treaty Withdrawal	
1. Action and Date	
2. Action and Date	
Registered with UN	07/30/1980, 27455, Australia
Other Series Numbers and Reference to Text	UNTS 1571 p105; UKTS 1972/15
Amendments to Treaty and Notes	see agreement of 10 Feb 1988, and agreement with Malaysia of 1 Dec 1971
Last Updated	09/14/2007

2. If the foregoing is acceptable to the Government of Malaysia, I have the honour to propose that this Note and its Annexes together with your reply to that effect shall constitute an Agreement between the two Governments in this matter which shall be deemed to have entered into force on the 1st day of November 1971.

Yours sincerely

[Signed:]

J R ROWLAND

High Commissioner

ANNEX I

ASSISTANCE BY AUSTRALIA TO THE ARMED FORCES OF MALAYSIA

The Government of Australia shall provide as may be agreed between the Government of Malaysia and the Government of Australia and on such terms, including terms as to payment, as may be agreed:

- (a) personnel to assist in the training and development of the Armed Forces of Malaysia;
- (b) facilities, including instructional courses abroad, for training members of the Armed Forces of Malaysia;
- (c) expert advice and assistance in operational and technical matters;
- (d) use of facilities for the purposes of the Note;
- (e) assistance in the supply of equipment for the Armed Forces of Malaysia.

ANNEX II

RIGHTS AND FACILITIES

Section 1

Installations

(1) The Government of Malaysia shall permit an Australian force to occupy such installations as are agreed by the Government of Malaysia upon such terms and conditions as may be agreed by the Government of Malaysia and the Government of Australia.

(2) The Government of Malaysia agrees to afford the Government of Australia an adequate opportunity to comment before any development is authorised in the vicinity of the installations that would hamper their operation or endanger their security.

Section 2

Training

(1) An Australian force may use such defined land and sea areas, air space and facilities related thereto as may be agreed between the Government of Australia and the Government of Malaysia, for the purpose of training or exercises as may be agreed, and in accordance with Malaysian clearance procedures.

(2) The Government of Australia shall give the Government of Malaysia such prior notice of their intention to use any such areas or air space, or any related facilities, as may be agreed between the two Governments; and the Government of Malaysia shall take such measures as may be agreed between the two Governments