

**Defence responses to questions identified as ‘undertaking further work’ in Defence
Supplementary Submission EC23-000372 of 31 Jan 23**

at 2 Apr 23

**INQUIRY INTO RECOGNITION FOR SERVICE WITH RIFLE COMPANY
BUTTERWORTH**

8(c) *Was the application of military discipline during Rifle Company Butterworth deployments the same as that for peacetime service in Australia?*

- ***If not, what was the nature and reason for any difference?***

Defence notes that the use of the term ‘War Service’ for disciplinary matters has an extensive history. In particular, paragraph 44 of the Explanatory Memorandum to the Defence Force Discipline Bill 1982 explained the codes of discipline for the Army prior to the introduction of the legislation. Specifically, it was noted that:

‘the expression “war service” is something of a misnomer because ... it not only includes service in time of war, but also active service ... and all service outside Australia in time of peace’.

As such, the statement ‘Whilst on War Service’ reflected the military discipline arrangements and processes applicable to units deployed overseas. It provided increased powers of punishment for officers commanding and commanding officers of units deployed overseas, and does not refer to a nature of service classification.

8(f) *What security arrangements were provided for Royal Australian Air Force personnel who did not live on base?*

No further information has been located.

8(g) *What plans were in place for the extraction of families from Malaysia in the event that it was required?*

- ***Who was responsible for the maintenance of this plan?***
- ***Was this plan updated regularly, rehearsed, trialled or enacted?***
- ***What ‘trip-wires’ would likely have generated a decision to evacuate families from Malaysia?***
- ***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 notes Document number 083 provided by the Tribunal is HQ RAAF Butterworth Operation Order 2/72, ‘RAAF Families Protection Plan’.

No further information has been located.

8(j) Did the service records of any Rifle Company Butterworth personnel contain a form AABS3 (or any other form) annotated “WOWS” or “Whilst on War Service” or similar?

The annotation ‘WOWS’ would appear in the Record of Service of Rifle Company Butterworth personnel if the individual had faced disciplinary action during their deployment. The statement ‘Whilst on War Service’ reflected the military discipline arrangements and processes applicable to units deployed overseas. It provided increased powers of punishment for officers commanding and commanding officers of units deployed overseas, and does not refer to a nature of service classification.

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

There is no nexus between a disciplinary environment (Whilst on War Service) and the physical environment. The statement ‘Whilst on War Service’ reflected the military discipline arrangements and processes applicable to units deployed overseas. It provided increased powers of punishment for officers commanding and commanding officers of units deployed overseas, and does not refer to a nature of service classification.

8(l) What records are there of Rifle Company Butterworth personnel:

- *conducting training of Malaysian military personnel;*
- *engaging in joint training with Malaysian military personnel;*
- *engaging in training away from Air Base Butterworth separately from Malaysian military personnel; and*
- *undertaking duty other than training away from Air Base Butterworth? - please provide details*

Training of Malaysian military personnel

Defence has not found evidence of Rifle Company Butterworth personnel training Malaysian Armed Force personnel.

Joint training with Malaysian military personnel

Rifle Company Butterworth did conduct bi-lateral training exercises with the Malaysian Armed Forces. Examples include:

- Jungle warfare training exercises in late 1977 and late 1978;
- An exercise with the 7th Battalion, Royal Malaysian Regiment in March 1981;

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- Exercise HARINGAROO. This became a regular training exercise through the 1980s and by 1989 HARINGAROO exercises were usually occurring three times per year. Joint exercises with the Malaysian Armed Forces under the HARINGAROO banner continue to this day.

Training away from Air Base Butterworth separately from Malaysian military personnel

Available end of tour reports routinely discuss Rifle Company Butterworth personnel training away from the air base at various Malaysian Armed Forces facilities at Pulada, Langkawi Island, Penang Island and other places.

In March-April 1989, Rifle Company Butterworth participated in Exercise CHAPEL GOLD, the first bi-lateral land exercise to be held in Thailand, and involved combined land exercises with Thai units.

Undertaking duty other than training away from Air Base Butterworth

One example occurred in October 1978 when a Royal Australian Air Force C-130 Hercules aircraft of 37 Squadron was deployed to Thailand to assist with flood relief operations. Two Rifle Company Butterworth personnel were assigned to support the aircrew during the relief operations in Thailand over an eight-day period.

8(m) (i) *What Rules of Engagement were issued to Rifle Company Butterworth personnel from time to time?*

Defence has located rules of engagement in Headquarters Field Force (HQFF) Standing Orders and Staff Instructions in 1978, 1979 and 1982. The rules of engagement are listed in Annexures or a part of annexures to these orders and instructions for the use by Rifle Company Butterworth while on deployment at Air Base Butterworth.

(ii) *How did such Rules of Engagement differ from those issued to Army personnel in Vietnam or other conflicts?*

Rules of engagement are prepared by commanders, with the support of legal officers and operations staff who consider the mission (task and purpose), the threat and other considerations subject to the operation, environment and the type of force deployed.

A key delineation for all rules of engagement is the authority to utilise force for a reason and support to a mission and the identification of an enemy or threat actor and the risks they might impose on the missions' success.

Rules of engagement included in 1978 HQ Field Force Standing Orders and Staff instructions are characterized as being defensive as they limited to the protection of Australian persons (including family of ADF members) and their property from criminal acts (e.g. theft or assault). This reflects a number of factors:

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- The rules of engagement are strictly self-defensive in nature. In particular, they include measures to ensure only the minimum necessary force is used including:
 - if in doubt, do not shoot
 - they require a warning before shooting
 - only shoot as a last resort
 - only shoot to wound
 - use minimum rounds
- the rules of engagement only applied on the air base, e.g. RCB members were not permitted to shoot at anyone outside the boundary fence unless specifically authorised;
- while the Malay forces were responsible for perimeter security, the local Malays appeared to have access to the base, e.g. because they were employed to provide services on the base;
- there were reported incidents of petty theft in the Rifle Company Butterworth end of tour reports;
- the rules of engagement refer to detaining/arresting a suspected illegal entrant to the base, not an enemy or potential Prisoner of War;
- the need for the use of force was based on an internal security risk was not an Australian Defence Force security force, i.e. there were only two Military police in the Rifle Company Butterworth contingent and so the rifle company had a security role within the base.

The Butterworth ‘Rules of Engagement’ differ from a warlike rules of engagement in a number of critical ways, e.g.:

- the rules of engagement for Rifle Company Butterworth do not refer to there being a war or armed conflict;
- the rules of engagement for Rifle Company Butterworth do not indicate a legal basis for using force e.g. a reason like ‘because Australia is participating in an armed conflict in Malaysia against communist insurgents’ is not included;
- the rules of engagement for Rifle Company Butterworth do not identify a warlike mission (e.g. to assist Malaysian government to defeat an insurgency or defend against a threat);

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- the rules of engagement for Rifle Company Butterworth do not identify a legal basis for the RCB to participate in an armed conflict e.g. invitation of the Malay Government (under Five Powers Defence Agreement [FPDA]) or a UNSCR;
- the rules of engagement for Rifle Company Butterworth do not designate, describe or identify an enemy or hostile forces;
- the rules of engagement for Rifle Company Butterworth do not refer to capturing Prisoners of War or how Prisoners of War should be treated;
- the rules of engagement for Rifle Company Butterworth do not refer to or require compliance with the laws of armed conflict (which apply in times of war);
- the rules of engagement for Rifle Company Butterworth do not authorise the use of ‘offensive force’ (as opposed to self-defensive force) against an identified enemy or hostile force e.g. Rifle Company Butterworth cannot open fire on an insurgent or something they think is an insurgent without being threatened while on base;
- the rules of engagement for Rifle Company Butterworth do not permit the use of force to protect Malay armed forces or other allies in Malaysia;
- the rules of engagement for Rifle Company Butterworth are limited to ‘self-defence’ measures which emphasis the use of the minimum use of force, require a warning before using lethal force and require the use of the minimum;
- the rules of engagement for Rifle Company Butterworth do not permit the use of force outside the Australian base.

(iii) Are Rules of Engagement issued to Army personnel on garrison duty in Australia?

The majority of Garrison Duty in today’s context or area or asset security is conducted by civilian contractor. Previous Garrison Duties before the 1990’s were conducted by military police and rostered guard duties from soldiers of unit and barrack areas. Navy and Air Force utilised different systems with Naval Police (later Naval Police Coxswains) and Air Defence Guards/Air Force Security Forces however now also utilise civilian security in most areas.

(ii) How do such ROE differ from those issued to Rifle Company Butterworth personnel?

The key difference in the Rules of Engagement for Rifle Company Butterworth and Australian garrison Rules of Engagement are the locations named in the orders and instructions. These rules of engagement are all characterised as defensive rules of engagement.

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8(n) *In the C2 arrangements of the day, how would ROE REQUESTs or equivalent have likely been handled/processed?*

In the period 1970 to 1989 records indicate that rules of engagement and requests to adjust the rules of engagement reflect current practices where the operational chain of command determine the threat and risks to the mission and determine rules of engagement that support the mission (task and purpose). Changes that reflect changes to a threat level or conditions highlighted by the chain of command would be put through the operational chain of command for approval. It is practice that rules of engagement were to be approved at very high levels within Defence.

The rules of engagement stipulated in HQ Field Force Standing Orders and Staff instructions are not typical of rules of engagement issued by operational headquarters deploying to areas of conflict.

8(o) (i) *Who within the ADF “owned” the Rifle Company Butterworth Rules of Engagement/Orders for Opening Fire.*

There is a mix of current terminology, like ‘owned’ and ‘accountable’ and older terminology, like ‘ROE Requests’, utilised in this question.

Rules of engagement are communicated through the chain of command as orders. The development of the rules of engagement are through consideration of the mission and likely threats to the missions’ success. The rules of engagement utilised by Rifle Company Butterworth were issued by Headquarters Field Force, later to become Headquarters Land Command. The owner in this case would be the Field Force Commander who through each Brigade and Battalion communicated the rules of engagement to their companies deploying as Rifle Company Butterworth.

Currently the ‘owner’ and ‘accountable officer’ of any Rules of Engagement for ADF troops deploying is the Chief of the Defence Force. The ‘responsible officer’ is the Chief of Joint Operations for mission success in all elements. The rules of engagement for warlike operations are developed by operations and legal staff in Joint Operations Headquarters and become a part of the orders provided to all deploying personnel.

(ii) *Who was accountable for processing ROE REQUESTs or equivalent?*

This question is unclear and mixes terminology. HQ Field Force staff and its Commanders at the time were responsible for developing rules of engagement and adjusting them if necessary.

8(r) (i) *Is the inherent right of self-defence (including the ability to employ lethal force) an artefact of Rules of Engagement/Law of Armed Conflict/National/International/Other Law?*

Defence is still considering this question.

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- (ii) *Is an Australian civilian, for example, able to deploy lethal force in self-defence (subject to similar provisos/limitations just as the Rifle Company Butterworth could?)***

Defence is still considering this question.

- 8(s) *Under the December 1978 Orders for Opening Fire, what level of force was available to the Rifle Company Butterworth 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)?***

Records indicate that Rifle Company Butterworth were deployed with a full complement of a standard doctrinal rifle company. Each member of the company were to be issued a weapon based on their role and training level. The orders for opening fire clearly indicate instructions to avoid the use of lethal force, the firing of a weapon.

The soldiers and officers of Rifle Company Butterworth were issued standard infantry rifle company equipment to support their training and conduct of activities with equipment they were trained on and familiar. This is a key risk mitigation for any deployment.

The first element of support to Rifle Company Butterworth security duties was their physical presence at Air Base Butterworth in Australian uniform.

The second element of support to Rifle Company Butterworth security duties was their individual training and doctrine demonstrated through their discipline and type of activity or training conducted on Air Base Butterworth.

- 8(t) *In other words, did the Rifle Company Butterworth Rules of Engagement provide for the use of lethal force in the defence of others?***

Yes, however other options were to be used first. The rules of engagement are strictly self-defensive in nature. In particular, they include measures to ensure only the minimum necessary force is used including:

- if in doubt, do not shoot
- they require a warning before shooting
- only shoot as a last resort
- only shoot to wound
- use minimum rounds.

Lethal force, to wound only, was to be used as a last resort.

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8(u) *Where do the Rifle Company Butterworth Rules of Engagement (Orders for Opening Fire) sit on the ‘spectrum’ of Orders for Opening Fire options?*

There is no spectrum (current terminology not used in the development of Rules of Engagement) or scale of rules for opening fire. The rules of engagement given to and used by Rifle Company Butterworth are characterized as defensive which reflects the task and purpose, i.e. the mission of the troops at Air Base Butterworth.

Where specific military objectives are a part of the mission, rules of engagement reflect this mission profile, identified and enemy threat, and are characterised as being more offensive in nature, requiring direct action or combat with an identified and active enemy.

8(aa) *What was the mandated degree of weapons readiness for Rifle Company Butterworth personnel while on duty?*

Records of Orders and Instructions found in the research indicate that all rostered duty and piquet's were to be conducted with weapons at ‘unloaded’ condition unless specified by the Commander on the ground. It is not uncommon for these orders to be delegated.

Records indicate that different commanders, at company, platoon and section level adopted different weapon readiness status subject to the tasks that they were given. The rules of engagement provide a commander the information to support these orders but the circumstances of particular times, tasks, levels of training, as individuals and collectively, and the environment might dictate a different weapon readiness status.

8(ab) *What was the degree of weapons readiness as it applied to live rounds?*

Degrees of weapon readiness is terminology that explains both the status of the weapon and are also orders given to troops to prepare to use the weapon. This terminology is used for live and blank firing ammunition, i.e. for all ammunition natures and the terminology relates to the weapon, not the rounds that are in it.

For example a weapon without any rounds (ammunition) in the breach of the rifle, and no magazine carrying rounds attached to the weapon, it is at the ‘unloaded’ condition. To get to this degree of weapon readiness the commander would order “unload” or “inspect weapons”.

Weapons are stored in magazines, an armscote, in the ‘unloaded’ condition. Weapon handling regulations stipulate that on issue or handover of any weapon and any time between a storeman or to another soldier the weapon must be checked that it is ‘unloaded’ as a routine safety standard operating procedure. This is completed by going through the unload weapon drill and weapon clearance process by both parties. A soldier is trained to complete this process in seconds. It is the first lesson of any weapon training conducted in Army.

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The majority of training in Army, including drill, physical training, marching and combat fitness training is conducted with weapons in an ‘unloaded’ condition.

The next degree of weapon readiness is ‘Load’ and is the order given to load a magazine with either no rounds, blank rounds or live rounds and normally conditional on the activity being conducted. A weapon in the ‘loaded’ condition or at that ‘degree of weapon readiness’ is assumed to have live rounds in the magazine and should not be out of reach of its operator at any time until unloaded. The weapon is carried differently and specific handling procedures are applied. ‘Load’ is the first degree of weapon readiness where live rounds are attached to a weapon.

The explanation of further degrees of weapon readiness of ‘Action’ and ‘Instant’ and fire orders of ‘Fire’, ‘Ceasefire’ and ‘Check fire’ can be provided if necessary.

8(ae) When were weapons issued (e.g., 0800 daily for the duration of Quick Reaction Force duty vs continuous access)?

The 1978 Field Force Standing Orders for Rifle Company Butterworth indicate that the Quick Reaction Force were to be issued individual weapons at commencement of each duty period and withdrawn on completion of this duty. Records indicate that other Rifle Company Butterworth weapons were issued to conduct training serials that required this equipment. The 1978 Standing Orders (Annex C, pg C2, par 6, subpar a-c) stipulate that the QRF was to be issued three Self Loading Pistols (SLP), one General Purpose Machine Gun (GPMG) M60 and the remainder of the section, six to eight personnel, issued Self Loading Rifles (SLR) or M16 rifles.

Additionally, as the rifle is standard infantry equipment it is expected that each soldier and officer would conduct much of their daily work routines with a weapon as a part of their duty. Many commanders and trainers of soldiers adopted weapon handling and carriage as a part of daily routine to build confidence in the weapon, individual confidence and strength. The humid environment is likely to have contributed to weapons deteriorating quickly so daily handling would ensure ongoing maintenance of the equipment.

8(ak) Noting that the Rules of Engagement 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 Rules of Engagement issued during the period of Rifle Company Butterworth deployments.

In our 31 January 2023 submission Defence noted that we had not identified any further versions of the ROE. We now have a version from 1978 and 1982 which have been provided to the Tribunal. The rules of engagement are not significantly different in each version.