

## **DHAAT Inquiry into service with Rifle Company Butterworth (RCB)**

### **Introduction**

This submission is in response to submission 096c on behalf of the Department of Defence and dated 2 April 2023. This submission uses the numbering used by Defence in their submission, the better for the reader to relate the comments.

This submission does not intend to address all remarks made by Defence in their submission styled "063c"; merely those remarks that warrant rebuttal.

In all dealings on RCB to date, Defence has failed to conduct its affairs as a "model litigant" to the extent that some of the responses contained in their submission 096c are simply not correct or can only be intended to mislead the reader.

### **The "Matrix"**

This topic deserves its own attention separate from the rebuttal below. It is my view that the Chair of the Tribunal was correct when he ventured the suggestion that perhaps Defence was unwilling to address the matter of the Matrix lest it "give the game away".

Defence selectively engages in comparisons when dealing with RCB – but only when it suits their narrative. As expressed at the public hearing of 3-4 April 2023:

### **Somalia**

Troops deployed to Somalia were, according to the Tribunal, "under hostile fire" and therefore deserving of the award of the AASM, yet the term "hostile fire" is not defined in any Defence publication I can find.

### **Ubon**

At Ubon (according to internal RAAF communications), the RAAF didn't work on weekends or at night and communication was made not to arrive at the base at those times. The Airfield Defence Guards (ADG) did not appear to have any Rules of Engagement (ROE), but that is not a concern because they never fired a shot, yet they were awarded the AASM because (according to the Tribunal) they were on a "war footing". Like "hostile fire" the term "war footing" does not appear in any Defence definition I could locate.

Indeed, Defence has a problem locating any material prior to 1978 (with few exceptions), particularly when the early 1970s was a time when Malaysia was undergoing increased Communist Terrorist activity, coinciding with the fall of Cambodia and Vietnam.

Defence appears to adopt the position that “absence of evidence is evidence of absence” and hope that the reader will be fooled by their submissions. They don’t provide a shred of primary evidence to support their assertions.

The remainder of this submission will now focus on submission 096c:

**8(c)** It was established at the public hearing of 3-4 April 2023 that neither the RAAF nor the RAN operated under a regime of “Whilst on War Service” (WOWS) or “Whilst on Active Service” (WOAS) and, as such, in the context of Air Base Butterworth (ABB), it only applied to soldiers at RCB and/or those posted to the Ground Liaison Section. It might interest the Tribunal to know that during my Army service I was posted offshore (other than RCB) and was never advised that I was on “War Service” or “Active Service” for disciplinary purposes.

Similarly, when sub-units of 8/9RAR were deployed to Canada in 1976, or when ARA sub-units were deployed to PNG, NZ and other locations, “WOWS” was not implemented.

**8(g)** Defence neglects to address “Plan Downstairs” which was developed in 1966 to effect the evacuation of all Australian and allied dependents from Malaysia.<sup>1</sup>

It might be timely to highlight that since the RCB Review Group (RCBRG) was established and records were gathered for evidentiary purposes, the most prolific sources were not Defence. Strangely, Defence seems unable to locate anything that supports the contention that RCB was engaged in anything that didn’t align with the Defence position. Equally strangely, the other sources’ evidence appears to do exactly the opposite.

**8(j)** Addressed above.

**8(k)** The WOAS and WOWS prefix gave Defence an “each way bet” when dealing with soldiers deployed to RCB.

**8(l)** So, in 21 years of deployments to RCB to “train with the Malaysian Army” (if one were to believe Defence), only three instances can be found that supports this gross falsehood until the establishment of Ex HARINGAROO? What about all the other “training” that justified the deployments? Is Defence seriously expecting everyone to believe that troops

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<sup>1</sup> Townsend, Air Commodore and Evans, Brigadier, Draft Plan “Downstairs”, Army Ref 144/1/1(G), Air Force Ref BS 1201/24/P3, 15 June 1966.

deployed to RCB were sitting around for years at a time waiting for the Malaysian Army to engage in training? Where has that ever happened for any military force?

**8(m)** Despite what has been discussed in the public hearings, I can say with hand on heart that in the early 1970s and certainly in 1975 there was never any ROE that contained the lengthy Malay phrase that appeared in later iterations. Additionally, there was never any “shoot to wound” component. The internet is awash with video of live rounds being fired into ballistic gel mannequins that clearly demonstrate the ridiculous belief that such an idea of “shoot to wound” with regard to modern Infantry small arms is a viable option, particularly when using automatic weapons, explosives, anti-armour weapons and the like.

Originally, in Ubon, the authority to open fire was vested in a senior RAAF officer in Canberra. Later, owing to the time zone difference and other convenience factors, the authority was vested in a senior RAAF officer located in Bangkok. Later still, it was vested in the pilot in the air over Ubon.

In the case of RCB, the authority to open fire was vested in the lowest rank in the Australian Infantry – a private soldier.

Defence harp on about “self-defensive ROE”, “shoot to wound” and “low threat” – and that may appear in documents sourced 50 years after the fact, but the troops on the ground know otherwise and have attested to that in their numerous submissions to the Tribunal. Note that Defence does not deny the content of any of those submissions and they have yet to produce any RCB veteran willing to appear before the Tribunal to support their position.

For Defence to say “there were only two Military Police in the Rifle Company Butterworth contingent and so the rifle company had a security role within the base.” is to treat the reader like a fool. Defence cannot produce evidence that every RCB contingent had Military Police within – because they didn’t. They would rather conflate the presence of two soldiers in a 21 period and have the reader believe it was the status quo. If one were to take that approach, the majority of contingents were “up-gunned” Infantry soldiers. Does that mean there was total war? Hardly.

For Defence to state “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)” is to deny the evidence. There is overwhelming evidence primary evidence from a number of sources that RCB was deployed to support the Malay government in the deterrence of an attack on ABB. To deny there was a threat is again to take the reader for a fool. In a large number of veterans’ group submissions there are examples of directives given by OC Base Squadron Butterworth that spell out the role of RCB that directly contradict the fantasy proposed by Defence.

It should also be stated and acknowledged that Defence is a phase of war.

The majority of Defence's content in this response is nonsense and, at times, contradicts statements made elsewhere in their submission.

**8(n)** No evidence provided to support Defence's position.

**8(o)** Convoluted response. It appears Defence is unable to consult the Army History Unit or any other organisation with the Defence establishment who has any idea what went on before last week.

**8(r)** Noted. Question too difficult to answer without revealing a weak position. A first year law student could answer this question with a high degree of accuracy.

**8(s)** I had to read this twice – "The orders for opening fire clearly indicate instructions to avoid the use of lethal force, the firing of a weapon." Perhaps Defence can explain what "orders for opening fire" relate to if not firing a weapon.

"The first element of support Rifle Company Butterworth security duties was their physical presence at Air Base Butterworth in Australian uniform." This statement is an insult to each and every RCB veteran and it clearly demonstrates the utter contempt Defence has for its veterans. If the first element of RCB's presence was merely being present in an Australian uniform, why not send a group of storemen, or cooks, or dental hygienists? The answer to that question is obvious – because that group (storemen, cooks and/or dental hygienists) would most likely not be able to perform the combat role that RCB was deployed to perform.

Defence fail to define "security duties". Because they cannot without revealing the role of the QRF – which was not "defensive" in nature.

**8(t)** The first word of Defence's response is sufficient – "Yes". It agrees that the RCB ROE provided for the use of lethal force. It begs the question – against whom if not an identified enemy engaged in threatening conduct? The balance of the Defence response (i.e. beyond the first word) is the usual regurgitation of contradictory nonsense.

**8(u)** Defence conveniently neglects to deal with the role of the Quick Reaction Force (QRF) whose sole purpose was to be an aggressive combat response to an identified threat. Actually, it is interesting to observe that the QRF is not mentioned anywhere in the Defence submission. Why is that? It was the primary function of RCB and was provided on a 24/7 basis for 21 years.

**8(aa)** The first paragraph of this response is contradicted by the evidence and the second paragraph. The second paragraph indicates the truth of the RCB deployments, that the threat ebbed and flowed over the 21-year existence of RCB's presence at ABB during the Communist Insurgency War and the ROE on the ground changed in response to those changes in threat level and immediacy.

**8(ab)** Defence's response is puff and comes directly from the training manual. It does not relate to the situation on the ground at ABB and glosses over the gravity of live rounds as intended in the question. The state of weapon readiness at any one time in an RCB deployment might be different to the state of weapon readiness for the same activity on any other day. It is a reflection of the aforementioned ebb and flow of the threat.

Defence is deliberately attempting to deflect from any admission that live ammunition was carried at RCB as a matter of daily routine and there is evidence that in the 21-year history of RCB the state of weapon readiness could have been anything from "unloaded" to the "instant" condition – as the evidence shows.

**8(ae)** Again, Defence refers to 1978 situation as if it was representative of the entire 21-year history of RCB. It is not. The evidence reflects that it is not. Every RCB soldier would have been carrying a weapon whilst on duty from arrival at ABB and until their departure for Australia at the end of their deployment.

**8(ak)** Again, no records could be found by Defence to support their position. Based on two versions of ROE (i.e. 1978 and 1982), it appears Defence is willing to extrapolate that all deployments (i.e. four per annum over a 21-year period) were "not significantly different". If they didn't believe that, they would have said as much in their response. What is amusing is that they expect the reader to go with them on their delusional journey.

### **Balance of Probabilities**

If the burden of proof to be satisfied to secure a classification of warlike service for RCB veterans was "the balance of probabilities" and the Tribunal were to give the veterans the benefit of the doubt in light of the overwhelming primary evidence gathered and offered in support of their case; particularly when Defence offers almost nothing in response, the matter is resolved in the positive.

Defence's contradictory assertions alone should be sufficient to expose their position as being disingenuous.

The anomaly between "non-warlike" and "warlike" service (using the 1993 definitions) is the presence of a military objective. That objective was identified during the public hearing on

3-4 April 2023 – jointly with other forces (RAAF ADG, Malay SSP and others) to defend ABB against attack by hostile elements of the Communist Terrorist Organisations present in proximity to ABB at the time.

All the elements are satisfied and despite the repeated softening given to the mission by Defence (e.g. “self-defensive ROE”, “shoot to wound” etc) they cannot deny that the role of the QRF was counter-attack to contain and defeat an enemy attempt to penetrate the perimeter of the base. Otherwise, what were they there for and why were they carrying weapons with live ammunition 24/7 for 21 years?

### **1993 Definition of Warlike Service**

*“Warlike operations are those military activities where the application of force is authorised to pursue specific military objectives and there is an expectation of casualties. These operations can encompass but are not limited to:*

- (1) A state of declared war*
- (2) Conventional combat operations against an armed adversary*
- (3) Peace enforcement operations which are military operations in support of diplomatic efforts to restore peace between belligerents who may not be consenting to intervention and may be engaged in combat activities. Normally but not necessarily always they will be conducted under Chapter VII of the United Nations Charter, where the application of all necessary force is authorised to restore peace and security or other like tasks.”*

If we examine the elements of the definition we arrive at the following:

“military activities” – RCB was engaged in “military activities”. They were a military unit.

“application of force” – we have already established that weapons and live ammunition were not only available to RCB soldiers, but carried daily.

“authorised” – the ROE authorised the application of lethal force.

“to pursue” – in the attempt to secure (taking the normal meaning)

“specific military objectives” – it has been established by the Tribunal that the military objective was the defeat of hostile forces attempting to penetrate the perimeter of ABB.

“and there is an expectation of casualties” – it has been demonstrated that 4RAAF hospital was put on alert several times in their role of treating casualties from combat. The interview of Dr Graeme Killer (former CO of 4RAAF Hospital) clearly demonstrates the comprehensive plan to cope with casualties resulting from an incursion onto the base and/or explosions resulting in indirect fire.

Sub-para (2) offers “conventional combat operations against an armed adversary” – it has been established that the CTs were armed and they were the most likely adversary. Defence is a legitimate phase of war. Assaulting an armed adversary attempting to penetrate the perimeter of ABB would be a conventional combat operation. QED.

On the material above and considering all the evidence objectively, the balance of probabilities is well and truly satisfied.

## **Conclusion**

It cannot be overstated that each tour of RCB was different from most other tours as the threat ebbed and flowed, as new technology was introduced, as new interpretations were put on the situation by different commanders on the ground (based on their experience and skillset).

It only remains for the Tribunal to recommend to the appropriate Minister that service at Air Base Butterworth 1970 – 1989 be re-classified as warlike to end a travesty that has been permitted to continue for decades beyond the service on the ground of the RCB veterans.