



12 May 2023

Defence Honours and Awards Appeals Tribunal
CANBERRA ACT 2610

Dear Tribunal members

Accompanying this letter please find four papers which together represent the final submission of the Rifle Company Butterworth Review Group to the Tribunal's current inquiry. They are titled:

1. RCBRG Supplementary Submission
2. Considerations arising from the Tribunal Hearings 3-4 April 2023
3. Response to Defence Submission 096c
4. Warlike Service Through the Lens of Cabinet 2000, Defence, and Mohr

We believe that we have presented a compelling case for warlike service and that Defence has not provided any credible counter to our case. The Defence propensity to assert conclusions without any evidence to support its arguments has proven to be undiminished throughout the inquiry. Defence has failed to honour the undertakings it made to the Tribunal that "Defence will be available to assist the Tribunal throughout the Inquiry and support any recommendations it may find".¹

The fact is that Defence has failed to assist the Tribunal on a number of occasions by refusing to provide an assessment of the veterans' comparison of service matrix, which the Tribunal said would be very important to its deliberations, and refusing to provide a contemporary military threat assessment based on the historical evidence available for RCB. The Tribunal is entitled to conclude from these refusals that the reason for doing so is because those assessments would demonstrate the warlike nature of RCB service. We believe that the Tribunal should draw that conclusion.

Veterans have provided much evidence on the warlike nature of service at Butterworth between 1970 and 1989. They have explained the role of the QRF, the presence and threat of hostile forces and the joint defence of Air Base Butterworth alongside our Malaysian allies at a time of great distress for their nation. Those eyewitness accounts cannot be lightly dismissed as they have been in the past. This is especially so given the inability of both Defence and the veterans to locate official documents for large swathes of the relevant period.

¹ Campbell, A.J., CDF, *Inquiry into Medallion Recognition for Service with Rifle Company Butterworth, Department of Defence Submission*, 6 July 2022, DHAAT Submission 096, para 3.32.

The Tribunal must decide, based on the evidence before it and common sense, whether RCB veterans were engaged in warlike service or not. It must ask itself whether an ADF deployment, facing a hostile force, with live ammunition and authority to use it to defend a foreign operational airbase against insurgents that had attacked other airbases, and acting in cooperation with local forces then engaged against that insurgency to do so, could reasonably be described as anything but warlike.

We thank the panel members for their time and effort, and also wish to acknowledge the tireless and efficient work of the Tribunal secretariat. They have made our engagement with the Tribunal processes over the past year a streamlined and stress-free experience.

We look forward to the release of the Tribunal's report.

Yours sincerely

Ray Fulcher
Chair, Rifle Company Butterworth Review Group



Considerations Arising from the Tribunal Hearings 3-4 April 2023 Rifle Company Butterworth Review Group

1. The purpose of this paper is to clarify some key issues raised at the hearings on 3-4 April 2023.
2. The Tribunal would be aware that there are gaping holes in the official record of RCB service, particularly Army records. Given this we believe that greater weight must be given to the submissions and testimony of veterans, as the people who were there, than has hitherto been afforded by Defence or government.

“Silver bullet”

3. The Tribunal, at the hearing on 4 April 2013, asked the veterans whether, in relation to assertions of fact contained in their submissions and uncontested by Defence:

“In that whole spectrum of assertions of fact does anyone say that there is anything in there that if it happened could have happened *only* because it was warlike?”¹
4. The Tribunal referred to this as a “silver bullet” and related that it had initially thought that the disciplinary category of Whilst On War Service was such a silver bullet until proven otherwise.
5. We submit that there was such an activity that could only occur on warlike service. Furthermore, descriptions of it are contained throughout the veterans’ submissions, both group and individual submissions, the facts of which Defence has not contested.
6. The veterans have provided first hand evidence of how RCB was to use force to defend the airbase, vital points, assets and personnel (including families). Not only Australian assets and personnel but also Malaysian. Further, that this was done by the QRF, patrolling the base by day and night, setting up and manning sandbagged defensive positions and being ready to undertake counter-penetration and counter-attack roles. It was put succinctly by the Tribunal:

“RCB was authorised to use force to pursue military objectives.”²

7. One military objective identified by the Tribunal was:

¹ Skehill, S., Chair DHAAT, Hearing recording around 5:00:54, 4 April 2023.

² Grady, A., Air Commodore (Retd), DHAAT, Hearing recording around 2:49:05, 4 April 2023.

“The defence of RAAF Butterworth.”³

8. The only nature of service classification that identifies the use of force to pursue military objectives as a component is warlike. This holds for both the 1993 definitions and the 2018 definitions. The 1993 definition for non-warlike for instance, does not permit the use of force to pursue military objectives but only for personal defence. The military objectives of warlike service are a concept distinct from the general military activities described in the non-warlike, and later peacetime, categories. It is not possible to find that troops were authorised to use force to pursue military objectives, *and* that their service was non-warlike as that activity is exclusive to warlike service.

Expectation of casualties

9. Defence noted that the Tribunal was focused on the 1993 Nature of Service definitions, and the Tribunal responded that Defence’s statement was a fair summary. But the Tribunal said that did not mean that the 2018 definitions would be disregarded and that:

“We can look at them to see whether they add anything that would help in the interpretation of the 1993 definitions.”⁴

10. We believe that the Tribunal’s opinion is supported by Ministerial Advice, signed by the Minister, containing the proposed new definitions. That advice said:

“It is important to note that the new definitions do not alter the intent or direction provided by the 1993 definitions. They do, however, more clearly distinguish between the NOS classifications and will promote a better understanding that NOS decisions are based on the **exposure to the risk of harm to ADF personnel from hostile forces, consistent with the historic basis for the provision of repatriation benefits.**”⁵

11. Both the 2018 definitions and Cabinet Directive 1048 sought to clarify the alignment of contemporaneous nature of service definitions with the “historic basis” for repatriation benefits.

12. Clarke J, in his *Report of the Review of Veterans’ Entitlements 2003*, gave an indication of what that “historic basis” was:

“13.11 The Government appears to have had no difficulty in providing qualifying service entitlements for service in Korea and the most intense period of the Malayan Emergency between 1950 and 1957. However, it was not until 1968 that qualifying service benefits were extended to those allotted for special duty in a special area under the SOS Act that covered operations in Vietnam, the Malay-Thailand border, the Malay Peninsula, Singapore and areas of Borneo during Confrontation. The principal reason for this service not being accorded qualifying service status at the time of those operations was that the risk to personnel involved was not initially assessed to be as great as that experienced in earlier wars. The comparison of this type of service with

³ Grady, A., Air Commodore (Retd), DHAAT, Hearing recording around 2:44:15, 4 April 2023.

⁴ Skehill, S., Chair DHAAT, Hearing recording around 1:19:45, 4 April 2023.

⁵ Binskin, M.D., Air Chief Marshal, CDF, Review of the Definitions of Nature of Service Classifications for Australian Defence Force Operations, CDF/OUT/2017/952, 23 November 2017, para 4.

that rendered in the two World Wars illustrates an attempt, however flawed, to adopt consistent criteria in determining what service would provide access to service pension benefits.

13.12 The next, and better, attempt to adopt a principle consistent with that which applied in World Wars I and II in conferring qualifying service benefits is illustrated in the second reading speech by the Minister for Repatriation, Senator McKellar, for the 1968 SOS Bill, in which he said:

The second amendment that the Bill proposes is to extend eligibility for service pensions to those who have served on special service under the Repatriation (Special Overseas Service) Act. The government believes that the nature of the special service, which is **similar to theatre of war service in earlier wars** [author's emphasis], justifies the recognition of its intangible effects in the future."⁶

13. Cabinet Directive 1048 further clarified that allotment for special service should occur where ADF 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."⁷

14. This aligned the SOS Act with the historic basis for repatriation benefits in that it made the risk of harm central to the determination.

15. Likewise, the 2018 definition aligns the concept of "expectation of casualties" with those historic principles. It says for warlike service:

"ADF personnel are authorised to use force to pursue specific military objectives and there is an expectation of ADF casualties **as a result**."⁸
[author's emphasis]

16. That is, an expectation of casualties **is the result** of authorising the use of force to pursue military objectives. This aligns the warlike definition in both the 1993 and 2018 definitions with the historic principle of incurring danger from hostile forces contained in the *Repatriation Act 1920* and the similar concept of exposure to potential risk from hostile forces contained in Cabinet Directive 1048. This clarification makes the contemporary NOS definition of warlike "consistent with the historic basis for the provision of repatriation benefits".

17. This is reinforced when the wording of the 2018 definitions for peacetime and non-warlike are considered. The peacetime classification says that "...there is no expectation of casualties as a result of engagement with hostile forces" because ADF personnel are not exposed to an assessed threat from same. Non-warlike states that

⁶ Clarke, J., *The Report on the Review of Veterans' Entitlements*, Hon John Clarke, QC, January 2003, paras 13.11-13.12.

⁷ 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.

⁸ Binskin, M.D., Air Chief Marshal, CDF, *Review of the Definitions of Nature of Service Classifications for Australian Defence Force Operations*, MA17-003664, CDF/OUT/2017/952, 23 November 2017, Attachment B.

“...there is no expectation of ADF casualties as a result of engagement of those designated forces or groups” because there is no specific threat from them and no intent on the part of the ADF to engage them short of self-defence.

18. Defence inadvertently confirms this assessment in its submission of 31 January 2023 (submission 096b). In assessing RCB service against the 2018 definition of peacetime service Defence said:

“There was no expectation of casualties as there was not expected to be an engagement with hostile forces.”⁹

That is, it is the possibility of engaging hostile forces that creates the expectation of casualties. Having identified a hostile force and set ADF personnel in opposition to it there *must* be an expectation of casualties as a result.

19. In none of the 2018 definitions is there a mention of gradation of expectation of casualties except to say that for peacetime and non-warlike there is no expectation. Then suddenly for warlike there is an expectation. The only significant change from peacetime and non-warlike to warlike is the intent of Australian forces to engage hostile forces (i.e. pursue military objectives—defend the base).
20. The only other difference in the 2018 warlike definition is the “intent to directly target ADF personnel”. But this is a moot point given the Shared Defence Plan, and the indiscriminate nature of the weapons likely to be used in any attack on the base. Given Australian and Malaysian forces were a single entity for defence of the base under that plan, an intention to target the base was an intention to target ADF personnel. There was an intent to target the base and a consequent intent to target ADF personnel who would seek to engage those hostile forces:
- Defence staff at the Australian High Commission Kuala Lumpur in 1971 reported the Malaysian DDMI had “...assessed Air base Butterworth as “a probable target”. Defence staff concluded that “*The information we were given we consider to be highly reliable;*”.
 - JIO Study 13/75 states at sub paragraph 48 (d) “...the use of booby-traps and minor acts of sabotage by subversive groups are relatively common throughout Peninsula Malaysia and pose a distinct threat, both to the Base and to Australian personnel and their dependants”.
 - Further, JIO Study 13/75 states at paragraph 45 “... in the event of attack, however, it is unlikely that the CTO would try to discriminate between RAAF and RMAF targets, and Australian personnel and equipment would be endangered”.
 - “GDOC was manned by Defence Section and 6RARCOYGP personnel during the period 21JAN76 to 31JAN76 (reason – possible ground threat to F111 aircraft).”¹⁰

⁹ Robards, P., *Inquiry into Recognition for Service with Rifle Company Butterworth*, EC23-000372, submission 096b, 31 January 2023, para 2.65d.

¹⁰ Commanding Officer’s reports – *Monthly reports unit history sheets (A50) – Base Squadron, Butterworth*, NAA Series No. A9435, item 12155562.

21. However, as the Tribunal is not using the 2018 definition other than to help in the interpretation of the 1993 definitions there is no need to prove beyond a reasonable doubt that the CT intended to target ADF personnel.
22. Further reinforcement that an expectation of casualties is the **result** of authorising the use of force to pursue military objectives comes when consideration is given to the “theatre of war service” that the second reading speech to the SOS Bill refers to. It is defined in the *Repatriation Act 1920*:
23. Litigation in the Federal Court of Australia clarified the meaning of this section of the *Repatriation Act 1920*:

“Served in a theatre of war’ means served at sea, in the field or in the air, in naval, military or aerial operations against the enemy in an area, or on an aircraft or ship of war, at a time when danger from hostile forces of the enemy was incurred in that area or on that aircraft or ship of war by the person so serving.”¹¹

“The section requires service, inter alia, in military operations against the enemy, in the sense of operations in hostility or opposition to the enemy.”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.”¹³

“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.”¹⁴

“...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.”¹⁵

“...being “at war” is a technical concept referring to a state or condition of affairs, not mere acts of force.”¹⁶

“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

¹¹ Australia, *Repatriation Act 1920*, s23.

¹² Cooper J., *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), para 25.

¹³ Davies, Wilcox and Foster JJ, *Repatriation Commission v Walter Harold Thompson* [1988] FCA 212; (1993) 44 FCR 20 (24 June 1988), para 12.

¹⁴ *Ibid.*, para 8

¹⁵ *Ibid.*, para 7

¹⁶ Sheppard, Morling and Beaumont JJ, *Thomas Joseph Marsh v the Repatriation Commission* [1987] FCA 303 (4 September 1987), para 28.

always possible, raids launched from aircraft or from submarine landings, or surface carriage of small parties."¹⁷

“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 for an encounter with the enemy, whether offensive or defensive in character.”¹⁸

24. The 2018 definition seeks to clarify that the 1993 definition of warlike is aligned with these historical principles for provision of repatriation benefits. The following points are important and are grounded in over 100 years of repatriation law, including the current definitions:

- No immediate encounter with hostile forces is required.
- No state of declared war need exist.
- No immediacy of threat is required.
- No adjectives describing threat levels are required.

25. What is required is that:

- ADF personnel are exposed to a risk of harm from hostile forces.
- There is an expectation of ADF casualties (an incurring of danger, or risk of harm if you like) **because** ADF troops are authorised to use force to pursue military objectives.

26. It would be a brave CDF that put to the Minister, and a braver Minister that put to the public, that ADF personnel were at risk from hostile forces and authorised to engage them with fire but that, due to an arbitrary calculation of “expectation”, no casualties would occur.

27. With regard to consideration of the expectation of casualties the RCBRG was asked in a letter dated 25 November 2022:

“...the panel would appreciate receiving from you, by 31 January 2023, anything further that you wish to say in relation to the degree of likelihood of casualties arising from RCB service, and in particular copies of any contemporaneous evidence documenting the official rating of that likelihood”.

28. Similarly, Defence was asked to provide a military threat assessment using the historical documents available but refused to do so and reiterated its refusal to do so at the hearings on 3-4 April 2023.

29. The likelihood and quantifying of casualties were not specifically assessed when planning for and conducting operations in the period under consideration. To address the Tribunal’s question about the degree of likelihood of casualties arising from RCB service, the RCBRG conducted a threat assessment using contemporary ADF doctrine. Specifically, the Operational Risk Management process (ORM) was used.¹⁹

¹⁷ Cooper J, *Repatriation Commission v Mitchell* [2002] FCA 1177 (20 September 2002), para 15.

¹⁸ *Ibid.*, para 22.

¹⁹ Australian Defence Force Publication 5.0.1, ed. 2, AL3., 15 August 2019, Annex 1C.

30. The risk assessment was informed by primary source documents, including contemporaneous threat-related intelligence assessments about CT attacks, weapons and tactics, reports from diplomatic and military sources, orders, instructions, plans and other relevant information in submissions to the Tribunal.²⁰
31. As the Tribunal's question was focused on the likelihood of casualties to RCB personnel the RCBRG risk assessment assessed:
- The likelihood of the risk of a CT attack on ABB;
 - The consequences of a CT attack in terms of casualties; and
 - Identification of the overall level of risk of casualties.
32. The outcomes of the risk assessment were:
- The likelihood of the risk of a CT attack on ABB: **Probable.**
 - The consequences of a CT attack in terms of casualties: **Catastrophic.**
 - Identification of the overall level of risk of casualties: **Very High.**
33. The RCBRG submitted this paper and the accompanying risk assessment to a nationally accredited risk management consultant to review. The consultant endorsed the methodology used and the outcome of the assessment.
34. The assessment requested by the Tribunal was provided on time and at considerable financial cost to the veterans who lack the financial and other resources available to Defence. However, despite previous undertakings to cooperate with the Tribunal, Defence refused to provide an assessment of the likelihood of casualties. The RCBRG acknowledges the importance of this assessment which is why we went to the lengths we did to comply with the Tribunal's request.
35. The RCBG has not been given an opportunity to discuss its assessment in an open forum with the Tribunal and, given the importance accorded to this matter by the Tribunal, it would be only fair and reasonable that the RCBRG be permitted to do so.

Methodology for determining the expectation of casualties

36. In an email to the RCBRG chair the Tribunal advised that:
- “The parties have each had extensive opportunities to make submissions about the methodology for assessing threat and the consequential likelihood of casualties.”²¹
37. Defence has consistently refused to provide the Tribunal, including at the hearings on 3-4 April, with such a threat assessment. As discussed in the previous section, the RCBRG *has* provided the Tribunal with such an assessment.
38. The Tribunal asked of Defence at the hearing on 4 April 2023:
- “Under current arrangements ... what is the means by which the ADF calculates the expectation of casualties or not? So, you've got an operation coming up, at some point the ADF will need to form a view as to whether

²⁰ Submission 66 provided a USB with relevant primary source documents.

²¹ Kopplemann, J., *RE: RCBRG question to Tribunal*, email, 21 April 2023.

casualties are expected. What is the mechanism, the process you run to do that?”²²

39. Defence responded that it did not have the expertise on the day of the hearing to answer that question. This response from Defence cannot be taken seriously given that the Tribunal has repeatedly asked Defence for five months to provide such an assessment, and Defence has as often refused to provide it. It is open to the Tribunal to infer from this refusal that Defence is not answering because such an assessment would demonstrate that RCB faced a significantly higher risk of casualties than for peacetime or non-warlike service.
40. That is certainly the conclusion contained in the assessment of the likelihood of casualties provided by the RCBRG. The manner in which the ORM was used by the RCBRG was vetted and endorsed by an industry expert. As the only methodology using contemporary doctrine currently before the Tribunal, which has been repeatedly asked for by the Tribunal from Defence, this assessment should be used unless shown to be invalid.
41. That RCBRG has used the appropriate methodology is supported by Defence comments at the hearing on 4 April 2023. In response to Defence saying it did not have the expertise available, the Tribunal asked:
- “But is it fair to conclude that there is some process and at some stage Defence forms a view about the expectation of casualties. Or is that a process that seems so vague that no one knows much about it?”²³
42. Defence then responded that the method used by the RCBRG for its assessment is the appropriate method:
- “Well not at all. Certainly not vague. The veterans have already highlighted the risk management and risk assessment processes that are conducted as a part of normal military planning. Military planning and advice to government would always include comments that would regard the likelihood of casualties...”²⁴
43. Defence did not contest the results of the assessment provided by the veterans despite having ample time to do so. This again reinforces that the assessment of the likelihood of casualties conducted by the RCBRG should be used unless shown to be invalid.

The question of mortars

44. The Tribunal, in response to RCBRG commentary on the use of indirect weapons against Butterworth, said:
- “If there had been an attack using mortars or other similar indiscriminate weapons the risk of casualties or the likelihood of casualties would rise and you might get to expectation level. But you can’t just say ‘they might have a

²² Grady, A., Air Commodore (Retd), DHAAT, Hearing recording around 3:00:17, 4 April 2023.

²³ Grady, A., Air Commodore (Retd), DHAAT, Hearing recording around 3:01:05, 4 April 2023.

²⁴ Holmes, M., BRIG, Hearing recording around 3:01:21, 4 April 2023.

mortar therefore its warlike'. The question is what is the risk of them using a mortar against the base."²⁵

45. This approach stands in stark contrast to the 100-year historical basis for repatriation benefits discussed above. None of the repatriation law or policy in that time has required an actual attack before the risk of casualties are assessed. That is because, as the Tribunal has said, such assessments are prospective as nature of service classifications generally are. It is only when looking at past service that this issue raises its head. But it is an incorrect approach that Mohr addressed in saying, "...what the historian says he or she has learned since the war about the actual intention of the enemy is hardly relevant."²⁶

46. The approach taken here by the Tribunal is in contradiction to an earlier commentary on the same day. In discussion with Defence on the non-warlike definition in regard to the activation of the GDOC, the Tribunal said:

"I think that you're saying that because there was never a code red and therefore never the physical application of force you can't make that definition."²⁷

Defence concurred with that assessment.²⁸

47. The Tribunal responded that the nature of service definitions was prospective and that:

"The problem I have with that is that you've said to us a number of times nature of service is assessed prior to deployment. The definition is prospective, the fact that things *didn't* happen is not relevant in the definition."²⁹

48. We submit that this is the correct approach when determining expectation of casualties. What was assessed at the time rather than whether or not a mortar attack occurred.

49. In admonishing the veterans that "you can't just say "they might have a mortar therefore its warlike'", the Tribunal misrepresents what the veterans have said. Paragraph 55 of submission 065 provides a number of references to the threat posed by mortars and rockets to ABB. This material was provided to demonstrate the *prospective* concerns over the threat posed to ABB by these weapons. The JIO itself considered that "this form of attack is quite likely".³⁰ The Department of Air was clear that:

"...the obvious and immediate effects from rocket mortar and other forms of attack... [would be] the death and injury to personnel and families."³¹

²⁵ Skehill, S., Chair DHAAT, Hearing recording around 3:22:22, 4 April 2023.

²⁶ Ibid., para 11.60

²⁷ Grady, A., Air Commodore (Retd), DHAAT, Hearing recording around 1:53:58, 4 April 2023.

²⁸ Holmes, M., BRIG, Hearing recording around 1:55:58, 4 April 2023.

²⁹ Skehill, S., Chair DHAAT, Hearing recording around 1:56:10, 4 April 2023.

³⁰ Defence, The Security of Air Base Butterworth, JIO Study 13/75, October 1975, para 48(c).

³¹ Department of Air, *Brief for DCAS Concerning Security of Butterworth*, 564/8/28, October 1975, Para 12.

50. It did not consider that a mortar attack might simply raise the level of expectation of casualties but that it would *cause* casualties. Concerns regarding mortars and rockets (which were repeatedly used against Malaysian bases) demonstrate a prospective expectation of casualties.

Malaysian operations

51. Throughout the period that RCBRG has pursued its claim, there has been denial by Defence that Malaysia was even involved in a conflict between 1970 and 1989. When that argument failed, the fall-back position that RCB was somehow separated from that conflict was pushed forward. But this does not pass the pub test either. RCB was sent to Butterworth as a counter to the very forces that the Malaysians were fighting. RCB and RAAF were conjoined with Malaysian forces under the Shared Defence Plan to defend Butterworth — what today would be called a multi-national force. RCB was to defend the base, whether Malaysian or Australian assets. All forces on the base were under the command of OC RAAF Butterworth in a ground defence situation. Involvement in a conflict does not require the conducting of search and destroy missions but can include defence of vital infrastructure from an attack by hostile forces.

52. In discussing the nature of the conflict in Malaysia the Tribunal said:

“There was undoubtedly a very hot combat situation between the communist terrorists, whoever they were supported by, and the Malaysian military and there were severe casualties amongst the Malaysians. But that was because there was an internal insurrection seeking to overthrow the Malaysian Government. Australia wasn’t party to that combat.”³²

53. The Tribunal should have regard here to what the Federal Court has said in relation to being engaged in combat:

“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.”³³

54. Geographically, RCB were right in the middle of the conflict and the qualitative context of the actuality of fighting the war was that RCB was defending the most vital base that the Malaysians had to prosecute that war.

55. The Court further found that:

“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'.”³⁴

56. It is uncontested that RCB activities were “directly intended for an encounter with the enemy” in defence of the base. The fact that that encounter never happened is irrelevant. Nor can it logically be argued that as a conjoined force, sections of which had suffered “severe casualties”, that none would be experienced by the other sections of that conjoined force.

³² Skehill, S., Chair DHAAT, Hearing recording around 3:41:00, 4 April 2023.

³³ Einfeld J, *David Norman Ahrenfeld v Repatriation Commission* [1990] FCA 319; 101 ALR 71 (29 August 1990), para 37.

³⁴ *Ibid.*, para 47.

57. The Tribunal further said that the history of the Communist Insurgency in Malaysia would not necessarily lead to a determination of warlike service for the Australian RCB. But one possible exception was highlighted by the Tribunal:

“If we were talking about, were the Malaysian troops operating out of Butterworth in a warlike engagement, may well say yes.”³⁵

58. There is ample evidence in veteran accounts and official documents that this is precisely what happened. Reports of Malaysian military actions against communist terrorists were regularly reported to Australian authorities. One example from 1975 demonstrates the active nature of Butterworth and reinforces the proximity of hostile forces to the base:

“Two airstrikes were launched from Butterworth against targets northwest of the Muda Dam during July. On 25 July four Tebuan aircraft each armed with 2 x 500lb bombs and 56 rockets struck a target 50 nautical miles 020° from Butterworth. The following day four Tebuans with minigun pods and rockets struck the same target. Four Sabre sorties were planned, but not flown.”³⁶

59. In testimony at the hearing on 4 April 2023, Wing Commander Penney noted that:

“Air Base Butterworth was being used at that time as a mounting base to prosecute operations against the CT using F5 aircraft with high explosives and also as a mounting base to deploy RMR troops using helicopters. Now given that, the airbase was considered by the Royal Malay Regiment at that time, and it certainly was in our briefs, to be a legitimate CT target. I think that was highlighted and evidenced by the fact that whilst I was there, they put a Handau company both with us and the other base that was prosecuting those kind of operations.”³⁷

60. Clearly Malaysian troops *were* operating out of Butterworth on warlike engagements.

Alert levels

61. The Tribunal commented on Malaysian intelligence and its effect on base security levels:

“I accept entirely that the base commander had to have regard to what the Malaysians were saying to him, and he did do so. We had evidence yesterday that got fed back to Canberra and it didn’t result in a change of risk assessment. And when the base commander did react to what he had, he went to Amber and not to Red. So, he took it into account but he didn’t get up to goodness gracious an attack is imminent, it’s going to happen.”³⁸

62. There are a number of things to say about this assessment. First, the Tribunal has acknowledged the very limited availability of intelligence assessments from that time, so to categorically say that there was no change to risk assessment is based on very

³⁵ Skehill, S., Chair DHAAT, Hearing recording around 3:41:50, 4 April 2023.

³⁶ Royston, R.S., *Security Situation – Air Base Butterworth Report No 34*, INT 8/10/3 (150), 4 August 1975, para 5.

³⁷ Penney, G., Wing Commander, Hearing recording around 4:53:20, 4 April 2023.

³⁸ Skehill, S., Chair DHAAT, Hearing recording around 4:01:14, 4 April 2023.

slim evidence. Defence itself has acknowledged this lack of ability to locate documents:

“Defence still cannot guarantee that all intelligence assessments and other classified documents supporting deployed forces, not just into Malaysia, at the time have been provided.”³⁹

63. Secondly, a failure on the part of the chain of command to initiate a reassessment should not be held against the veterans.

64. Lastly, the Tribunal misunderstands the alert levels applicable at Butterworth under the Shared Defence Plan. For instance, the Tribunal, in discussion with Defence said:

“I think that you’re saying that because there was never a code red and therefore never the physical application of force you can’t make that definition.”⁴⁰

65. It is an error to suggest that a code red necessarily engendered “the physical application of force” or that code amber precluded “the physical application of force”. Both were a means for the base commander to place his forces in a posture for the possibility of “the physical application of force” as that is what intelligence assessments had indicated. They were a prospective action to meet a threat to the base which had been assessed as imminent.

66. An Amber level alert was “declared when it is known that a shared defence situation at Air Base Butterworth is *imminent*.”⁴¹ That is, that an attack was expected based on very strong intelligence. GDOC operation for Red was “As for Security Amber”.⁴² Security Amber activated mobile reserves (ie the QRF/RCB), placed Australian and Malaysian forces under command of GDOC and cancelled all leave.⁴³ Security Red simply brought more, smaller, forces onto line. The major defensive force, the mobile reserves (QRF/RCB), was already activated at Security Amber.⁴⁴ We know that the mobile reserve was the key component of defence because it is stated as such throughout the official record. For instance:

- “Taking into account Malaysian sensitivities, our security measures should be relatively unobtrusive. To meet the situation security should be based on:
 - effective local security which includes good observation; and
 - a quick reaction capability.”⁴⁵
- “On-base security arrangements to protect against sabotage or to react quickly to any attempted incursions by CT groups are satisfactory. An ARA Company on

³⁹ Robards, P., *Inquiry into Recognition for Service with Rifle Company Butterworth*, EC23-000372, 31 January 2023, Enclosure 2, para 2.12.

⁴⁰ Grady, A., Air Commodore (Retd), DHAAT, Hearing recording around 1:53:58, 4 April 2023.

⁴¹ RMAF & RAAF, *Shared Defence of Air Base Butterworth, Operation Order No. 1/71*, 8 September 1971, para 3.b(2).

⁴² *Ibid.*, para 3.c(3).

⁴³ *Ibid.*, para 3.d(2).

⁴⁴ *Ibid.*, para 3.d(3).

⁴⁵ Commander ANZUK Force, *Security of Air Base Butterworth*, ANZUK 007/3001/1/OPS, 15 March 1972, para. 8.

three monthly rotation provides a quick reaction force against attacks on the base, but are currently prevented from operations off the base ...”⁴⁶

- “Besides securing protection for the two jet squadrons within the perimeter of the Air Base, the role of the RCB was to provide a quick-reaction force to meet the communist terrorist threat, and be responsible for internal security within Air Base Butterworth.”⁴⁷

67. Australian authorities decided that the appropriate protection for ABB was an Australian rifle company providing a QRF. This level of combat force was considered the most effective in the circumstances of protecting an airbase against insurgent forces as providing a large static defensive perimeter was not considered viable:

“Whilst this office accepts that Armies will never have sufficient manpower to defend an airfield in detail by occupying the area around it and denying an enemy access to it directly or by fire, we continue to be concerned about the lack of any Malaysian Army units around Butterworth to at least deter the CTO.

“CT operations are particularly insidious from a defensive viewpoint. The terrorist has freedom of movement in the civil community, a reasonably wide choice in the selection of targets and types of weapons or nefarious explosive devices which can be used to attack or sabotage personnel, assets and facilities. The defensive penalty in the face of these kinds of threats is the diversion of large numbers of security force personnel to counter possibility of CT attacks. 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.”⁴⁸

68. To say that the alert level had to reach Red before an attack was considered imminent or that force could be applied is simply wrong. It was Amber where the imminence of an attack became a concern for the base commander and he placed his forces on alert to meet it.

Conclusion

69. This paper has pointed out that as the authorisation to use force to pursue military objectives is an exclusive feature of warlike service, any force that meets these criteria cannot be encompassed under the non-warlike definition of service. It has shown that the Tribunal’s use of the 2018 definitions to enlighten the 1993 definitions is supported by the Ministerial Advice that approved the 2018 definitions. That advice was clear that the new definitions were to clarify that the basis of nature of service was the exposure to the risk of harm to ADF personnel from hostile forces, consistent with the historic basis for the provision of repatriation benefits. The paper points out that the “historic basis” for repatriation benefits is essentially that ADF forces incurred

⁴⁶ Rowland, 7 October 1975, *Butterworth Base Security and Security of C130 Aircraft in South Vietnam*, addressed to ‘Minister’, Para 4.

⁴⁷ Ibid.

⁴⁸ McNamara, N.P., AVM, DCAS *Butterworth Security*, 564/8/28, 14 October 1975, paras 2-3.

danger from hostile forces. It notes that the only methodology for determining an expectation of casualties has been provided to the Tribunal by the RCBRG following a vetting process by an independent industry expert and as such should be used unless shown to be invalid. It demonstrates that the Malaysian Armed Forces were in fact conducting combat operations from Air Base Butterworth against the CT. The paper concludes by clarifying the meaning of Alert levels declared at Butterworth and what they meant in terms of immediate threat to the base.

70. As the Tribunal has indicated that it will determine the question of RCB service on the balance of probabilities, it is submitted that this paper and others provided by veterans indicate that it is more likely than not that there was an expectation of casualties and that RCB and RAAF service at Butterworth was more likely than not warlike service.

Ray Fulcher
Chair RCBRG

12 May 2023

Response to Defence Submission 096c, Defence responses to questions identified as ‘undertaking further work’ in Defence Supplementary Submission EC23-000372 of 31 Jan 23.

Kenneth Marsh, 6 May 2023

INTRODUCTION

This submission responds to Defence submission 096c of 2 April 2023. In 2014 Defence claimed to have conducted extensive research, including:

“Available records at the NAA (National Australian Archives) in addition to the above, including records which are ‘Closed’ or ‘Not Yet Examined’, including DFAT controlled records for which access approval has been obtained from DFAT.”¹

If true, Defence have accessed, and are therefore aware of, sources unavailable to Butterworth veterans. Despite this claim they are unable to provide answers to questions asked by the Tribunal. This submission aims to answer those questions. It draws on documents provided to the Tribunal in the lead up to the Brisbane hearing, and other documents either acknowledged by Defence or, given the above claim, one would expect are available and known to them.

Defence have made statements regarding the content of Rules of Engagement (ROE) and their content. The Communist Insurgency in Malaysia (CIM) commenced in 1968, ending in 1989. It cannot be assumed that current procedures and protocols applied more than 50 years ago. With that in mind this submission shows that the elements referred to by Defence appear in the contemporaneous documents, including those submitted by or acknowledged the Department.

In reviewing Defence’s answers to the Tribunal’s questions, I believe I have shown the documents provided by Defence contradict their assertions. Further, their responses appear selective and evasive, attempting to paint a picture other than that provided by the source documents. If true, questions must be asked regarding Defence’s research competence and/or their integrity and their approach to this inquiry.

Changing Conditions

Over the 21 years of the CIM alert states and the nature of the threat fluctuated. In response to recent rocket attacks on the RMAF Base near Kuala Lumpur and a military facility on Penang the CAS advised the Minister:

“Increased security arrangements have been implemented at Butterworth including controlled access to the base and vehicle search, dispersal of aircraft and patrols on aircraft lines. The RMAF has also planned dispersal of their aircraft to other bases” ...

¹ Background Paper, Parliamentary Petition Dated 3 March 2014, Rifle Company Butterworth 1970 – 1989. Nature of Service Branch. 28 April 2014. Para 6.

“The period of tension is expected to last until at least 22 April and probably for a further month.”²

In August 1975 the SITEREP, “Butterworth and North Peninsular Malaysia,” informed DEFAIR of recent developments on ABB and in the surrounding area. In response to recent communist activity, including a recent communist anniversary, DEFAIR were advised of:

“Increased security consisting of 5 standing patrols of half section strength deployed during darkness, one section picket of aircraft lines and AIRMOV area and normal ready reaction section will continue till at least 8 August 75.”³

A standing patrol is a small party of troops “which gain information of enemy movement and prevent or disrupt enemy infiltration.” Main tasks include watching and listening “on likely enemy approaches.”⁴

Alert states and security measures described above are the highest I have seen in the available evidence. That said, evidence presented in this submission is of a continuing threat requiring a constant state of readiness.

Rifle Company

The RCB had a strength of around 130 soldiers. When considering its task, one must take into consideration the specific role of the Quick Reaction Force (QRF) as distinct from other members of the Company. The QRF was a small component of the unit. Both the size of the QRF and the role of the Company generally, would have changed according to the day-to-day threat levels.

In 1974 the RAAF Senior Ground Defence Officer reported:

“Emergency security measures for the protection of Australian assets and property is in the hands of the Australian Infantry Company, with at least two platoons on call. They are assisted in the final stage by a flight (platoon) made up of BSQN [Base Squadron] personnel, and in the second stage by flights from 3 Sqn, 75 Sqn and 478 Sqn. The RMAF has a similar two stage system.”⁵

As demonstrated below, both RAAF and RMAF units at ABB had defence and security roles, and operated under similar ROE to the RCB. As the Shared Defence Plan created a coordinated approach to Base defence an assessment of nature of service at ABB should be made within the context of the Base as a single unit.

Format

² Butterworth Base Security. 418/4/12. 3 Apr 75.

³ SITEREP. Butterworth and North Peninsular Malaysia. 5 Aug 75

⁴ From information supplied by Mr Peter Kelly, RCB veteran. Confirmed by LtCol (Rtd) Russell Linwood, former infantry officer.

⁵ Butterworth Brief for Ministerial Visit Dec 74. S. Brough (?), Wg Cdr, SRGD. 3 Dec 74.

To save time I have resorted to cut and paste for those parts of the Defence response I have chosen to respond to, and in one instance, in my response. Rather than use paragraph numbers I have resorted to sections as a simpler way to cope with the cut and paste.

SECTION 1

Defence

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.

Comment

Op Order 2/72, Families Protection Plan. Identifies the threat to families, the right of Australia to protect families, alert states, and responsibilities for the operation of the warden system under the plan.

At 8(g) Defence acknowledge it is aware of this Op Order.

SECTION 2

Defence

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*

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;

- 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.

Comment

In October 1973 the Chiefs of Staff Committee discussed the matter of RCB training away from the Base. The Chief of Naval Staff commented, "... in moving away from Butterworth for training, the Committee was losing sight of the primary task of the company."⁶

SECTION 3

Defence

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.

Comment

See also Appendix 5 to Annex C to Air Base Butterworth Op Order No 1/71 Dated 8th September 1971.⁷

Defence have acknowledged this document.

SECTION 4

Defence

(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.

⁶ Chiefs of Staff Committee. Agendum No 47/1973. Supplement No 1. Minute No 67/1973. 17 Oct 1973

⁷ Shared Defence of Air Base Butterworth. Operation Order No. 1/71.

Comment

The Shared Defence Plan for ABB identified different threats, including “a resurgence of militant communist activity both overt and covert” and “sabotage or malicious damage.”⁸

The mission of the Shared Defence Plan was, “To protect operational assets, property and personnel within the perimeter of Air Base Butterworth by joint arrangement and mutual support.”⁹

The Shared Defence Plan defined the mission, identified the threat, and in doing so the enemy. Appendix 5 to Annex C of the Op Order also contains Specimen Orders for Sentries of Patrols Mounted in a Protected Place. These orders, applying to Malaysian and Australian forces, contain rules for the use of lethal force, or ROE.¹⁰

Defence

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:

Comment

What is the basis for this claim?

ROE were exercised in support of the Shared Defence Plan with identified threats including “a resurgence of militant communist activity both overt and covert” and “sabotage or malicious damage.”¹¹

The ANZUK Threat Assessment to the end of 1972, at para 57 (d) identified “sabotage by the planting of delayed action explosives, booby-traps” and the like as a method of likely attack. These attacks could be carried out by “one or more CTs, members of subversive groups, sympathetic or suborned LEC (locally employed civilians) / contractor personnel.” This method was assessed as “by far the most likely” at the time (para. 58).¹² A similar assessment is included in the 1975 JIO Threat Assessment at para. 58, (b), (d).¹³

These subversive elements cannot be considered as criminals. They were enemy agents. Neither can it be construed that the ROE were limited to the protection of the property of “Australian persons.”

Defence’s assertions are incorrect.

⁸ *Ibid*, para 1.a.

⁹ *Ibid*, para 2.

¹⁰ *Ibid*, Annex C, Appendix 5.

¹¹ *Ibid*, para 1.a.

¹² ANZUK Intelligence Group (Singapore). Note No.1/1971. The Threat to Air Base Butterworth up to the end of 1972.

¹³ The Security of Air Base Butterworth. JIO Australia. October 1975

SECTION 5

Defence

- 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:

Comment

ROE were authorised for the defence of ABB, a military objective. The first two paragraphs of Annex A to HQ FF COMD STAFF INSTR 2/79, Rules of Engagement, provided to the Tribunal by Defence, reads:

All ranks are to be made aware through briefings and discussions of the difficulties and necessity for, identifying friend from foe. Although required to, many Malaysians who have access to the Air Base may not carry identity cards/entry passes and probably have only a vague awareness of authorised and unauthorised areas.

It is imperative that all rank know and understand the Rules of Engagement and methods of ensuring own troops safety. The most important implication of engagement by fire is 'IF IN DOUBT – DO NOT SHOOT'."¹⁴

Within the bounds of ABB care was required to ensure the safety of friendly forces and civilians legitimately on the base. See section 6.

SECTION 6

Defence

- 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;

Comment

In May 1962, 79 Squadron RAAF, equipped with Sabres, was deployed to Ubon in Northern Thailand, and remained there until withdrawn in August 1968. The period 1962 till June 1965 is classified as non-warlike service. Based on a recommendation of Justice Mohr, the period from June 1965 till the squadron withdrew in 1968 is classified as warlike.¹⁵ Until June 1965 the Squadron's role was the air defence of Thailand if instructed by the Air Board or if Thai authorities so requested through official channels.

From June 1965, the squadron was integrated into Thailand's air defence system, pilots were placed on the highest possible alert state to respond to intrusions into Thai air space, and the pilot was authorised to shoot without recourse to higher authority. The role was "confined to the boundaries

¹⁴ Annex A to HQ FF COMD Staff Instruction 2/79. Rules of Engagement. 6 July 79.

¹⁵ Review of Service Entitlement Anomalies in Respect of South-East Asian Service 1955 – 1975 (Mohr). Chapter 6.

of Thailand.”¹⁶ In other words, the ROE were issued in a defensive situation, similar to those within the confines of ABB.

Mohr also noted that the Air Defence Guard (ADG) mustering was created in 1965 and some were deployed to Ubon for base security. Defensive positions had been prepared within the base and arms issued for use if needed. The ADGs patrolled outside the wire and were authorised to fire if need be.¹⁷

In its assessment of Mohr’s recommendation for Ubon Defence stated:

“May 1962 to June 1965 – Agree that this period of service was ‘non-warlike’. The Rules of Engagement at the time do not justify ‘warlike’ conditions of service.

“June 1965 to August 1968 – Based on the change of the Rules of Engagement it would be difficult to argue otherwise. The pilots were placed in a warlike situation by contemporary standards.”¹⁸

This, and other submission show, ABB operated under a shared defence plan and the armed soldier or airman was authorised to shoot without recourse to higher authority. These conditions mirror Ubon. Professor Dale Stephens, giving testimony to the Tribunal, informed defensive only ROE were authorised for East Timor, INTERFET and UNTAET, all declared as warlike operations.¹⁹

SECTION 7

Defence

- 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;

Comment

- As stated above, the presence of Malaysian, not Malay, citizens on ABB provides part of the rationale for applying ROE with caution.
- As identified in the ANZUK and JIO assessments these civilians may have been communist sympathisers and potential saboteurs.

SECTION 8

Defence

- there were reported incidents of petty theft in the Rifle Company Butterworth end of tour reports;

¹⁶ *Ibid.*

¹⁷ *Ibid.*

¹⁸ Cabinet Submission JH00/0088 - Review of Service Entitlement Anomalies in Respect of South-East Asian Service 1955 – 1975 – Decision JH00/0088/CAB. Attachment F. Recommendations of the Mohr Report. #20.

¹⁹ Transcript provided by Squadron Leader Bernard Farley CSM (retired), personal email, Abbreviations for Interpretation. 4 May 2023.

Comment

This factor is addressed in the 1971 ANZUK assessment at paras 36 and 37.

“These incidents are not necessarily attributable to the CTs or their supporters; the thefts were probably carried out by locals, perhaps LEC or contractor personnel, or even members of the SSP (Malaysian Security Guards). The incidents do, however, reveal that unauthorised personnel have been able on several occasions within the past few months to gain access to areas within the Base including Vital Points.”²⁰

These incidents with similar conclusion appear in the 1975 JIO assessment at para 35. Evidence of illegal entry to ABB helped to highlight the vulnerability of the Base to the small scale attacks considered most likely.²¹

Defence’s statement is only a half truth.

SECTION 9

Defence

- the rules of engagement refer to detaining/arresting a suspected illegal entrant to the base, not an enemy or potential Prisoner of War;

Comment

This statement can only be seen as an attempt to mislead.

ROE applied to “any person” who “either enters the wire surrounding the Protected Place or is seen by you to be attempting to make his way through, over or under the wire or is in an area in which you suspect his presence to be unauthorised or is setting in a manner to arouse suspicion of unauthorised presence ...” The ROE make no attempt to differentiate between criminals, trespassers, or enemies. They call for caution in identifying “friend from foe.”²²

SECTION 10

Defence

- 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.

²⁰ ANZUK Intelligence Group (Singapore). Note No.1/1971. The Threat to Air Base Butterworth up to the end of 1972.

²¹ The Security of Air Base Butterworth. JIO Australia. October 1975

²² Annex A to HQ FF COMD Staff Instruction 2/79. Rules of Engagement. 6 July 79. Paras 1,2.

Comment

What does this mean? The RAAF had its own Service Police and Security Guards.

In April and May of 1971, the Senior Ground Defence Officer (SR (GD)) and the Provost Marshall (PM) (Head of RAAF Police), at Air Force Office in Canberra, prepared two reports on the security of ABB. The first was from information held on file, the second following a visit to the Base. As advised by Squadron Leader Bernard Farley CSM (retired), the SR (GD) and PM were the senior advisors in Air Force Office on Defence and Security and as such the direct advisors to CAF in 1971. Farley was the Base Squadron Butterworth Ground Defence Officer in 1982-83.²³

On 27 April 1971 they reported:

“Base combatant personnel are trained to the level required for their secondary role in security. However if they are maintained at a state of readiness in a security situation for an extended period their primary role suffers and base function could be seriously affected after a short period. As a percentage of personnel live in Georgetown, their continued absence from their families in a time of emergency could have adverse effects on family morale.”²⁴

The following is a cut and paste from their second report.²⁵

9. The 1971 JIO assessment of the threat to Air Base Butterworth may be briefly summarised as follows:

- a. It is unlikely that any armed action by formed bodies of troops from the CPO or Malaysian Nationalist Liberation Front (MNLF) will be mounted against the base within the next twelve months unless a favourable situation resulted from the diversion of the base security forces and local forces to quell civil disturbance.
- b. There is a continuing threat from unco-ordinated action by dissident individuals which could result in loss or damage to the assets of the base.
- c. There is no evidence to indicate that potential enemies have any indirect-fire weapon capability such as mortars.

10. The acceptance of this threat assessment leads to a requirement for two phases of defensive arrangements, apart from the arrangements necessary to protect members, dependents and nominated personnel in the event of civil disturbance. These are:

²³ Personal email. Abbreviations for Interpretation. 2 May 2023.

²⁴ Security of Australian Personnel and Assets, Air Base Butterworth. Security of Australian Personnel and Assets, Air Base Butterworth. 562/8/28. 6/10/1/PM Pt1 (53).

²⁵ Report of Visit by SR(GD) and PM to Headquarters Air Base Butterworth 4th to 12th May 1971. 564/8/28. 25 May 1971.

- a. day to day security measures to protect the base against the minor threat stated at paragraph 9.b. consisting of routine guarding measures; and,
- b. the capability to adopt an expanded security posture to counter the unlikely, but nevertheless possible, threat summarised at paragraph 9.a.

Contemporaneous evidence demonstrates the RCB was deployed to ABB to respond to both the “continuing threat from uncoordinated action by dissident individuals” and “the unlikely, but nevertheless possible” larger threat. The use of RAAF personnel on their secondary, security duties, for a prolonged period could have a deleterious effect on base efficiency and family morale.

Following their visit to ABB the two officers recommended the finalisation of a shared defence agreement for ABB and the availability of “an AUSTARM or ANZUK company” whenever the OC RAAF considered it necessary. Alternatively, they recommended “the deployment of RAAF Airfield Guards as a permanent Army replacement.”²⁶

This is reflected in Plan Asbestos. Although having a “restricted” security classification as opposed to the many “secret” documents showing the real purpose for the deployment, the RCB was placed under the operational control of the Officer Commanding RAAF Butterworth.²⁷ This meant he had control over matters such as leave and off base movement, effectively making the RCB available to the OC whenever he considered it necessary for security purposes.

SECTION 11

Defence

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;

Comment

Annex A to HQ FF COMD Staff Instruction 2/79, “Rules of Engagement,” supplied to the Tribunal by Defence has, as its opening sentence:

“All ranks are to be made aware through briefing and discussion of the difficulties and necessity for, identifying friend from foe.”²⁸

²⁶ *Ibid*, para 58.

²⁷ Australian Joint Service Plan No 1/1973. Plan Asbestos. Rotation of an Australian Rifle Company at Air Base Butterworth, Malaysia. File Ref. 71/1511. Department of Defence. Canberra. A.C.T. August 1973

²⁸ Annex A to HQ FF COMD Staff Instruction 2/79. Rules of Engagement. 6 July 79.

Appendix one to Annex A lists friendly forces at ABB and provides descriptions of their uniforms.²⁹ Foe, according to the Cambridge Dictionary, means “enemy”.³⁰ ROE at ABB both acknowledge an enemy, and therefore an armed conflict, and provide the rationale for applying the ROE with caution.

Defence properly state in Section 10 “there were only two Military police” in the Rifle Company Butterworth contingent ...” Manning requirements for RCB, as stated in HQ FF COMD Staff Instruction 2/79, included “two military policemen, RMACMP, including one qualified as an investigator.”³¹

Why is it that Defence have referred to the fact of two MPs yet failed to mention the opening sentence to the ROE contained in the same document? See Section 5 where this is quoted. Either it has not read the document or only selected that which fits its narrative.

One cannot assume that the protocol for drafting ROE today is the same as that in the 1970s and 80s. What is demonstrated that the elements referred to by Defence were in place at the time.

SECTION 12

Defence

- 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;

Comment

Paragraphs 3 to 5 annex A to HQ FF COMD Staff Instruction 2/79 provide the legal basis for the ROE.³² Annex A to Air Base Butterworth Op Order 1/71, “Legal Aspects of a Shared Defence Situation in the Defence of Air Base Butterworth,” also addresses this matter.³³

This document was provided to the Tribunal by Defence.

SECTION 13

Defence

²⁹ Appendix 1 to Annex A to HQ FF COMD Staff Instruction 2/79. Friendly National Organisations Which Operate Within the Air Base Butterworth, 6 Jul 79.

³⁰ <https://dictionary.cambridge.org/us/dictionary/english/foe>

³¹ HQ FF COMD Staff Instruction 2/79. Part 1 – Operational Aspects para 7(g). 6 Jul 79

³² Annex A to HQ FF COMD Staff Instruction 2/79. Rules of Engagement. 6 July 79.

³³ Annex A to Air Base Butterworth Op Order 1/71, “Legal Aspects of a Shared Defence Situation in the Defence of Air Base Butterworth,” 8th Sept 1971.

- 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);

Comment

This statement ignores the fact that RCB had a key role in the Defence of ABB under the shared defence plan. The mission of the Shared Defence Plan was, “To protect operational assets, property and personnel within the perimeter of Air Base Butterworth by joint arrangement and mutual support” against “a resurgence of militant communist activity both overt and covert” and “sabotage or malicious damage.”³⁴

Contrary to Defence’s claim, the Shared Defence Plan committed Australian to cooperate with Malaysia to defend ABB defend against a resurgent insurgency threat.

During the 1970s I did guard duty at both Williamtown and Richmond Air Bases, including Guard Commander at Richmond. At both bases guards patrolled with the L1AI Self Loading Rifle. At no time was I issued with ammunition, including blank ammunition, and there was no ROE.

Although it was recommended that RCB complete “security training prior to deployment” it was recognised, “Some training and familiarisation will still need to be conducted at Butterworth.” This included: “familiarisation with key points; [and] appreciation of the enemy threat and likely approaches.”³⁵

SECTION 14

Defence

- (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.

Comment

A statement without evidence and one that would be laughed at by may veterans of the time.

In the 1970s there were no ROE at either Williamtown or Richmond or, to my knowledge, at any other like military establishment. There may have been some in particularly sensitive areas.

³⁴ Shared Defence of Air Base Butterworth. Operation Order No. 1/71. Paras 1.a, 2

³⁵ Annex B to HQ FF COMD Staff Instruction 2/79. Pre-deployment Security Training. 6 Jul 79.

SECTION 15

Defence

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.

Comment

With respect to Defence, the last sentence above is nonsense.

Plan Asbestos made the Army responsible for ensuring troops deployed to ABB as part of RCB met the training standards “required by OC RAAF Butterworth in matters associated with the security duties of the company.”³⁶

Annex B to HQ FF COMD Staff Instruction 2/79 addressed pre-deployment training. It recommended “the company complete security training prior to deployment” so it could “properly carry out security duties on arrival in Butterworth.”³⁷

Appendix 1 to the annex include the test standard “The correct state of weapon readiness and rules of engagement are to be applied”.³⁸

Logically, this included the weapons they would be required to carry on deployment.

SECTION 16

Defence

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:

... normal precautions

³⁶ Plan Asbestos, para 12(f).

³⁷ Annex B to HQ FF COMD Staff Instruction 2/79. Pre-deployment Security Training. 6 Jul 79.

³⁸ *Ibid* Appendix 1.

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

Comment

ROE authorised opening fire to protect buildings, aircraft, vehicles, storage places and the like, the occupants of same, or any property contained in such. They were also authorised to protect persons being illegally attacked.³⁹

Regarding expectation of casualties and acknowledging the views expressed at the recent Tribunal hearing, a wounded individual is still a casualty and cannot be used to undermine the warlike service classification. The discharge of a live round in an inhabited area such as ABB, whether fired to wound or otherwise, must carry the risk of death of the target or other person in the area.

SECTION 17

Defence

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? ^{at 2 APl}

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.

Comment

These issues have been addressed in different places above.

SECTION 18

Defence

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

³⁹ AS Rifle Coy Unit Standing Orders. Annex C, Appendix 3. Rules of Engagement – Engagement by Fire. Para 5. 12 Dec 78

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.

Comment

Members of the QRF were required at all times to be ready to react to a potential or real threat. See Section 20.

Sentries on Protected Places were clearly armed with live ammunition and authorised to shoot as authorised by the ROE.⁴⁰

Annex D to AS Rifle Coy Unit Standing Orders of 12 Dec 78 prescribe the duties of security picquets. They were responsible for the security of company offices and lines. If the QRF was called out the security picquet was to report to the QRF room ready for deployment as an armed reserve.⁴¹

Defence's response is, at best, highly selective.

SECTION 19**Defence**

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.

Comment

Evidence above relating to this point has been sourced from different prime documents, including the Shared Defence Plan, Field Force Staff Instructions and RCB Unit Standing Orders. While there may be slight variation there is an overall consistency. Defence have provided no evidence to support this assertion.

SECTION 20**Defence**

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

⁴⁰ AS Rifle Coy Unit Standing Orders. Annex C, Appendix 3. Rules of Engagement – Engagement by Fire. Para 9. 12 Dec 78

⁴¹ Annex D to AS Rifle Coy Unit Standing Orders. Orders – Security Picquet. 12 Dec 78.

Comment

I can only describe Defence's response to this question as waffle. They fail to answer it.

Annex C to AS Rifle Coy Unit Standing Orders dated 12 Dec 78 contains the orders for the QRF.⁴² Appendix 2 to Annex C addresses states of weapons readiness for the QRF.⁴³

The evidence demonstrates the QRF at all times had immediate access to live ammunition to enable it to react immediately if activated.

"During period of daily training within Air Base Butterworth the QRF is to be equipped and available for reaction."⁴⁴

SECTION 21

Defence

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.

Comment

See Section 20.

The evidence demonstrates the QRF at all times had immediate access to live ammunition to enable it to react immediately if activated.

"During period of daily training within Air Base Butterworth the QRF is to be equipped and available for reaction."⁴⁵

⁴² Annex C to AS Rifle Coy Unit Standing Orders. Orders – Quick Reaction Force. 12 Dec 78.

⁴³ Appendix 2 to Annex C. State of Weapon Readiness – QRF.

⁴⁴ Annex C to AS Rifle Coy Unit Standing Orders. Orders – Quick Reaction Force. 12 Dec 78.. Para 10 (c).

⁴⁵ Annex C to AS Rifle Coy Unit Standing Orders. Orders – Quick Reaction Force. 12 Dec 78.. Para 10 (c).

Defence have failed to mention this relevant fact.

Also see Section 18.

Sentries on Protected Places were clearly armed with live ammunition and authorised to shoot as authorised by the ROE.⁴⁶

Under the Shared Defence Plan the ROE applied equally to the Malaysian forces. While we have no evidence of the way Malaysia managed their forces in relation to the Plan, the fact that those forces also operated under similar ROE must be considered when assessing the likelihood of casualties.

SECTION 21

Defence

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 provide to the Tribunal. The rules of engagement are not significantly different in each version.

Comment

ROE forming part of the Shared Defence Plan in 1971 are similar to those identified by Defence.⁴⁷ This confirms that at least for the period 1971 to 1982 ABB operated under essentially the same conditions defence wise. Without evidence to the contrary, it must be assumed these same conditions applied to the end of the Insurgency.

Conclusion

This submission focuses on Defence's response to questions asked by the Tribunal relating to ROE, weapons, and the like. It is obvious Defence is familiar with the ROE and the orders of which they are apart, and the threat assessments such as the ANZUK threat assessment to the end of 1972 and JIO's off 1975.

Despite this, it has been unable to answer questions put to it by the Tribunal when the answers are found in those same documents. Defence has argued that certain elements required in ROE, bearing

⁴⁶ AS Rifle Coy Unit Standing Orders. Annex C, Appendix 3. Rules of Engagement – Engagement by Fire. Para 9. 12 Dec 78

⁴⁷ Op/Order 1/71, Shared Defence Plan Annex C, Appendix 5.

in mind we are talking of ROE prepared around 45 to 50 years ago, are missing. It has also made other claims while ignoring the reality of the shared defence plan. These include:

- ROE being defensive only, “limited to the protection of Australian persons ... and their property from criminal acts. This ignores the shared defence arrangements in which Malaysian and Australian forces cooperated for the protection of ABB, including shared facilities and vital points.
- Claiming “reported incidents of petty theft” while ignoring the fact that evidence of illegal entry through the perimeter fence were seen as evidence of weaknesses in defensive preparedness that could be used by infiltrators.
- ROEs referred to the detainment or arrest of suspected illegal entrants, “not an enemy or potential Prisoners of War”. The Shared Defence Plan was prepared to meet a resurgent militant communist threat and incursions into the Base by this identified enemy.
- The ROE did not “indicate a legal basis for using force” when a legal basis is provided in the orders referred to.
- ROE did “not identify a warlike mission” when the mission of the shared defence plan was, “To protect operational assets, property and personnel [Malaysian and Australian] within the perimeter of Air Base Butterworth by joint arrangement and mutual support.” This against “a resurgence of militant communist activity both overt and covert” and “sabotage or malicious damage.”

Defence ignore the reason for caution in the application of ROE, being “the difficulties and necessity for, identifying friend from foe.” It also fails to mention that the QRF, as a component of RCB, was at all times ready to respond instantly to potential threats.

Also demonstrated is the correlation between ROE at ABB and Ubon, where Defence agreed that the ROE from June 1965 onward met the contemporary standards of warlike service.

This submission also raises questions about Defence’s research competence and/or integrity with its failure to answer questions asked by the Tribunal and its failure to mention evidence that does not support its preferred narrative.

I believe the documents supplied by and known to Defence support the claim for warlike service at ABB.

Warlike Service Through the Lens of Cabinet 2000, Defence, and Mohr

Kenneth N. Marsh

24 April 2023

1. Australian military personnel at Air Base Butterworth (ABB) during the 1968-1989 Communist Insurgency in Malaysia (CIM) served with the definite threat of attacks designed to damage equipment and injure personnel. It was considered these attacks could take place at any time without warning. The threat was ever-present and therefore immediate. Logically, a definite threat of attacks designed to cause casualties at any time can only mean casualties were expected.¹

2. Drawing on Cabinet's response to the Mohr Review and decisions made by Defence around the same time this submission aims to show:
 - The unique nature of service at ABB during the 1968-1989 CIM.
 - The 1993 Nature of Service (NOS) Framework provides an objective standard for determining warlike, non-warlike and peacetime service. Subjective threat assessments such as slight, low and unlikely do not form part of the NOS determination.
 - Cabinet, and Defence, were both committed to the Committee of Inquiry into Defence and Defence Related Awards (CIDA) principles, including Principle 3, namely comparable service must attract equal recognition.
 - The decision to devolve authority to the service person at the sharp end, such as the sentry and patrols, forecasts the expectation of casualties and is the point at which service becomes warlike.
 - ABB service during the CIM meets the warlike service criteria.

The Unique Nature of Butterworth

3. If service at ABB during the period of the Communist Insurgency War (CIM) is not unique in Australian military history, parallels must be rare.
 - ABB was a Malaysian owned operational airbase being used by Malaysia to launch offensive ground and air operations against its armed enemy, the Malayan Communist Party (MCP) and its agents, including the uniformed Communist Terrorists (CTs).
 - By agreement, the RAAF maintained two Mirage Squadrons and support units at ABB for air defence and deterrence of external aggression.
 - Australia was not to be involved in internal security matters nor offensive operations against the CT outside ABB.
 - While there were clearly defined threats to Australian service personnel and their dependants off base they remained, generally, unarmed. Evidence shows that arms and live

¹ See paragraph 4 below.

ammunition could be and were carried off base under specific conditions, but there was no automatic right to apply lethal force.

- Under the Shared Defence Plan both nations cooperated on the defence of the base. Off base, Australia was not involved, on the base it was actively involved in base security and defence in the face of the CT threat.
- From the Communist perspective ABB must be seen as a military target. From a defensive perspective the CT qualify as a military target with Australia's military objective to deny and defeat the CTs attempts to enter the base.
- Within the confines of ABB ROE gave sentries/patrols the automatic right to apply lethal force in the pursuit of their military objective. This statement acknowledges the reasonable conditions applied to ensure friendly forces and civilians were not killed or injured. Please note that within the context of this submission "sentries/patrols" should be interpreted loosely to apply to all armed personnel legally carrying firearms with live ammunition at ABB.

4. Within this context:

- The ANZUK Intelligence Group in 1971 concluded there was "definitely a risk that one or more CTs or members of subversive groups could ... attempt an isolated attack on or within the Base at any time."² It was considered advanced warning of such an attack "would probably not be received".³
- In 1975 Australia's Joint Intelligence Organisation concluded, "There is some risk that members of subversive groups could, regardless of CTO policy or acting on their own initiative, attempt an isolated attack on or within the Base at any time."⁴
- Likely methods of attack included, "The planting by subversive groups of delayed-action explosives, booby-traps, and other devices to damage equipment and to injure personnel."⁵
- In 1971 the Malaysian Military Police (MPP) responsible for ABB security could "be withdrawn by higher authority in part or in toto in an internal security situation."⁶
- The MPP was only responsible for Base security. **It did not have a Defence role.** Neither was it under the command or control of the CORMAF.⁷
- Responsibility for the security of Penang, Kedah and Perlis states rested with 6 Malaysian Infantry Brigade (MIB). It was continuously committed to anti-terrorist operations in these states. It had no permanent presence "in the area immediately surrounding Butterworth."⁸
- In October 1975 the DCAS advised the DJS regarding ABB security:

Whilst this Office accepts that Armies will never have sufficient manpower to defend an airfield by occupying the area around it and denying an enemy access to the airfield directly

² ANZUK Intelligence Group, Singapore. Note No. 1/1971. Singapore. The Threat to Air Base Butterworth up to the end of 1972. 30 Nov 1971. Para 71 (e).

³ *Ibid.* Para 72 (b).

⁴ JIO Australia. The Security of Air Base Butterworth. Oct 1975. Para 56 (f).

⁵ *Ibid.* Para 57 (c).

⁶ Security of Australian Personnel and Assets, Air Base Butterworth. 564/8/28. 6/10/1/PM Pt1 (53). 27 Apr 71. Para.9

⁷ JIO Para 9

⁸ JIO Para 12

or by fire, we continue to be concerned about the lack of any Malaysian Army units around Butterworth to at least deter the CTO. We also recognise that as Armies and Air Forces have different primary roles, the Air Force commander responsible for the ground defence of an Air Base, can never be guaranteed the continuance of Army presence if other priorities influence the local Army Commander. Therefore if the allocation of even one battalion were arranged, its tenure of occupancy in a defensive posture is unlikely to be unconditionally assured.⁹

- A report on ABB Security of 11 July 1975 confirmed “Isolated CT incidents and consequent Security Forces follow-up operations adjacent to Air Base Butterworth have been reported in HQ RAAF Butterworth Intelligence Reports to DAFI ... Local authoritative sources have stated that no Malaysian Security Force contingency plan exists for the reinforcement of Air Base Butterworth.” Further, there was no patrolling programme outside the Base by external units except the case of a visit by a VIP or “an anticipated or positive threat to the Air Base exists.”¹⁰
- The Army Historical Unit advised Major Willis in the leadup to the approval of the ASM for service in Malaysia to the end of 1989 the Malaysian Airforce Defence Guards (Handau) were poorly trained conscripts who provided an additional hazard. “... it was not unusual for the Handau to overreact when surprised and shoot at the unknown. Such incidents are known to have occurred during RCB quick-reaction response training in which RCB members came under fire.”¹¹

5. It is uncontested that a Shared Defence Plan existed at ABB, committing both nations to cooperate in the defence of the base. Intelligence data from the time considered there were threats, including a definite threat to ABB, and therefore Australians, of attacks at any time without warning. The form of attack could include “delayed-action explosives, booby-traps, and other devices to damage equipment and to injure personnel.” Attacks of the kind considered “definite” at any time, without warning, must create the continuous expectation of casualties.

6. The picture painted by contemporaneous intelligence data is one of Australian resources and personnel at constant threat of attack from Communist forces or sympathisers active in the immediate area of ABB. Australia could not rely on the support of 6MIB or Malaysian SSP who could be withdrawn at any time by higher authority, meaning it could be left to its own resources to defend ABB from attack. The poorly trained Malaysian Handau presented an additional threat to the Australians with their propensity to over-react and shoot at the unknown. This threat added to the expectation of casualties.

7. As will now be shown the warlike service criteria, and therefore the expectation of casualties, are objective, leaving no room for subjective assessment.

⁹ Butterworth Security. To DJS. N.P. McNamara, AVM, DCAS. 14 Oct 75.

¹⁰ Annex A to HQBUT 5/1/AIR (72). 11 July 1975.

¹¹ Enclosure 1 to Defence Personnel Executive Minute, Recommendations of the Review of Service Entitlement in Respect of the Royal Australian Air Force and Army Rifle Company Butterworth Service 1971-1989. S.V.L. Willis, MAJGEN, HDPE. 20 Dec 00

An Objective Standard

8. The 1993 NOS framework was approved before the first Australian risk management standard was published in 1995. This became the precursor to the International Organization for Standardization's risk management standards.¹² It was not until early 2002 that Defence introduced a Risk Management Framework based on an updated standard.¹³ As current risk management methodology has its origins in the 1995 standard the application of current practice to the 1993 Framework is considered illegitimate as it must alter the intent of the Cabinet decision. Therefore, terms such as "low" and "unlikely" considered by the Tribunal cannot be understood in the light of modern risk management practice.

9. In 1993 warlike service was defined as:

... those military activities where the application of force is authorized to pursue specific military objectives and there is an expectation of casualties.

10. A list of warlike examples followed, such as "a state of declared war", or "conventional combat operations against an armed adversary". It is clearly stated a declaration was not limited to the examples given.

11. I quote from the Ministers Executive Summary to Cabinet in response to the Mohr Report.

"The review concludes that there are a considerable number of deployments of ADF and other personnel to SE Asia 1955 -75 where the determination of entitlements to medals and repatriation benefits is anomalous. On the basis of the new information provided in the Mohr Report, the Department of Defence has reassessed each deployment against the criteria of 'warlike' and 'non-warlike' as directed by Cabinet on 22 April 1997 in Cabinet Minute JH/0057/CAB/2'. The results are in most cases identical to the recommendations of the Mohr Report. While extending those entitlements, I propose to reject the Mohr Review's policy analysis which could have significant flow-on effects under the Veterans' Entitlements Act 1986. I propose instead to affirm the current set of objective criteria for assessment of 'warlike' and 'non-warlike' service and thereby provide the framework against which any further historic claims and all future service can be assessed."¹⁴

12. Of note:

- Mohr's recommendations were reassessed "against the criteria of 'warlike' and 'non-warlike' as directed by Cabinet on 22 April 1997 in Cabinet Minute JH/0057/CAB/2'".

¹² History of developing risk management standardization. At <https://rmtap.com/history-rm-standardization.htm>. Accessed 24 Apr 2023.

¹³ Australian Defence Risk Management Framework: A Comparative Study. Svetoslav Gaidon and Seng Boey. Australian Government. Department of Defence. Defence Science and Technology Organisation. Executive Summary, and page 2.

¹⁴ Cabinet Submission JH00/0088 – Review of Service Entitlement Anomalies in Respect of South-East Asian Service 1955 – 1975 – Decision JH00/0088/CAB. Executive Summary.

- The Minister rejected Mohr’s analysis fearing it “could have significant flow-on effects under the Veterans' Entitlements Act 1986.”
- The minister proposed “to affirm the current set of objective criteria for assessment of 'warlike' and 'non-warlike' service and thereby provide the framework against which any further historic claims and all future service can be assessed.”

13. The reason for the Minister’s rejection of Mohr’s policy analysis is not clear to me. In the following analysis I have referenced Mohr where his recommendations have been agreed to by Defence.

14. Paragraph 14 of the Background Paper to the Mohr Review attached to the Cabinet submission responding to Mohr states:

“During the period of the inquiries, the Review was advised of the requirement to also consider the 10 guiding principles for assessing medals entitlements established by the 1993/94 Committee of Inquiry into Defence and Defence Related Awards (CIDA). Those principles have for the most part, been applied.”¹⁵

15. CIDA Principle 3 states:

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.

Consistency must be maintained in making recommendations to Government. The standards of measurement for service that apply must be transparent and fair in the eyes of the community.¹⁶

16. Defence’s refusal to comment on “Comparison of Operational Service Entitlements and MEDALLIC Awards – RCB” prepared by RCB can only be seen as a denial of this principle and inconsistent with Cabinet directives.

Comparison Ubon and ABB

17. The following table compares service at Ubon with that at ABB. It focuses on Ubon post June 1965, the period classified as warlike in response to the Mohr review, and ABB within the perimeter of the air base. Ubon data is sourced from Mohr, Chapter 6.¹⁷

¹⁵ Cabinet Submission JHOO/0088 – Review of Service Entitlement Anomalies in Respect of South-East Asian Service 1955 – 1975 – Decision JHOO/0088/CAB. Background.

¹⁶ CIDA

¹⁷ Review of Service Entitlement Anomalies in Respect of South-East Asian Service 1955 – 1975 (Mohr). Chapter 6.

Ubon	Comments	Butterworth	Comments
Non-warlike			
Self Defence			
In defence of Thailand when instructed by the air board			
If requested by Thai authorities through COMUSMACTHAI ... to intercept aircraft attacking with weapons			
While the RAAF were placed on an immediate operational footing having to maintain a position that would enable an immediate response if called upon ... such an event appeared unlikely and no aircraft were placed in at an alert state.	If the alert had been activated, the expectation of casualties was clearly forecast.		
An enemy aircraft could not be fired on before it had used its weapons.			
Warlike (post June 1965)			
Ubon was one of the most important USAF bases for its air operations against Vietnam.		ABB was Malaysia's largest air base and closest to Communist Strongholds. ¹⁸	
"the probability of enemy air attacks [on Thailand] would be slight"		The ANZUK 1971 and JIO 1975 threat assessments considered different possible	

¹⁸ *The RAAF Presence at Butterworth*, Para 21, attached to Hamilton R.N, A/First Assistant Secretary Strategic and International Policy Division, Review of Butterworth Deployment, 22 October 1976, Reference: DEF 270/1/4.

		<p>forms of attack on ABB.</p> <p>It was assessed that the definite threat of small-scale, isolated attacks with the purpose of damaging equipment and injuring personnel could happen at any time without warning.</p>	<p>At any time without warning must mean the threat at all times was considered imminent. This would require a force ready to respond at any time.</p>
<p>The use of Ubon by America as a base to launch air raids on Vietnam was considered to increase the threat of retaliation, both from the air and ground attacks by insurgents.</p>		<p>The continued use of ABB “as a base for ground-attack against the CT” was seen to “increase its attractiveness as a target” slowly increasing the threat to ABB.¹⁹</p>	
<p>Increased alert status required two fully armed aircraft to be airborne within five minutes to engage an intruding aircraft and destroy it.</p>		<p>QRF personnel were to sleep in the QRF room.</p> <p>The QRF was not to leave the QRF room unless ordered to, with the approval of the QRF Commander or Duty Officer, or while conducting weekend security patrols.²⁰</p> <p>If training within the confines of ABB the QRF was to be equipped</p>	<p>While the specific circumstances differed, the aircraft at Ubon and QRF at ABB were maintained at an alert state that required instant response. The five minutes at Ubon was necessary because the extreme heat made it impossible for the pilots to remain seated in the cockpits.</p>

¹⁹ Minute. Security Situation – Air Base Butterworth Report No 34. INT 8/10/3(150). R.S Royston. GPCPT. DAFI. 4 Aug 75

²⁰ Annex C to AS Rifle Coy Unit Standing Orders Dated 12 Dec 78. Orders – Quick Reaction Force. Paras 3,4.

		and ready to respond. If moving away from its company area within ABB it was to carry live ammunition in the QRF truck ready to react if called on. ²¹	
All friendly forces integrated into one cohesive system for the air defence of Thailand and Ubon		The ABB shared defence plan required Australian and Malaysian forces to cooperate on the defence of the base. ²²	
The RAAF bore 50% of the responsibility of the air defence burden and thus freed up USAF and Thai assets for other tasks.		The evidence suggests Australia carried the prime responsibility for the security and defence of ABB. (Para 6, above). The RAAF was responsible for the security of all installations vital to the operation of ABB, some being Malaysian facilities in close to where the RMAF was in strength. ²³	Note – 6MB could not be relied on as army commanders had different priorities. MMP could be withdrawn at any time without warning. MMP security, not defence role. RCB QRF – base defence (Para 4, above)
"The decision for a No. 79 Squadron aircraft to engage an intruder or not within Thai airspace		The final arbiter of the decision to shoot resided with the sentry	Logically, the danger of casualties was clearly forecast.

²¹ *Ibid.* Para 10.

²² Op Order 1/71. Shared Defence of Air Base Butterworth.

²³ Air Base Butterworth – Shared Defence. Air Commodore I.S. Parker. Annex C to 564/8/28. 6/10/1/PM. 160.

now clearly rested with the OC of the Air Operations Centre at Don Muang (near Bangkok), and the final decision to engage had passed to the airborne pilot. Again the danger of casualties was clearly forecast."		who had an automatic right to shoot. ²⁴	
Within the confines of Air Base Ubon the RAAF contingent were prepared for base defence and arms had been issued for this purpose if needed.		This has been demonstrated above for ABB.	
ADGs patrolled outside the perimeter of the base and saw evidence of communist activity.		Incidents of CT activity with Security Force follow up adjacent the base have been confirmed. ²⁵	The lack of external patrolling outside the perimeter of ABB was obviously a concern for the RAAF. ²⁶

18. Summarizing the changes at Ubon post June 1965 Mohr stated:

"The period after June 1965 until withdrawal of the RAAF Squadron in August 1968 is, however, a different matter. Four fundamental changes to the original Directive and Rules of Engagement were made in June 1965 which placed the RAAF Contingent Ubon on a very different footing than in earlier years as follows:

- Operational control passed from Canberra to the AOC at Don Muang and the airborne pilot became the final arbiter of when to 'open fire'.
- Deletion of the words 'attacking with weapons' meant that the pilot could shoot first and not have to wait till the enemy aircraft had first attacked Thailand or friendly forces.
- All friendly forces were at last integrated into one cohesive system for the air defence of Thailand and Ubon.
- Maintenance of 'Alert State Five' operational readiness was the highest feasible operational status."²⁷

²⁴ Annex A to HQ FF Comd Staff Instr 2/79 Dated 6 Jul 79

²⁵ Annex A to HQBUT 5/1/AIR (72). 11 July 1975.

²⁶ Butterworth Security. To DJS. N.P. McNamara, AVM, DCAS. 14 Oct 75.

²⁷ Mohr, Ch 6

19. As demonstrated in the above table, Mohr's summary of Ubon post 1965 could be applied to service within the confines of ABB with little editorial change.

ROE Determined Warlike Service

20. The warlike and non-warlike service criteria are objective. In its assessment of Mohr's recommendation for Ubon Defence stated:

"May 1962 to June 1965 – Agree that this period of service was 'non-warlike'. The Rules of Engagement at the time do not justify 'warlike' conditions of service.

"June 1965 to August 1968 – Based on the change of the Rules of Engagement it would be difficult to argue otherwise. The pilots were placed in a warlike situation by contemporary standards."²⁸

21. The ROE at Ubon, as at ABB, are an objective fact, not open to qualitative assessment such as likely, unlikely, or slight. The use of ROE as a determinant of warlike service is consistent with the objective nature of the criteria.

Service on the Thai/Malay Border 1 August 1960 – 27 May 1963

22. Mohr reviewed the above service in Chapter 5 of his report. He noted the soldiers were to exercise caution in the exercise of their ROE because of the possibility of civilians being in the operational area, just as sentries at ABB were to take care in an environment where friendly forces and civilian dependants were present.²⁹ Mohr concluded:

"It is clear that members of the ADF who were involved in anti-terrorist operations on the Thai-Malay border were involved in combat operations against an armed adversary where the application of force was authorised to pursue specific military objectives, namely the destruction of Communist terrorists in the region."³⁰

23. Mohr clearly identified the Communist terrorists as "military objectives." These same terrorists were active in the area around ABB during the MIW and were the target of the shared defence plan. In its review of Mohr's recommendation Defence agreed it was a "warlike operation supported by a previous Defence review using contemporary warlike application"³¹ I have been unable to find that review.

Diego Garcia

24. Diego Garcia is recognised with the award AASM.

"It was ... totally remote and inaccessible from any forces under attack in Afghanistan, but it was vulnerable to possible but improbable air attack by terrorist if they were successful in hijacking a

²⁸ Cabinet Submission JH00/0088 - Review of Service Entitlement Anomalies in Respect of South-East Asian Service 1955 – 1975 – Decision JH00/0088/CAB. Attachment F. Recommendations of the Mohr Report. #20.

²⁹ Annex A to HQ FF Comd Staff Instr 2/79 Dated 6 Jul 79

³⁰ Mohr, Ch 5.

³¹ Cabinet Submission JH00/0088 - Review of Service Entitlement Anomalies in Respect of South-East Asian Service 1955 – 1975 – Decision JH00/0088/CAB. Attachment F. Recommendations of the Mohr Report. #14

civilian international airliner and using it in a 9/11 style suicide attack. As at Ubon, the risk of an air attack may have been considered low, but the consequence of it happening were so great that Australia agreed to send 75 Squadron with its air defence capability to prevent it. Unlike Ubon, there was no manifest threat of insurgency by enemy surface forces so no Airfield Defence Guards were deployed, and the aircrew did not carry personal weapons. And in retrospect like at Ubon, it is clear that no air attack occurred, but again like Ubon, the squadron's high-alert aircraft were scrambled against unknown targets. Unlike Ubon shortly after the Contingent was withdrawn, no surface force attacked the base with rockets, mortar or ground attack".³²

25. The common factor between Diego Garcia, Ubon and ABB is the alert status. At ABB, as demonstrated above, the RCB QRF was held ready to react at a moment's notice. Regarding the consequences of an attack on ABB see Submission 065E – Paper by Marsh, para 7, last bullet point October 1975. Regarding the activation of the Ground Defence Operation Centre to an imminent Defence threat, see the same paper, paras 8 and 9.

26. The NOS at Ubon and Diego Garcia were obviously not based on the risk factor as described by terms of slight, low, possible, or improbable. Both were based on the objective fact of the alert level. When CIDA Principle 3 is applied to Ubon, Diego Garcia and ABB, similar alert levels existed. In harmony with Principle 3 and consistent with Cabinets directives at the time of Mohr, ABB is deserving of like recognition as Ubon and Diego Garcia.

Shared ROE at ABB

27. The Shared Defence Plan at appendix 6 to Annex C contains the ROE that applied to both Malaysian and Australian forces.³³ They applied within the confines of ABB, which was a protected place and conferred the automatic right to shoot equally to Malaysian and Australians, bearing in mind reasonable precautions to protect friendly forces and civilians.³⁴

28. The purpose of the shared defence plan was, "To protect operational assets, property and personnel within the perimeter of the Air Base Butterworth by joint engagement and mutual support."³⁵ This was against the identified threat of "a resurgence of militant communist activity both overt and covert" and other threats.³⁶ The shared defence plan authorized "the application of force ... to pursue specific military objectives", namely, the defence of ABB.

29. It has been accepted in other places that ROE authorizing the front line operative to decide when and when not to shoot carries with it the expectation of casualties. At ABB the risk of casualties is further evidenced by the undisciplined fire by the Malaysian Handau.

³² Report to the Minister Assisting the Minister for Defence, By The Independent Review Panel on Vietnam Campaign Recognition for RAAF Service at Ubon, Thailand 25 June 1965 to 31 August 1968. 9 July 2004. pp.27-28.

³³ Op Order 1/71. Shared Defence of Air Base Butterworth. Annex C Appendix 6.

³⁴ Annex A to HQ FF Comd Staff Instr 2/79. Dated 6 July 79

³⁵ Op Order 1/71 Para 2

³⁶ *Ibid* Para 1

Conclusion

30. This submission has reviewed service at ABB during the CIM through the lens of Cabinet's response to the Mohr review and decisions made by Defence around that time. It has demonstrated the strong parallels to Ubon along with comparison to Diego Garcia. The level of operational readiness at Ubon and Diego Garcia is very similar to that of RCB and ABB. The objective fact that made the difference between non-warlike and warlike service at Ubon was that the pilot in the cockpit was authorised to make the final decision whether to shoot or not. This closely reflects the situation at ABB with regards to sentries/patrols.

31. Based on the objective warlike criteria and consistent with CIDA Principle 3, it is concluded service at ABB during the CIM is equally deserving of warlike service recognition.

Introduction

1. The RCBRG submits that the service of Army and RAAF personnel deployed to protect Air Base Butterworth (ABB) during the period 1970 to 1989 was warlike in nature and should be recognised by the award of the Australian Active Service Medal (AASM).
2. The RCBRG acknowledges the many submissions by veterans who served at ABB during the period under review. They have been prepared by RAAF and Army veterans and provide eye-witness evidence of the warlike nature of their service at ABB.

Aim

3. This submission provides the Tribunal with factual information, to prove on the balance of probabilities that RCB service was warlike in nature.
4. **The 1993 Definition of Warlike Service.** The 1993 definition of warlike service states that warlike operations are those military activities where:
 - The application of force is authorised to pursue military objectives; and
 - There is an expectation of casualties.¹

Approach

5. This submission examines the issues of threat, Rules of Engagement (ROE) and expectation of casualties as they relate to Rifle Company Butterworth (RCB) service during the period 1970 to 1989.
6. The RCBRG considers any examination of RCB service must be done in the context of the period under consideration (1970 to 1989) and not through the prism of 2023.
7. **Relevant Factors.** Accordingly, due regard must be accorded to the following factors relevant to the period:
 - Intelligence assessments that addressed the enemy threat (Malaysian Communist Terrorists) in terms of numbers, capacity, capability, weapons, doctrine and tactics.
 - Statements of Australian Government officials, Defence officials and commanders that resulted in the deployment of RCB.
 - The legal basis for the defence of ABB.
 - Australian defence doctrine for the planning for and conduct of defensive operations.
 - Australian doctrine and training for the use of infantry small arms by RCB and RAAF personnel deployed at ABB.
 - The Mission as stated in the ABB Shared Defence Plan².
 - The RCB tasks allocated in the ABB Shared Defence Plan.
 - RCB weapons and other relevant equipment.
8. **Military Operations.** The nature of military operations is such that the issues of threat, ROE and expectation of casualties are intrinsically linked and cannot be considered in isolation of each other.
9. In planning for and the conduct of military operations the issue of threat is considered in the context of the degree of risk posed by hostile actions that threaten the successful execution of a military objective/mission. ROE are based on government policy, which prescribes the degree of force that may be used to achieve the military objective/mission. The same applies to an opposing hostile force. Accordingly, in the event of hostile action it must logically follow there will be an expectation of casualties. This can only be the case as military doctrine and training is predicated on assuring

¹ Faulkner, J. and Brererton, L., *Cabinet Submission 1021 - ADF Personnel Deployed Overseas - Conditions of Service Framework*, 13 May 1993.

² OP ORD No. 1/71, Shared Defence of Air Base Butterworth, 8 September 1971

the successful execution of the military objective/mission. Implicit in military doctrine and training is an acceptance, that casualties will be likely on both sides.

Background to the Decision to Deploy RCB

10. The following key events resulted in the decision to deploy RCB:

- 1958 - The RAF hand-over of Airbase Butterworth (ABB) to the RAAF.
- 1968 - Resurgence of Malaysian communist insurgency commences. Communist China supports the MCP/CTs with weapons and equipment.
- 1971 - UK withdrew from Malaysia and Singapore.
- 03/1970 - Australia handed over ABB to Malaysia - 1970 (RMAF and RAAF are co-tenants (RAAF had 2 x sqns of fighter based there with 1200 personnel and dependents))
- 1970 - A Rifle Company initially provided on a monthly rotation from the Australian and New Zealand infantry battalions for security duties at ABB.
- April 1971 - Five Power Defence Agreement (FPDA) signed.
- 8 September 1971 – ABB Shared Defence Plan signed.
- November 1971 - Exchange of Notes between Australia and Malaysia came into force.
- 1972 - US and China rapprochement. China withdrew support to the MCP/CTs
- 30 April 1975 - Saigon falls and the Vietnam War ends. CTs in Malaysia were increasingly supported with weapons and training by DRV/North Vietnam.
- 1972 - Whitlam Labor Government elected with a mandate to withdraw all Australian ground combat forces from SE Asia.
- 11 January 1973 - The Australian Defence Committee recommended deployment of a Rifle Company from Australia on three-month rotational basis. Deployment to be “*communicated publicly as being for training purposes*”.³
- 15 November 1973 - The Australian infantry battalion was withdrawn from Singapore.
- September 1973 - The first Rifle Company (RCB) was deployed on a three-month rotation from Australia.

Key Documents

11. The following are relevant to the submission:

- **Protected Places and Protected Areas Act (Malaysia) 1959:** The legal basis for the use of force in the defence of ABB.
http://www.commonlii.org/my/legis/consol_act/paappa19591983395/
- **FPDA.**⁴
- **Exchange of Notes between 1971:** (Australia was permitted to maintain an Infantry Company at ABB, sub para (1) (c) refers, and is permitted to “*take such measures within their installations as they deem necessary to ensure the security of the installations...*” - Section 2 para (1) refers.)
- **Shared Plan for the Defence of ABB:**
 - OC RAAF Butterworth was appointed as overall commander of RAAF and MAF personnel at ABB for ground defence purposes.

³ Defence Committee Meeting 11 January 1973, Minute 2/1973, paragraph 28 (e)

⁴ The FPDA was established in April 1971 against the backdrop of ongoing armed conflicts in the region (the Vietnam War and communist insurgency in Malaya), the termination of the Anglo-Malaya Defence Arrangement, and the British decision to withdraw troops from east of Suez in 1967. Originally established as a ‘temporary security fix until Malaysia and Singapore had developed their military capabilities’, it continued through the peak of the Cold War and the volatile situation in Southeast Asia.
<https://www.aspistrategist.org.au/the-five-power-defence-arrangements-time-for-the-quiet-achiever-to-emerge/>

- The Shared Plan acknowledged “*There is a threat to the security of the air base*” - sub sub paragraph 1. a. (1) refers.
- The Shared Plan stated “*Malaysian Law allows personnel (both Malaysian and Australian) to protect the Base, themselves, their property and dependents*” – Annex A para 1 refers.
- The Mission as stated in the Shared Plan was “*To protect operational assets, property and personnel within the perimeter of Air Base Butterworth by joint arrangement and mutual support*”.
- **Defence Committee Minute 2/73:** acknowledged “*...the requirement for a company for security duties at Butterworth will be met by providing the unit, on rotation from Australia*” - sub para 28 (e) refers.
- **ANZUK Intelligence Group Note No. 1/1971 The Threat to Air Base Butterworth UP TO THE END OF 1972:** “*there is definitely a risk that one or more CTs or members of subversive groups known to be operating in the vicinity, could, regardless of CPM/CTO policy and/or acting on their own initiative, attempt an isolated attack on or within the Base at any time*” -page 17, sub para 54. (e) refers.
- **JIO STUDY No. 14/74: Likelihood of Attack.** “*there is a potential threat to the base*” – page 19, sub para 48 (b) refers.
- **JIO STUDY No. 13/75: Likelihood of Attack.** “*There is a potential threat to the Base from the CTO and related communist, subversive organizations*” – page 18 sub para 56. (b) refers.

Threat and Risk

12. At the hearing on 4 April 2023 questions regarding threat and risk were posed in way that suggested the terms were interchangeable. When considered in a military context threat and risk have different meanings.
13. Threat is defined in ADF doctrine as “*Hostile action that has the potential to cause physical or psychological harm to individuals, damage to equipment, or prevent or reduce the likelihood of an operations success*”.⁵ Whereas risk is defined in terms of the “*effect of uncertainty on objectives*”. This definition is drawn from the Australian/New Zealand Standard AS/NZS 31000: 2018.⁶ This risk management standard is now part of ADF doctrine as part of the in the form of the Joint Military Appreciation Process (JMAP).

The Threat

14. To understand the insurgency threat in Malaysia during its Communist Insurgency (1968-1989), one must understand the Chinese Communist’s Revolutionary Warfare doctrine and its direct application and success in fostering revolutionary wars in SEA post the Second World War that gave rise to the Domino Theory.



⁵ Land Warfare Publication – G. 3.6.7.

⁶ Australian/New Zealand Standard AS/NZS 31000:2018 *Risk Management—Guidelines*.

- **First Indochina War** (1946 -1954) between the communist Viet Minh guerrilla force and the French Army ending with the latter's defeat resulting in the Geneva Peace Accords and the division of Vietnam into two separate regimes North Vietnam (Communist) and South Vietnam (Republic).
- The **Malayan Emergency**, (1948–1960), a guerrilla war fought between communist CPM's pro-independence fighters of the Malayan National Liberation Army (MNLA) and the military forces of the Federation of Malaya, British Empire and Commonwealth.
- **Vietnam War** (1955-1975). Fought by the North Vietnamese People's Army of Vietnam and the South Vietnam-based Viet Cộng against the military of South Vietnam (and its Allies) and were backed by their communist allies, mainly China and the Soviet Union.
- **Laotian Civil War** (1959–1975) was waged between the Communist Pathet Lao and the Royal Lao Government The North Vietnamese and Pathet Lao emerged victorious in 1975 in the slipstream of the victory of the North Vietnamese army and the South Vietnamese Vietcong in the Vietnam War.
- **Cambodian Civil War** (1960-1975) The Khmer Rouge insurgency grew, aided by supplies and military support from North Vietnam. By 1973, Vietnamese support of the Khmer Rouge had largely disappeared. China "armed and trained" the Khmer Rouge both during the civil war and the years afterward.
- **Communist Insurgency in Malaysia** (1968-1989)

15. The Three Phases of Chinese Communist Revolutionary War Doctrine.

- One.** **Establish the base support** amongst the population to provide recruitment, intelligence and logistic support.
- Two.** **Terror attacks**, raids, ambushes, sabotage, IEDs on “soft” targets such as government agencies, VIPs, police and military installations and isolated enemy units.
- Three.** **Armed conventional combat** with insurgent units against Government military units.

Except for the Malayan Emergency and the Communist Insurgency in Malaysia all the three phases succeeded in communist victories in the above conflicts.

16. In the Malayan Emergency and the Insurgency in Malaysia both were actively supported by the Chinese Communist Government until its 1972 rapprochement (the Shanghai Communiqué) with the USA. Thereafter the DPRV (North Vietnam) became the primary supporter of the Malaysian Communist Party's (MCP) insurgency with the supply of arms (direct weapons and indirect mortars and rockets), ammunition, mines/booby traps etc, and tactical operations advice, increasingly so after the fall of Saigon (April 1975) that ended the Vietnam War. The impact of this support was seen in the increased terror actions and casualties to the MAF.

Assessing the Threat to ABB

17. During the period under review, the military Appreciation Process was the methodology used at the strategic and tactical level to assess the CT threat to the security of the ABB. This process, which was used by Army and RAAF to plan for the defence of ABB, assessed:
- the enemy by analysing the CTs in terms of their strengths, capabilities, weapons, tactics and their support from other communist countries; and

- likely courses of action the enemy might adopt and the identification of the enemy's most likely course of action.⁷

18. A key input to informing the Appreciation Process was intelligence collected by RAAF staff responsible for liaising with Malaysian Armed Forces, Malaysian Field Force Police and Special Branch. Evidence given at the second public hearing by two former Ground Defence Officers at ABB, GPCAPT Coopes and WCDR Penny (Retd), addressed the importance of the currency and immediacy of locally acquired intelligence, particularly as there would be minimal warning of an attack on the airbase. The relevance of tactical intelligence collected from local sources, including from the Malaysian Armed Forces, is also addressed by Mr Sean Arthur in a paper that provides a comparative evaluation of JIO assessments of the security of ABB.⁸

Official Awareness and Acknowledgement of the CT Threat

19. At the strategic level, contemporary documents from the period confirm the Prime Minister, Ministers, the Secretaries of the Departments of Foreign Affairs and Defence, diplomats, the Service Chiefs and other senior officers and officials had been briefed on the CT threat to ABB. That insight included access to the 14/74 JIO STUDY and the 13/75 JIO STUDY and is also evident from the following:

- A 1971 memorandum from the Australian High Commission at Kuala Lumpur to DFAT, Defence and the Director of Air Force Intelligence addressing the threat of attacks on air base in Malaysia stated that the Malaysian Deputy Director of Military Intelligence "*assessed the Air Base Butterworth as a probable target*".⁹
- A 1972 memo reporting a monitored CTO radio broadcast and an attached cablegram from the Australian High Commission to Secretary of DFAT - 'Threat to Air Base Butterworth', stated "*on the whole we would be inclined to rest on the general fact that there is a clear threat*".¹⁰
- A Director of Air Force Intelligence report addressing the security situation at ABB and the implications of ABB use by the MAF to mount operations against the CTs stated the "*threat to Air Base Butterworth must be considered to be slowly increasing*".¹¹
- A Chief of the Air Staff Minute to MINDEF addressed "*possible CT intentions to launch rocket attacks on bases in Malaysia increases our concern regarding the security of the area around the base. Intelligence sources consider CTs have or able to obtain 81/82mm mortars to supplement their known supplies of 3.5 inch rockets*".¹² The Defence Attaché (sic. at Kuala Lumpur) "*suggests that an attack from outside the perimeter of the Air Base Butterworth must be considered a possibility and we would agree with this view*".¹³

Other references to primary source documents provide further confirmation of official awareness and acknowledgement of the CT threat are addressed in RCBRG submissions No.065f and No.096.

- Further confirmation of the threat posed by enemy forces and the need to ensure RCB personnel were aware of that threat was addressed in the 2/79 Field Force Command Staff Instruction dated 6 July 1979, which in addressing security training for RCB personnel stated, that some "*training and familiarisation will need to be conducted at Butterworth*"- and

⁷ Manual of Land Warfare Volume 1, Pamphlet 1, Staff Duties in the Field, 1979, Annex C, The Defence Appreciation, page 4C-1.

⁸ Comparison - Joint Intelligence Organisation (JIO) Studies: No. 14/74 and No. 13/75, Sean Arthur, May 2023, paragraphs 11 and 12.

⁹ Australian High Commission Kuala Lumpur Memorandum, 207/2/2, dated 11 March 1971.

¹⁰ Australian High Commission Memo FA 928, file reference 207/2/3/5, dated 12 May 1972

¹¹ DAFI Report No. 34 – Security Situation Air Base Butterworth, 4 August 1975.

¹² CAS Minute to MINDEF – Security of Butterworth, 7 October 1975, paragraph 2.

¹³ Ibid., Annex A, paragraph 10.

“appreciation of the enemy threat and likely approaches” – Annex B para 2 and sub para 2.c. refer.

- Eye witness evidence given under oath at the recent public hearing by LTCOL Michelson (Retd), LTCOL Linwood (Retd), LTCOL Charlesworth (Retd), WGCDR Penney (Retd) and GPCAPT Coopes, all of whom served at ABB, lends further weight to the threat of attack on ABB and the consequent risks to the safety of RAAF personnel, their dependants and RCB personnel.

Assessed Level of Threat to ABB

20. Defence has asserted “Assessments for Air Base Butterworth over the period 1971 to 1989 were continually assessed as LOW”.¹⁴ However, Defence has not presented **ANY** evidence to support that assertion. However, of the three available intelligence documents, the ANZUK Intelligence Group Note No. 1/1971, the 14/74 JIO STUDY and the 13/75 JIO STUDY, all three of these documents **DID NOT** assess the likelihood of threat of attack on the airbase as LOW.

The following points are relevant:

- The ANZUK Intelligence Group Note No. 1/1971 - The Threat to Air Base Butterworth UP TO THE END OF 1972: stated *“there is definitely a risk that one or more CTs or members of subversive groups known to be operating in the vicinity, could, regardless of CPM/CTO policy and/or acting on their own initiative, attempt an isolated attack on or within the Base at any time”* - page 17, sub para 54. (e) refers.
- The 14/74 JIO STUDY assessed the likelihood of attack on ABB by stating *“there is a potential threat to the base”* – page 19, sub para 48 (b) refers.
- The 13/75 JIO STUDY assessed the likelihood of attack by stating *“there is a potential threat to the base from CTO and related communist; subversive organisations”* – sub para 52. (b) and *“There is some risk that members of subversive groups could, regardless of CTO policy or acting on their own initiative within the Base at any time”* - sub para 56 (f) refers.
- The 14/74 JIO STUDY documented 56 CT incidents near ABB from the 25th May 1973 to 15th June 1974 - Annex A refers.
- The 13/75 JIO STUDY documented 124 CT incidents near ABB from the 12th July 1974 to 17 August 1975 – Annex E refers, and detailed the probable approaches of CT attack by day and night – Annex F refers.
The proximity of the incidents to ABB from the 13/75 JIO assessment is evident from a map attached as Annex A to this submission.
- The ABB Shared Defence Plan stated *“There is a threat to the security of the air base and damage to property”*.¹⁵
- An assessment of ABB’s security provided further acknowledgement of the attack threat on ABB and RCB’s importance of RCB in ABB Shared Defence Plan by stating that it provides a QRF *“and is an essential requirement for the Base Operation Plan No. 1/71”*. The report recommended hardening the defences of ABB by the addition of observation towers, bunkers placed at strategic points inside the perimeter manned with machine guns, aircraft revetments, and the deployment of remotely monitored surveillance equipment.¹⁶ These improvements were implemented.

¹⁴ Enclosure 1 to Defence Submission EC 22-00-4607, Answer to Question 4, dot point 6.

¹⁵ OP ORD No. 1/71, Shared Defence of Air Base Butterworth, 8 September 1971, p. 1, sub sub para 1. a. (1).

¹⁶ Countermeasures to Security at ABB, OC RAAF Base Butterworth, 24 December 1971, paragraphs 28 and 47.

- **A Malaysian Army Intelligence Officer's Perspective of the Threat to ABB.** A retired Malaysian Army Lieutenant Colonel has provided a unique perspective of the communist insurgency and his assessment of the threat to ABB. He was an intelligence officer attached to 6th Malaysian Infantry Brigade during the communist insurgency and has confirmed "*The CT threat to ABB was constant during the emergency*".¹⁷ He was provided with a copy of the 13/75 JIO STUDY and has stated "*The assessment provided an overall threat to ABB.*"¹⁸

The Evolving Nature of the Communist Insurgency

21. During the public hearing on 3-4 April questions and discussion about the degree of threat to ABB and why ABB was not attacked did not give due regard to the way in which the Communist Insurgency evolved in Malaysia during the period under consideration. However, the 13/75 JIO STUDY did go some way to addressing this and its relevance to consideration of the threat posed to ABB.
22. The approach taken by the Communist Party of Malaysia (CPM) and its associated organisations to military operations was addressed in the ANZUK and JIO reports, both of which documented acts of terrorism, sabotage on local infrastructure and attacks on Malaysian security forces that were consistent with Maoist doctrine for revolutionary war and the second phase of an insurgency. However, although there was a degree of coordination in those attacks it was assessed the CTs needed further time to develop their numbers, training and stockpile ammunition and food necessary to support coordinated large-scale attacks against well defended Malaysian Government infrastructure, including military installations. Such attacks might be expected of the CTs when increasing the tempo and focus of their attacks as part of the third phase of the insurgency. This is confirmed by the 13/75 JIO STUDY which stated it would include "*open attacks on government installations.*"¹⁹
23. Professor David Kilcullen, an Australian counter-insurgency expert, has provided the RCBRG with a paper addressing insurgency conflict in which he states "*It may be argued that CT activity levels waxed and waned over time during the insurgency, so that for some periods of its operational existence RCB was under limited threat. This is a misunderstanding of how insurgency occurs. Insurgents typically do not seek to maintain uniform threat levels across an entire theatre throughout a conflict. Rather, they seek to demonstrate the ability to attack anywhere at short notice, forcing counterinsurgents to defend everywhere*". He also explains that the insurgents will do this "*by avoiding hard targets, attacking only when sure of success, and mounting hit-and-run attacks against vulnerable outposts, patrols and civilians. They tend to avoid well-defended localities and base areas supported by quick-reaction forces or strong garrison elements (such as Air Base Butterworth during this period)*".²⁰

Professor Kilcullen also states:

- "*The fact that Butterworth was not directly attacked, whereas more distant airbases – including RMAF Base Sungei Besi – were attacked, suggests that the presence of RCB deterred the insurgents, by making the base a hard target. This further indicates that RCB played an operational role in the conflict, deterring attack on Butterworth*";²¹ and
 - "*my assessment is that the CT insurgents during 1968-1989 regarded Butterworth as central to their area of operations, with aircraft from the airbase playing an operational role in the conflict, making it a target*".²²
24. The former Malaysian Army Intelligence officer referred to earlier has expressed a similar view with regard to ABB being a CT target, "*ABB as a base was already a target and using the base*

¹⁷ Submission 36d MAJ Mark Gallagher (Retd), paragraph 14 of statement, refers.

¹⁸ Ibid., paragraph 21 c. a.

¹⁹ The Security of Air Base Butterworth, JIO STUDY 13/75, October 1975, p. 7, paragraph 24.

²⁰ Rifle Company Butterworth in context of the Malaysian Emergency, 1968-1989, Professor David Kilcullen, 28 April 2023, p. 3, paragraphs 4 and 5.

²¹ Ibid., p. 2, paragraph 3.

²² Ibid., p. 3, paragraph 6.

*for launching operations against the CTO would continue to remain a target” – paragraph 19 refers.*²³

25. It is clear the CTs in proximity to ABB had the weapons, sufficient personnel and training to attack ABB. This point is addressed in a submission from LTCOL Ted Chitham (Retd), a former career Army officer with extensive first-hand experience of counter insurgency operations and who was the Senior Instructor at Tactics Wing at Canungra; where he was the subject matter expert on counter insurgency warfare. In his supplementary submission, he states in his opinion the threat of a Phase 2 attack on ABB was Probable.²⁴

26. In addressing the question as to why the CTs may have refrained from attacking ABB it is also pertinent to note that JIO assessed the CTs may have feared *“that Commonwealth forces would be reintroduced into the (sic. Malaysian) Government’s anti-terrorist campaign”*.²⁵

27. The Conjoined Nature of Operations at ABB.

In response to questions concerning the nature of the conflict underway, Professor Stephens, in his testimony at the second public hearing agreed that although Australia was not a formal party to the conflict against the CTs, which was a Non-International Armed Conflict, as a result of the shared responsibilities for the defence of ABB Australia did have specific responsibilities regarding the security of people, their dependents and the property of the respective defence forces.

The Tribunal Chair expressed his view as to what RCB was permitted to do if ABB was attacked where he said words to the effect *‘conflict was between the Malaysian Government and insurgents; Australia was not a party to that conflict. If insurgents attacked the base, then the rifle company could act under their ROE to defend the base, assets and personnel.’*²⁶

Comments:

- The RCBRG contends the joint defence of ABB involving RAAF and RMAF was such that any threats to the RMAF presence must logically have been threats to RAAF and RCB personnel and property.
- This contention is supported by the 13/75 JIO STUDY which stated with regard to an attack on ABB *“it is unlikely that the CTO would try to discriminate between RAAF and RMAF targets, and Australian personnel and equipment would be endangered”*.²⁷

28. **Relevance of the ABB Shared Defence Plan.** Further evidence that supports the conjoined nature of the operations conducted within the ABB perimeter is addressed in a supplementary statement from GPCAPT Coopes where, in addressing the ABB Shared Defence he states *“This Plan was agreed and signed in conjunction with the Royal Malaysian Air Force” – page 1, paragraph 2 of Attachment 4 refers.*

29. **Relevance of Malaysian Law.** It is relevant to note that Australian defence personnel were authorised under Malaysian law to have authority to protect the base from attack. To this end, the ADF were acting in concert with the RMAF in protecting the base and as a consequence any threat of attack on ABB was not only a threat to the RMAF but also to the RAAF and RCB personnel.

²³ Submission No. 36d, MAJ Mark Gallagher (Retd).

²⁴ Submission No.055a by LTCOL Chitham (Retd), to the DHHAT Inquiry into Medallic Recognition for service with Rifle Company Butterworth at Air Base Butterworth (ABB), p.6, paragraph 24. 1.

²⁵ The Security of Air Base Butterworth, JIO STUDY 13/75, October 1975, p. 14, paragraph 41.

²⁶ YouTube Recording of the Public Hearing, 3 April 2023, 5 hours, 32 minutes, 55 seconds.

²⁷ JIO 13/75 Study, The Security of Air Base Butterworth, October 1975, p.15, paragraph 45.

30. **Implications of the Immediacy of the Threat.** In addressing the threat of attack on ABB the JIO Study 13/75 addressed an “*attack by fire using mortars or other indirect fire weapons*” and stated “*this form of attack is quite likely*”.²⁸ As the CT had been identified as being equipped with either 81mm or 82mm mortars an attack using these indirect weapons could be initiated without warning from a maximum range of 4000 metres from the air base.
31. **An Assessment of threat using a Contemporary Methodology.** In his paper, Sean Arthur used a contemporary methodology used by a range of Government agencies, to assess the threat to ABB, that considers the capabilities and intent of the CTs. He assessed the threat as HIGH.²⁹

Summary.

32. The key points are:

- There was an awareness of the threat of attack by CTs on ABB at the strategic level by Government and the Service Chiefs.
- There was an awareness at the diplomatic level of the threat of CT attack on ABB.
- The OC RAAF Base Butterworth acknowledged the threat of attack by CTs in the plan for the Shared Defence of ABB.
- None of the three available intelligence assessments support the Defence contention that the threat of an attack to ABB was LOW throughout the period.
- The number and proximity of CT related incidents in proximity to ABB documented in the 14/74 JIO STUDY reports there were 56 incidents and the 13/75 JIO STUDY assessment **126** such security incidents - **an increase of 125% between two intelligence reports only 12 months apart.**

Comment: The 13/75 JIO assessment is the document that Defence relies on to demonstrate that there was no risk to the safety of RAAF personnel and families, RCB personnel and Australian Defence property at the entire air base, and that the service of RAAF and Army personnel at the airbase was actually peaceful and no threat or risk of attack was evident.

- Witnesses Penney, Coopes, Michelson, Charlesworth and Linwood have given sworn evidence that corroborates available intelligence assessments and primary source documents that confirm official awareness of the threat to the air base and the measures taken to mitigate risks arising from the threat.
- The joint presence of RMAF, RAAF and RCB personnel at ABB and the consequent responsibilities addressed in the plan for the Shared Defence of the airbase were such that Malaysian and Australian forces that the operations undertaken within the ABB perimeter were conjoined in nature any threat assessed by the MAF to the airbase must also be regarded as a threat to the safety of Australian personnel and property.
- In considering the question of threat of attack on ABB due regard must be given to the nature of insurgency conflict, particularly in the context of the insurgency that was underway during the period 1970 to 1989 when RCB was deployed to ABB.
- **Malaysian Intelligence had assessed that ABB was a target for CT attack.**
- **JIO assessed the CTs were a potential threat to the base.**

²⁸ Op cit., p., 16, paragraph 48 (c).

²⁹ Op.cit., Annex A.

- **A threat to the security of ABB would threaten the safety not only RMAF personnel but also RAAF and RCB personnel.**

Rules of Engagement

33. At the hearing on 3 April 2023 Defence tabled a supplementary submission, much of which addressed ROE. That submission was only provided to the RCBRG after lunch at 1.58 pm on 3 April following a direct request by LTCOL Mickelberg to BRIG Holmes for a copy of the Defence submission.

34. **Further Opinion from Prof Stephens.** Due to the lack of time available for the RCBRG to consider the Defence supplementary submission tabled on 3 April 2023, the RCBRG had intended obtaining a further opinion from Prof Stephens, which is why an extension of time to lodge this submission was requested.

Prof Stephens has informed the RCBRG that as a result of discussions with Defence, he has decided that he can no longer continue his involvement in the matter before the Tribunal. He has advised that as an active Defence Reservist his continued involvement, including providing any further evidence on behalf of the RCBRG veterans' submission, would, under existing Defence policy be potentially regarded as a conflict of interest.

35. **Points Arising from the Public Hearing on 3 April.** With regard to ROE the following points from the public hearing on 3 April are relevant:

- In response to questions from ACDRE Grady, Professor Stephens stated words to the effect:
 - *"When I look at the rules of engagement that applied in Butterworth in the 1970s and when I look at the Rules of Engagement that we certainly applied in INTERFET and UNTAET, I see a very stark similarity, not only a similarity, but the use of the very same words between the two sets of ROE Atu Temback, the Bahasa statement that I saw in the Malaysian ROE, were replicated in certainly the UNTAET ROE".³⁰*
 - *"I would just make the comment as I made earlier, you may well be acting in self-defence, but that can be transformed into an armed conflict whether you like it or not, the enemy has a vote in this, you are not acting inconsistent with the law, should you, yourself respond in kind."³¹*
 - *"The question is do ADF members have an automatic right to protect themselves and to protect others that are faced with the application of lethal force. The answer is yes, as a matter of law that is possible and that is often reflected specifically as a rule in the rules of engagement".³²*

36. In the absence of expert advice from Prof Stephens the RCBRG has addressed in Annex B of this submission the matters raised by Defence in its supplementary submission that relate to ROE. The key points asserted by Defence in its supplementary submission were:

- **Defence asserted that RCB ROE were self-defensive and required the use of minimum force.**

Comments:

- This assertion overlooks the reality that the use of minimum force is a common requirement of all ROE. The UNTAET ROE, which Prof Stephens said in his testimony to the Tribunal were similarly defensive, prescribed the incremental use force to cater for escalation in threat. The

³⁰ YouTube Recording of the Public Hearing, 3 April 2023, 5 hours, 52 minutes, 22 seconds.

³¹ YouTube Recording of the Public Hearing, 3 April 2023, 5 hours, 54 minutes, 44 seconds.

³² YouTube Recording of the Public Hearing, 3 April 2023, 5 hours, 58 minutes, 36 seconds.

UNTAET ROE at the lower end prescribed the open display of weapons, progressing to verbal warnings, to the pointing of weapons and changes to weapon states (sic. weapon readiness) and at the upper end of the scale when deadly force was permitted.

- In response to a question from the Tribunal about ROE Prof Stephens said words to the effect that *“You can be given self-defensive rules of engagement, but as a matter of law you can go beyond those if the threat level you are facing satisfies that characterisation as a non-international or national armed conflict, so it is possible as a matter of law for that to occur”*.³³

- **Defence asserted there was no legal basis for the use of lethal force by RCB.**

Comment: This assertion ignores Annex A to plan for the Shared Defence of ABB, OPOD 1/71, which details the legal basis for the defence of ABB and the powers of Malaysian and Australian defence personnel, including the right to use lethal force.³⁴

- **Defence asserted that RCB ROE were self-defensive and did not permit the offensive use of force.**

Comment: The logic of this assertion is difficult to understand as the RCB was tasked to provide a QRF to respond to attacks on ABB and subject to the ROE of the ABB Shared Defence Plan, which permitted the use of lethal force.

- **Defence asserted that RCB ROE did not permit the use of force to protect Malaysian personnel on the airbase.**

Comment: It is apparent Defence has not read OPOD 1/71, the ABB Shared Defence Plan, as their assertion overlooks that:

- The defence of ABB was shared between the MAF and the RAAF.
- MAF aircraft and personnel were collocated at ABB with RAAF aircraft and personnel. All aircraft and personnel based within the ABB perimeter.
- OC RAAF Base Butterworth, who was designated as Ground Defence Commander, exercised *“operational control of all forces within the perimeter of the air base”*.³⁵
- The Mission as stated in OPOD 1/71 was *“To protect operational assets, property and personnel within the perimeter of Air Base Butterworth by joint arrangement and mutual support”*.³⁶
- The term ‘joint’ as used in the Mission is a direct reference to joint defence by RAAF and RMAF defence of ABB.
- RCB was under the operational command of OC RAAF Base Butterworth and tasked to provide a QRF to respond to attacks on ABB.

37. Aspects of what Defence asserted in its supplementary submission were addressed by Prof Stephens in his sworn testimony, which was largely unchallenged by Defence.

³³ YouTube Recording of the Public Hearing, 3 April 2023, 5 hours, 39 minutes, 43 seconds.

³⁴ OPOD No.1/171, Shared Defence of Air Base Butterworth, 8th September 1971, Annex A, p. 1., paragraph 3.a. (3).

³⁵ Ibid, paragraph 1 c. (1)

³⁶ Ibid, p. 2., paragraph 2.

38. GPCAPT Coopes, in his supplementary statement attached with this submission has stated the following in relation to the Rules of Engagement and the Orders for Opening Fire for RCB, "*This Plan was agreed and signed in conjunction with the Royal Malaysian Air Force and included Rules of Engagement and Orders for Opening Fire for Rifle Company Butterworth and Base Combatant Personnel*" – page 1 paragraph 2 of Attachment 3 refers.
39. **Defence Evidence.** Despite having a Defence Legal Officer present at the recent public hearing Defence did not provide any witnesses to offer an alternative to the position taken by the RCBRG on the issues relating to ROE.

Summary.

40. In summary the key points with regard to ROE are:

- ROE are not specifically designated offensive or defensive but are predicated on the use of minimum force as part a continuum to cater for the incremental application of force in response to changes in the of level of threat. The RCBRG has collated a number of ROE from other deployments that reflect this.
 - The plan for the Shared Defence of ABB, OPORD 1/71 detailed the legal basis for the defence of ABB and gave powers to Malaysian and Australian defence personnel, necessary for the joint defence of the airbase, including the right to use lethal force in the event the airbase was attacked by the CTs.
 - The defence of ABB was shared between the MAF and the RAAF.
 - MAF aircraft and personnel were collocated at ABB with RAAF aircraft and personnel. All aircraft and personnel based within the perimeter of ABB.
 - OC RAAF Base Butterworth, who was designated as Ground Defence Commander, exercised operational control of all forces, including Malaysian defence forces within the perimeter of the air base.
 - The Mission as stated in OPORD 1/71 was "To protect operational assets, property and personnel within the perimeter of Air Base Butterworth by joint arrangement and mutual support".
41. **Further Testimony by GPCAPT Coopes.** Of relevance to the issue of the RCB ROE, GPCAPT Coopes in his supplementary statement attached with this submission has stated in reference to the plan for the Shared Defence of the airbase, "*This Plan was agreed and signed in conjunction with the Royal Malaysian Air Force and included Rules of Engagement and Orders for Opening Fire for Rifle Company Butterworth and Base Combatant Personnel*" – page 1 paragraph 2 of Attachment 3 refers.

The Order 'Shoot to Wound and not to Kill'

42. The order 'Shoot to Wound and not to Kill' was addressed during the recent public hearing where Defence argued that was a key factor underpinning compliance with the RCB ROE.
43. To address this matter, it is important to understand the Army doctrine and training relevant during the period as this informed the use of infantry weapons that RCB carried at ABB.
44. The RCBRG has obtained specialist technical advice from two eminently qualified subject matter experts (SME) of infantry small arms doctrine, training, safety and the operational employment of infantry weapons. The two SME consulted are Major Jim Grant, CSM, (ret'd) and Major Peter Stammers CSM (ret'd). Their CVs and concluding statements are attached to this submission.

Shoot to wound does not, and never has existed in any Defence policy, doctrine or training.

If it did exist, it would be impossible to enforce or achieve.

Shoot to wound could not be a realistic order because of the weapons carried by the Quick Reaction Force (QRF).

RCB soldiers were not trained to shoot to wound prior to, or during, deployment to Butterworth.

45. In considering the points made in relation to infantry small arms doctrine, training, safety and their relevance to the operational employment of infantry small arms by RCB it is important to keep in mind the tasks allocated to RCB, which were:
- a. cordon and search;
 - b. internal base patrolling;
 - c. protection of RAAF Service Police/SSP at established road blocks;
 - d. protection of Key Points;
 - e. crowd dispersal;
 - f. providing a quick reaction force (QRF) of section strength (on immediate standby on a 24 hour a day basis 7 days a week);
 - g. providing a reserve force to be activated on deployment of the QRF;
 - h. operating mobile tactical lights on likely penetration points;
 - i. manning of listening posts and standing patrols by night; and
 - j. operating the Tobias Intruder Detection Equipment.

The RCB Quick Reaction Force (QRF) was on call to respond to attacks launched from outside the perimeter and also from inside the airbase. Additionally:

- The QRF was to be prepared to respond to designated key points around the airbase and to the RAAF Married Quarters.
- The QRF patrolled the base perimeter by day and night.

It is also important to note the presence of RAAF personnel, dependents and civilian employees at ABB. The consequent risk of collateral casualties arising from an RCB engagement in response to incidents, including attacks from within the airbase or in the event of a penetration of the airbase perimeter, could not be discounted.

Why “Shoot to Wound and not to Kill” is Impracticable and Unsafe.

46. Infantry Rifle Sections (including those that made up the RCB), are equipped with a variety of weapons that include semi-automatic rifles, machine guns, grenade launchers, hand grenades and claymore mines.
47. Optic sights, which permit more accurate shooting, were only introduced into Infantry Rifle Sections in 1989 when the Austeyr Rifle was introduced into service in the Australian Army to replace the 7.62mm SLR and the 5.56mm M16 rifles.
48. Given the variety of weapons available in an Infantry Rifle Section during the period 1970 to 1989, none of which were fitted with optic sights, it was impossible to guarantee that any gunshot or fragmentation wound would not have resulted in death. Blood loss/shock/organ damage resulting from wounds can all be fatal.

49. The nature of tasks allocated to RCB, and the limitations imposed on the QRF to only engage enemy within the perimeter of the airbase, would necessarily require very accurate aimed fire to avoid the potential for collateral casualties to RAAF personnel, RAAF dependants and civilians employed at the airbase who were present in close proximity to Key Points.
50. In operations such as those RCB was tasked with at ABB engagements would have been at close range. This would involve extreme stress for the soldiers, requiring an immediate and instinctive response. Aiming and firing at the centre of a visible³⁷ mass is essential to achieve this. This method is initially taught during recruit training and reinforced during all advanced combat training. Aiming at the centre of the visible mass is instinctive to all trained soldiers.
51. Put bluntly, an enemy must be stopped from killing friendly forces. Aiming at the centre of a visible mass provides the greatest chance of this occurring.

Nowhere in the Australian Defence Force weapon training curriculum are individuals taught to shoot to wound, and not kill. An order of this nature would be impractical and unsafe to implement.

This was the doctrine that informed the training with, and operational use of small arms during the period 1970 to 1989 and remains the case today.

Skill at Arms Training

52. An insight to the others issues of relevance, including the approach to small arms training, which all RCB and RAAF ADG personnel were required to complete before deployment, and the effects of the characteristics of the weapons they carried at ABB is addressed in MAJ Grant's attached statement.

53. Evidence of GPCAPT Coopes and WGCDR Penney (Retd).

During the recent public hearing GPCAPT Coopes and WGCDR Penney (Retd), who both gave their evidence on oath, in response to questions from the Tribunal stated that when posted as Ground Defence Officers at ABB they were never aware of the order "Shoot to Wound" and that if that had been become aware of the order they would have made immediate representation to their superior officer to have the order removed. Both witnesses have again affirmed this in their supplementary statements included as Attachments 3 and 4 to this submission.

54. In their supplementary statements GPCAPT Coopes and WGCDR Penney (Retd) have also affirmed that soldiers and airmen are trained to fire at the centre of the seen mass of a person and that never in combat is a person engaged with lethal force with intent to wound.

55. Summary.

- When considered in the context of the doctrine and training relevant to the period under consideration and the characteristics of the weapons available to RCB personnel, any other engagement technique other than aiming at the centre of the visible mass of the target is impractical. The expert advice provided is that the order to 'Shoot to Wound' was inconsistent with

³⁷ Also referred to as the 'centre of the seen mass'.

the training provided to Army and RAAF ADG personnel, was unsafe and would have left RCB and RAAF ADG personnel exposed to the risk of death or injury.

- At the public hearing on 3 April, in an answer to a question put to him by ACDRE Grady about the order 'Shoot to Wound and Not to Kill' Professor Stephens stated "I make the point that we don't have a rule that say's shoot to wound anymore because it is impossible".³⁸

The ACDRE then said "*In relation to the shoot to wound, I think we can all accept it is highly irregular and whether it is executable or not is almost beyond the scope of what we are talking about.*"³⁹

Expectation of Casualties

56. In the event of an attack the CTs had the capability to inflict significant casualties. This is supported by the intelligence reports of previous attacks on other RMAF bases, including other RMAF bases, where 3.5 inch rockets were used. Accordingly, if indirect weapons were used to attack ABB it was likely that RMAF, RAAF and RCB personnel defending the airbase would be casualties. JIO STUDY 13/75 assessed an indirect attack using mortars was "*quite likely*".⁴⁰
57. Further evidence is addressed in a submission to the Tribunal by retired Warrant Officer Robert Cahill, who was deployed as a Medical Assistant with D Company 6 RAR from November 1975 until March 1976. He stated that on arrival at Butterworth he received a briefing in which he was advised that he "*should be prepared for treating blast injuries as rocket/mortar attack was very possible if not likely*".⁴¹
58. In response to the possibility of an attack/incursion, RMAF, RAAF and RCB personnel, on a daily basis, carried weapons and live ammunition and had ROE that permitted them to use lethal force. In this event casualties would be expected on both sides, although the nature and extent of the casualties would not be clear until the battle had ended.
59. The potential for casualties as a result of an attack was acknowledged by the JIO STUDY 13/75 which stated "*it is unlikely that the CTO would try to discriminate between RAAF and RMAF targets, and Australian personnel and equipment would be endangered*".⁴² Further, a review undertaken by Strategic and International Policy Division stated "*Australian personnel including dependents and equipment would be endangered*".⁴³
60. RCB's tasks, particularly the QRF which would have required them to defend the airbase by reacting to an attack either from outside the perimeter or from within the airbase, would have resulted in casualties.
61. **RAAF Base Butterworth Medical Plan.** The OC RAAF Base Butterworth clearly expected casualties if the air base was attacked as the plan for the Shared Defence of ABB identified a clear threat of attack and had a Medical Plan, which No. 4 RAAF Hospital had primary responsibility for the planning for and implementation of.⁴⁴
62. A former RAAF Medical Officer who had served at Butterworth on three postings, twice as the Commanding Officer of No. 4 RAAF Hospital, has provided information of relevance to the medical arrangements to support a mass casualty event.⁴⁵ He has stated that when he was first deployed

³⁸ YouTube Recording of the Public Hearing, 3 April 2023, 6 hours, 01 minutes, 38 seconds.

³⁹ YouTube Recording of the Public Hearing, 3 April 2023, 6 hours, 03 minutes, 00 seconds.

⁴⁰ Op cit., p., 16, paragraph 48 (c).

⁴¹ Submission No.084 refers.

⁴² Ibid., paragraph 45.

⁴³ SIP Division Review of Butterworth Deployment, 22 October 1976.

⁴⁴ Op Cit., Annex B, Appendix 4.

⁴⁵ Submission No. 77c refers, by LTCOL David Evans (Retd) refers. The officer, who has asked that his name not be published, served at Butterworth in 1971 to 1972 and subsequently as CO of the hospital from 1977 to 1978 and again 1981 to 1982.

“the CT threat was still very real in Malaysia” and that the hospital participated in contingency exercise where the hospital was on standby to respond casualties arising from potential threats *“that might be a result of explosions on the Base or as a result of intrusions from exterior to the base - it could be communist terrorists or others”*⁴⁶.

When asked to comment on his expectation of casualties he stated *“I think bearing in mind the level of threat at that time, or the perceived level of threat, I would clearly have expected casualties”*⁴⁷.

63. Evidence of GPCAPT Coopes and WGCDR Penney (Retd).

In his supplementary statement GPCAPT Coopes indicated *“that in the event of any form of attack on the airbase by CT action, the expectation of casualties was very much present”* – paragraph 3 page 3 of Attachment 3 refers. In his supplementary statement WGCDR Penney (retd) states *“To this end, the expectation of casualties was addressed within the Shared Defence Plan with the identification of Casualty Clearance Points (CCPs) for BCP and RCB casualties.”* –paragraph 2 page 2 of Attachment 4 refers.

64. Assessing the Likelihood of Casualties.

The RCBRG has previously provided an assessment of the likelihood of casualties that was undertaken using the Operational Risk Management process (ORM), which is part of the Joint Military Appreciation Process (JMAP). The ORM is based on Australian/New Zealand Standard AS/NZS 31000:2018 Risk Management – Guidelines.⁴⁸ The assessment was informed by primary source documents discovered by the RCBRG from the National Archives of Australia, particularly contemporaneous threat-related intelligence assessments about CT attacks, weapons and tactics, reports from diplomatic and military sources, orders, instructions, plans and other relevant information in submissions to the Tribunal.⁴⁹

The assessment, which the RCBRG considers is very relevant to the question of expectation of casualties, concluded:

- The likelihood of the risk of a CT attack on ABB was: **Probable.**
- The consequences of a CT attack in terms of casualties: **Catastrophic.**
- Identification of the overall level of risk of casualties: **Very High.**

The methodology used and the results were vetted by a nationally accredited risk management consultant.

Further Evidence.

65. Evidence that supplies of body bags and coffins held at ABB stores warehouses is indicative of an expectation of casualties. The report prepared by the RCBRG of its assessment of the likelihood of casualties included a Statutory Declaration from Mr Glen Rowe who served at RCB. In his declaration Mr Rowe stated that when deployed to ABB in 1975 he had been shown body bags and coffins in RAAF store at ABB.⁵⁰
66. The statements attached as part of this submission from LTCOL Michelson (Retd), LTCOL McKay (Retd), LTCOL Linwood (Retd), and LTCOL Jensen (Retd), all of whom held RCB command roles, reflect their acknowledgement that during their RCB deployments casualties were possible and they implemented arrangements to collect, treat and evacuate casualties.
67. A submission by MAJ Mark Gallagher (Retd) examines approximately 50 Statutory Declarations, statements and communications from RCB, RAAF, RAAF Police, and RAAF dependents, which address their experiences of their time at ABB. The clear conclusion from the submission is that there was a probable risk of casualties to RCB, RAAF, RAAF Police,

⁴⁶ Ibid.

⁴⁷ Ibid.

⁴⁸ ADFP 5.0.1., Edition 2., AL 3., The Joint Military Appreciation Process, Annex 1C.

⁴⁹ Submission No.096 provided a USB with relevant primary source documents.

⁵⁰ Submission No.065e refers.

and RAAF dependents from the CT presence in proximity to ABB and also from a range of other threat sources.⁵¹

Summary.

68. The key points are:

- That casualties would have occurred in the event of an attack on ABB was acknowledged by JIO.
- When considered in the context of the weapons available to RCB, ADG and BCP to the CTs and the ROE issued to RCB, ADG and BCP, which permitted the use of lethal force and the tasks allocated to RCB and ADG it was realistic to expect that in the event of an attack on the airbase, that casualties would occur.
- The OC RAAF Base Butterworth had a clear expectation of casualties that was result of an assessment undertaken as part of his appreciation of the threat to ABB and then addressed in the plan for the Shared Defence of ABB; which detailed the requirements for No. 4 RAAF Hospital in the event of an attack on the airbase.
- That the overall level of risk of casualties occurring was **Very High**.

Whilst on War Service (WOWS)

69. In his testimony to the Tribunal at the most recent public hearing Professor Stephens was asked questions about the implication of RCB personnel being deployed on the basis of 'While on War Service' (WOWS). In response he said the relevance related the application of new offences that could not be brought against Defence personnel in peacetime and also to higher penalties those offences might attract. He also stated that just as RCB personnel were deployed Whilst of War Service that ADF personnel deployed to East Timor with INTERFET and UNTAET were deployed Whilst on War Service.

70. In Defence's supplementary submission 096c, which was not available to the RCBRG for consideration prior to the afternoon of the first day of the second public hearing and after Professor Stephens' had concluded his testimony, Defence provided an answer to Question 8 (k) from the Tribunal that related to WOWS.

Question 8 (k) stated "*is there a nexus between a disciplinary environment (Whilst on War Service) and the physical environment to the extent that Whilst on War Service apply exclusively to warlike situations?*"

Defence's answer was: "*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*".

Comment.

Defence's answer to the Tribunal's question is incomplete as the disciplinary environment 'Whilst on War Service' has a much wider meaning than just providing, as asserted by Defence, increased powers of punishment and there is indeed a very clear nexus to the disciplinary environment 'Whilst on War Service' in the context of warlike situations.

71. In essence, in 1979 (which was the same year of the Field Force Command Staff Instruction 2/79 for the Australian Rifle Company Butterworth) the Army was subject to the *Defence Act 1903*, which contained a number of offences pertaining to military service during peace. These offences were generally of an organisational or administrative nature or were connected with the maintenance of everyday discipline. They included for example, claiming pay improperly (s 73), unlawfully disposing of arms (s 79) and obstructing drill (s 81), etc. However, Defence members on 'war service' (as was the

⁵¹ Submission No. 36b, MAJ Mark Gallagher (Retd).

case of the RCB) were made subject to the broader disciplinary provisions of the *Army Act 1955* (UK) (specifically – under definitions), under ss 54–55 of the *Defence Act 1903* (Cth).

72. The *Army Act 1955* (UK) contained a number of offences which did not appear in the *Defence Act 1903* (Cth) of the time. These included several offences punishable by death, being mutiny (s 31), aiding the enemy (s 24), and communicating intelligence to the enemy (s 25). Many other offences applicable solely to Australian soldiers on ‘war service’ attracted very high penalties when compared to the offences provided by the *Defence Act 1903* (Cth) – for example cowardly behaviour (s 26), offences against morale (s 27), looting (s 30), failure to suppress a mutiny (s 32), insubordinate behaviour (s 33), etc. These were all punishable by imprisonment, with no statutory cap on the duration of imprisonment where the offence was committed on ‘active service’ (the UK equivalent of ‘war service’) or lesser penalties at the discretion of the court martial. One limitation to the application of the *Army Act 1955* (UK) was that if there were any inconsistencies between the *Army Act 1955* and the *Defence Act 1903* (Cth) or the Defence Force Regulations 1952, the Australian legislation would prevail to the extent of the inconsistency. However, neither the *Defence Act 1903* (Cth) or the Defence Force Regulations 1952, at the relevant time in the late 1970s, contained any inconsistent provisions relating to discipline of troops on ‘war service’.

73. It is clear from the offences applicable solely to soldiers when on ‘war service’ there is indeed a very clear nexus to the disciplinary environment WOWS in the context of warlike situations.

74. **Summary.** RCB members were deployed under WOWS and the nexus to the disciplinary environment in the context of the deployment of RCB is of direct relevance to the RCBRG submission in that RCB were involved in carrying out a warlike mission and tasks, including their QRF task, to protect ABB from the threat of attack when there was an active communist insurgency underway. To do this RCB personnel were armed and carried live ammunition and were ready to use ROE that permitted them to use lethal force. In no way can it be reasonably be argued the mission to protect ABB and the tasks undertaken by RCB were anything other than warlike.

Conclusion

75. During the period 1970 to 1989 a communist insurgency was underway. ABB was jointly occupied by the RMAF and the RAAF.

76. JIO had assessed and reported on:

- The CTs were in close proximity to ABB.
- The CTs were attacking targets, including other airbases as well as other targets in close proximity to ABB.
- The RMAF mounting offensive air attacks on the CTs from ABB.

77. Official correspondence from Australian Government ministers, senior officials and diplomatic staff reflect they were aware of the CT threat to the security of ABB and to the safety of RAAF personnel, their families, RCB personnel and Australian property.

78. As a result of concerns for the security of ABB measures to mitigate the threat of CT attack were implemented. OC RAAF Base Butterworth was appointed as Commander for the defence of ABB and exercised operational command over designated RMAF units at ABB and RCB was deployed to provide a QRF. As such the defence of ABB was a conjoined operation and any threat to RMAF personnel logically presented a threat to RAAF personnel, their families and RCB personnel.

79. The use of force by Malaysian and Australian defence personnel to defend ABB was authorised under Malaysian law, which was the basis for the ROE issued by OC RAAF Base Butterworth in the ABB Shared Defence Plan.

80. In the event the CTs had attacked ABB casualties would have been very likely. OC RAAF Base Butterworth expected casualties would occur and had put measures in place to for the treatment and evacuation of RAAF and RCB casualties.

THE 1993 DEFINITION OF WARLIKE SERVICE

“Warlike operations are those military activities where The application of force is authorised to pursue military objectives and there is an expectation of casualties”.

- The Mission of RAAF and RCB personnel deployed to ABB was a military activity.
- The application of force was authorised by the ROE issued in the plan for the Shared Defence of ABB.
- The arrangements implemented by OC RAAF Base Butterworth in the plan for the Shared Defence of ABB confirm there was an expectation of casualties.

81. It is our submission the service of RCB and RAAF veterans during the period 1970 to 1989 should, on the balance of probability be recognised with the award of the Australian Active Service Medal.

“One very significant principle established by MAJGEN Mohr during his deliberations on service in South East Asia, was that if ADF personnel are placed in circumstances where they may be used to react to an assessed threat made by Australian Government intelligence agencies, it has to be considered operational service. This is regardless of whether the threat is realized or not”.⁵²

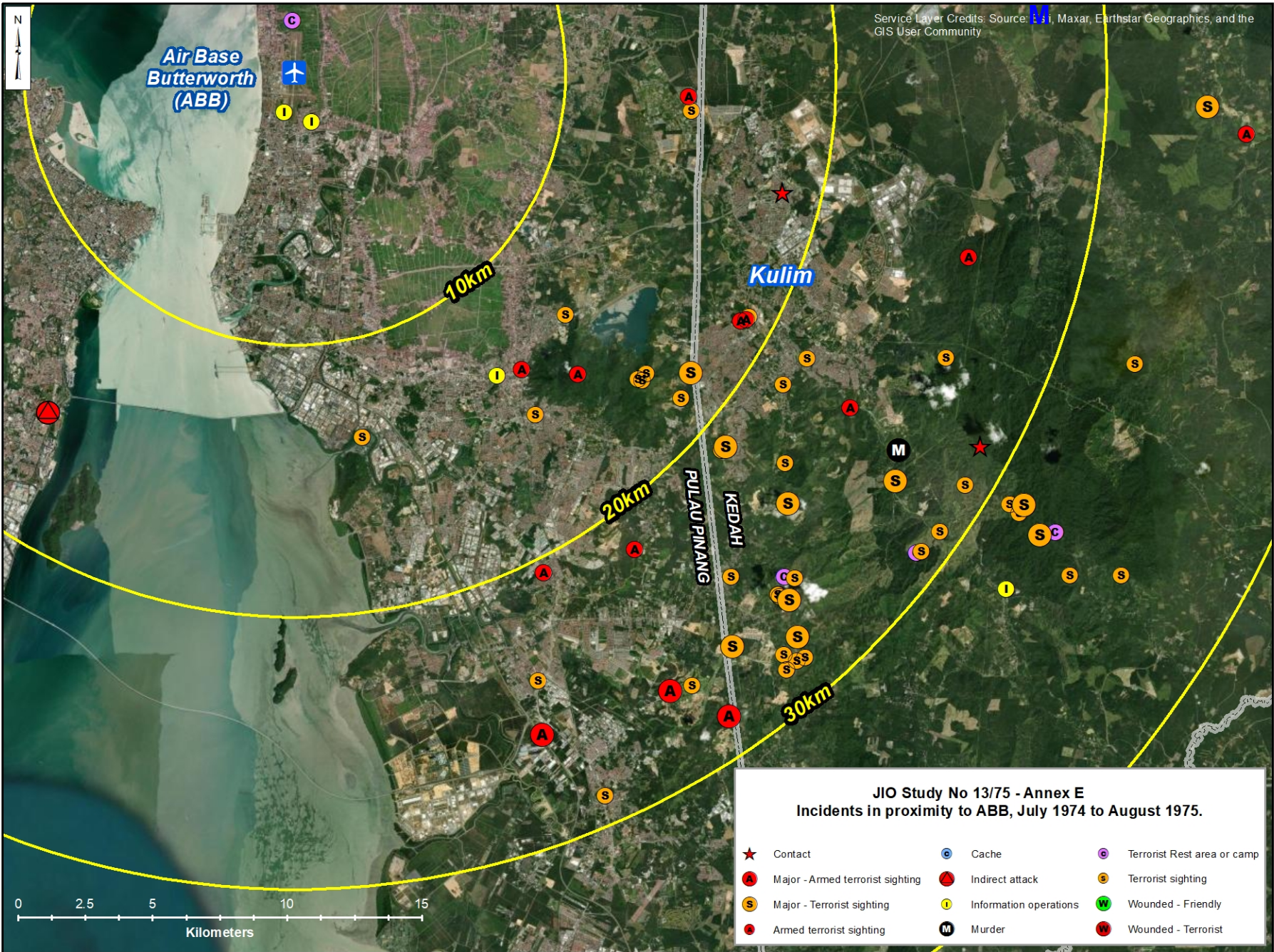
Annexes:

- A. Map showing CT incidents in proximity to ABB
- B. UNTAET ROE
- C. RCBRG Response to Defence Supplementary Submission EC23-000372 of 31 Jan 23

Attachments:

- 1. Paper by Mr Sean Arthur
- 2. Paper by Professor David Kilcullen
- 3. Supplementary Statement from Group Captain Bob Coopes, MBE
- 4. Supplementary Statement from Wing Commander Gary Penney (Retd)
- 5. Statement by Major Jim Grant CSM (Retd)
- 6. Statement by Major Peter Stammers CSM (Retd)
- 7. Statement by LTCOL Peter Michelson (Retd)
- 8. Statement by LTCOL Gary McKay OAM, MC (Retd)
- 9. Statement by LTCOL A. H. Jensen MG (Retd)
- 10. Statement by LTCOL R.J. Linwood ASM (Retd)

⁵² CDF Minute 777/2000: ADF Medals Policy – ‘Where We Have Been and Where We are Going’, para 19 refers.



0 2.5 5 10 15
Kilometers

UN RESTRICTED



UNTAET PKF-INDIVIDUAL GUIDANCE ON THE USE OF FORCE

Mission

1. Your mission is to maintain security, protect and support the other UNTAET components and, if required, to protect the East Timorese people.

General Use of Force

2. You are always to obey the orders of your commander. You are to avoid the use of force if at all possible. Force can only be used in self-defence, to achieve tasks essential to your mission, to resist attempts by forceful means to prevent UNTAET discharging its duties, and to resist attempts to limit UNTAET freedom of movement. Deadly force may only be used in limited circumstances set out in this card.

3. At all times, your conduct must cause the least possible concern, fear or danger to the population. Treat everyone humanely, respect private property, and do not steal.

4. Prevent and report all suspected serious breaches of the law to your superiors.

Self Defence and Defence of Others.

5. You have the right to use the **MINIMUM FORCE NECESSARY**, up to and including deadly force, **FOR THE PERIOD OF TIME NECESSARY**, in defence of yourself, your unit, other UN personnel and those it is your duty to protect.

Use of Force to Protect Buildings and Property

6. The minimum force necessary, NOT including deadly force, may always be used to protect your property and property (including buildings and installations) it is your duty to protect. Deadly force, including opening fire, may **ONLY** be used against an individual who:

a. attempts to damage or destroy property whose damage or destruction is likely to endanger the life of, or cause serious injury to, yourself or any other person; or

b. attempts to destroy property that has been declared 'designated property' by the UNTAET Force Commander;

AND there is no other reasonable way to prevent the individual from so acting.

UN RESTRICTED

Use of Necessary and Graduated Force

7. **WHEN YOU USE FORCE** you must only use the **MINIMUM FORCE NECESSARY FOR THE PERIOD OF TIME NECESSARY TO ACHIEVE YOUR OBJECTIVE**. Your response must be graduated where possible. Necessary force may require you to do one or more of the following:

- a. openly display arms,
- b. give verbal or visual warnings,
- c. bar access to the point being protected,
- d. physically restrain,
- e. point weapons and change weapon states,
- f. use non-lethal weapons,
- g. fire warning shots (if authorised by your commander), and/or
- h. use deadly force (including firing of weapons).

Warning Before Firing

8. Where it is necessary to fire, you are required, if possible, to give a warning either visually or in a loud clear voice in both Bahasa Indonesia and English saying:

UN - BERHENTI ATAU SAYA TEMBAK

(UN - STOP OR I'LL SHOOT)

If possible, repeat this at least three (3) times to ensure understanding.

Opening Fire

9. You may use the minimum force necessary, including opening fire (deadly force), against any individual who you believe is about to commit or is committing an act which is likely to endanger the life of, or cause serious injury to, yourself or any other person (or attempting to destroy 'designated property') and there is no other way to prevent such an act. For example, you may open fire against an individual who:

- a. fires or aims his weapon at you or any other person;
- b. attacks you or any other person with a machete or other similar implement;
- c. plants, detonates, throws, or prepares to throw an explosive or incendiary device at you or any other person; or
- d. deliberately drives a vehicle at you or any other person;

Minimum Force

10. If you have to open fire you must:

- a. fire only aimed shots,
- b. fire no more rounds than necessary,
- c. stop firing as soon as the situation permits, and
- d. avoid collateral damage if at all possible.

On the first day of the recent public hearing Defence tabled Defence Supplementary Submission EC23-000372 of 31 Jan 23

1. Defence has asserted the following points (in blue) with regard to ROE, some of which have been made its initial submission and some subsequently in its second submission:

The Defence response to Tribunal Question 8(m) (ii):

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

RCBRG comments:

- In his evidence Prof .Stephens made the point the ROE for RCB were similar to those used in other deployments, including deployments classified as warlike in nature, including Somalia, Cambodia, INTERFET and UNTAET, in that the ROE used also permitted the use of lethal force.
- The RCB ROE did call for the use of minimum force, just as the INTERFET and UNTAET ROE did.
- ROE are based minimum force and the incremental use force to cater for escalation in threat. The UNTAET ROE, mandated at the lower end of the scale the open display of weapons, moving to verbal warnings, to the pointing of weapons and changes to weapon states (weapon readiness) and to the upper end of the scale when deadly force was permitted.
- The RCB ROE and the UNTAET ROE have many similarities.
- The 'shoot to wound' order for RCB **DID NOT** include the word 'only'.
- 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.

RCBRG comments:

- This overlooks the individual right of self-defence.
- This begs the question what would RCB elements sent to train outside ABB do if fired on by CTs? Just sit there and wait until they have the authority from OC RAAF Base Butterworth or CO Base Squadron to shoot back to protect themselves?

C-2

- The Butterworth 'Rules of Engagement' differ from a warlike rules of engagement in a number of critical ways, e.g.:
- o the rules of engagement for Rifle Company Butterworth do not refer to there being a war or armed conflict;

RCBRG comment:

- The ROE for INTERFET and UNTAET, which were warlike operations, and which Prof Stephens confirmed were similar to the RCB ROE, did not refer to there being a war or armed conflict.
- o 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.

RCBRG comments:

- The ROE for INTERFET and UNTAET, which Prof Stephens confirmed were similar to the RCB ROE did not indicate a legal basis for using force e.g. a reason like 'because Australia is participating in an armed conflict in East Timor'.
- The legal basis for the defence of ABB, including RCB tasks, was detailed in Annex A to the plan for the Shared Defence of the Airbase, OPOD 1/71. Malaysian law provided the legal basis for the defence of ABB, including the use of force by Malaysian and Australian defence personnel to protect themselves, dependents and property.
- o 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);

RCBRG comment:

- OPOD 1/71, the plan for Shared Defence of ABB stated "*There is a threat to the security of the air base and damage to property arising from a resurgence of militant communist activity ... sabotage*" and the Mission in the OPROD stated "*To protect operational assets, property and personnel within the perimeter of Air Base Butterworth by joint arrangement and mutual support*".¹
- 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;

¹ OPOD 1/71 Shared Defence of Air Base Butterworth, dated 8th September 1971, paragraph 1 a. (1) (a) and paragraph 2.

C-3

RCBRG comment:

- The legal basis for the defence of ABB, including RCB tasks, was detailed in Annex A to the plan for the Shared Defence of the Airbase, OPORD 1/71. Malaysian law provided the legal basis for the defence of ABB, including the use of force by Malaysian and Australian defence personnel to protect themselves, dependents and property.
- o the rules of engagement for Rifle Company Butterworth do not designate, describe or identify an enemy or hostile forces;

RCBRG comment:

- The ROE for INTERFET and UNTAET, which were warlike operations, and which Prof Stephens confirmed were similar to the RCB ROE, did not identify an enemy or hostile forces.
- o the rules of engagement for Rifle Company Butterworth do not refer to capturing Prisoners of War or how Prisoners of War should be treated;

RCBRG comment:

- The ROE for INTERFET and UNTAET, which were warlike operations, and which Prof Stephens confirmed were similar to the RCB ROE, did not refer to capturing Prisoners of War or how Prisoners of War should be treated;
- o 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);

RCBRG comment:

- In his evidence Prof Stephens explained that Second Emergency was a Non International Armed Conflict and that the laws of armed conflict did not apply.
- o 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;

RCBRG comment:

- The RCB were clear as to under what circumstances force could be used and did not differentiate as 'offensive of self-defensive force'. To try and do so would be wholly impractical.
- o 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;

C-4

RCBRG comment:

- ABB was a MAF base occupied by Malaysian and Australian armed forces personnel. OC RAAF Base Butterworth as the Ground Defence Commander exercised operational control over all forces within the perimeter of the airbase, which included MAF personnel. RCB in providing a QRF and carrying out other
- tasks as allocated under OPORD 1/71 were a key part of the defensive plan to protect all Australian and Malaysian personnel.

Defence response to Tribunal Question 8(o) (i):

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

RCBRG comments:

- RCB was under the operational command of OC RAAF Base Butterworth while deployed to Butterworth.
- ROE were contained in a Directive from OC RAAF Base Butterworth to the OC of the Australian Rifle Company Butterworth (RCB).
- The ROE were not communicated to companies deploying as RCB but were briefed to them on arrival at ABB by RAAF Base Butterworth staff on behalf of OC RAAF Base Butterworth.

Joint Intelligence Organisation Studies: No. 14/74 and 13/75

Aim

1. This paper will address the Joint Intelligence Organisation (JIO) Intelligence Studies 14/74 and 13/75 that relate to the security of Air Base Butterworth (ABB). It will also speak to their relevance and use in the context of the period under investigation for Rifle Company Butterworth (RCB). **Part of this submission was made via the RCBVG, but this revised version contains new material and analysis.**

My Background

2. It is appropriate that I list my experience in the area of intelligence so that the Tribunal has some confidence that I am suitably qualified to make sensible commentary. I have briefly referred to this experience in a past submission by way of a footnote but I now believe that it should be brought to the forefront for reasons that will become evident. I do so only reluctantly because an argument made on its own merits is always superior to the titles of the claimant. However, at this point in our mutual investigations, it is important that ordinary opinion is separated from considerations based upon long experience.

3. In 1993, on completing my degree, I was recruited directly out of university to become an intelligence analyst in the Defence Signals Directorate (DSD). During that time I was extensively trained in many basic aspects of the role, including cryptanalysis, Signals Intelligence (SIGINT) collection and High Capacity Communications Analysis amongst other skills. During my time as a civilian Defence analyst, I was in a team reporting on active conflicts in a war zone.

4. I was also an analyst in a joint defence facility with a partner nation collecting intelligence in a significant strategic capacity for 14 months. In that position I was acting several grades above my nominal analytic role.

5. In 1996, I accepted a promotion as manager of the Open Source Unit (OSU) at the Defence Intelligence Organisation (DIO). The Joint Intelligence Organisation (JIO) was the forerunner to the DIO and performed a near identical function. My role was to manage an intelligence team in satisfying intelligence tasking through open source means. As a DIO analyst covering this tasking, we collected intelligence against a wide ranging set of areas from scientific developments to regional weapon systems and platforms.

6. In 1998, I accepted a position as a Criminal Intelligence Analyst with the Queensland Crime Commission (QCC) and mostly remained involved with state law enforcement agencies until my retirement last year in 2022. In 2007, I had a brief two-year foray into the national arena once more as a Senior Intelligence Analyst (SIA) in the then Australian Crime Commission (ACC) before returning to the state agency in a similar position as SIA. In total, I have been an intelligence practitioner in Defence, National Security and Law Enforcement for the past 29 years. I have covered every aspect of intelligence work from tactical, operational and strategic occupations in both military and law enforcement operations.

7. I have written numerable intelligence products over the years, from actual war analysis and reporting to criminal threat assessments. I have written strategic product on everything from emerging weapons platforms to criminal paedophilia to organised crime gangs and national criminal identities. I have performed a training role for intelligence analysts and have qualifications as a Human Source Handler (HSH) and also in Commonwealth Investigations. I have previously defended my intelligence analysis in cross-examination by defence QCs in criminal trials. Even though retired, I am due to do the same again at trial before the end of the year from the operational work resulting from my final police operation.

8. Having said this, I do not regard myself as an expert. Like everyone else, anything I attest can be challenged, and, obviously, sometimes I can be wrong in fact as any other person. However, I do understand intelligence work, intelligence processes and intelligence product. In this submission I primarily wish to discuss the JIO assessments and issues surrounding this document. Probably uniquely to this Tribunal, I not only was employed for three decades as a professional intelligence analyst, but I also deployed operationally to Air Base Butterworth (ABB) as an ordinary rifleman as part of RCB.

Intelligence Analysis

9. During the Brisbane hearing process it was clear the 13/75 JIO assessment of the security of ABB was being totally misunderstood by every side. By extension, misunderstanding this particular document meant that the meaning was not only being lost, its meaning was being misrepresented; probably innocently misrepresented, but misrepresented nevertheless. Every intelligence product has a defining purpose. The problem is that it is easy for a non-practitioner to read too much into it or read too little. There is also the age-old intelligence problem of making predictions about future developments. This is a fraught gamble because the more complicated the situation on the ground is at any given time, the more likely new developments will change outcomes. The compounding effect of all these small-scale new developments can make predictions exceedingly troubling.

10. To return to the intelligence product purpose. Arguably, all intelligence product exists in two primary realms – the tactical and the strategic. There is also the operational realm, but as the JIO assessment appears not to have been prepared for that purpose, it is preferable to omit discussion of the operational realm.

Intelligence - Tactical Vs Strategic

11. **Tactical intelligence** is based upon immediacy and what is required to take a responsive action. It reflects what is happening now, or what might happen very soon. It is intelligence designed to aid and protect the war fighter, and/or allow them to take advantage of a developing situation. By doing so it reflects a level of active threat like no other intelligence product can. These take the form of any number of products and the names change all the time. They can be bulletins, alerts, critics and such like, or can be intelligence periodicals in the form of daily or weekly activity, say in the form of Intelligence Summaries (INTSUM). Some product is so immediate, it is sent out “raw”, meaning that it is so important that no time must be wasted in analysis.

12. **Strategic intelligence** is completely different, and its primary audience is completely different. The main point is not that commanders at the tactical level may get to see such product, but rather, it is written expressly for the benefit of people of influence, such as policy makers. Strategic intelligence is designed to publish a condensed general opinion based upon diverse multi-sourced material, generally illustrating the necessity for “grand action” of some kind. That is its primary purpose. The central principal is that strategic products involve over ‘the horizon’ perspectives and generally have no relevance in a day-to-day tactical posture. They usually serve as a warning to action and are made in the knowledge that institutions need time to absorb information and either react to it in due course, or, to **not react to it and accept the risk**. I have stated previously that, because of this perspective, if commanders at the tactical level have access to a strategic level assessments they will, by necessity, regard it is at arm’s length. It does not represent what may happen tonight, but what *may happen* at some undefined future. Local command will naturally give greater immediacy to the attention of tactical intelligence reports.

It is also important to keep in mind that, in a very short period of time, the conclusions of assessments such as the JIO assessment become more and more ambiguous because strategic product does not—and cannot—keep up with the tactical changes that drive daily operations.

13. The principal audience for strategic intelligence product is the people who can read those ideas and have the power to summon into being possible remedies. A case in point is the reference made by the Chief of the Air Staff (CAS) in a 1975 Minute to the Minister of Defence addressing ‘Security of Butterworth’, where the CAS quoted directly from the JIO STUDY 13/75 when addressing the threat assessment for the airbase.¹

14. Strategic intelligence in a military context sometimes, but not always, may be used to support an appeal for resources, including money to be expended, either for boots on the ground, or perhaps for more or better equipment, or more advanced technology, or for different fighting platforms, and the like. It can inform high level decisions to acquire new defence capabilities that have wide ranging national security implications that may affect many organisations, including Defence. The information must be written with the perspective that an uninformed reader can quickly get the gist of the thing. The target reader will have many other high level competing problems that they have to deal with. The document must certainly contain truth, but when you zoom out sufficiently far enough, the truth must unavoidably become dated. If it takes an analyst three or four months to write a professional strategic product, then whatever significance an enemy action that took place a week ago may not have ripened into threatening activity as yet.

15. To use the dreaded example of Vietnam once more, in mid-1966, the enemy regimental HQ radios were tactically tracked heading south towards 6 RAR’s Area of Operations (AO) for many weeks and the Australian Task Force’s brigade’s intelligence officer, Captain Bob Keep, could not convince anybody of influence that the Australian Task Force was in danger. The end result was the Battle of Long Tan.² The strategic outlook at Nui Dat had not changed, but the tactical situation certainly had because the enemy had suddenly decided to go on the tactical offensive in a conventional posture. No strategic report predicted this possibility.

¹ 1 CAS Minute to MINDEF – Security of Butterworth, 7 October 1975, Annex A, paragraph 10.

² The inability of Captain Keep to warn the Australian Task Force command about the enemy creeping towards the Australian Task Force caused him to suffer a personal mental breakdown. By an incredible synchronicity, Keep was dispatched to the Butterworth Base Hospital about two days before the Long Tan Battle.

JIO Assessments at ABB – A tale of Two Reports

16.. Much has been written about the 13/75 JIO assessment, but an important factor, thus far, has floated just under the investigative radar. In the main, the central topic for discussion has been the 13/75 JIO assessment.³ **Because this particular assessment has been used as the main reference when discussing the strategic assessment of the CT threat to ABB, it might have escaped people’s attention that there are actually two JIO products concerning the security environment at ABB that have survived the years.** When read together, both reports are capable of illustrating the significant change in the situational threat at the airbase. The other surviving JIO strategic assessment was the 14/74 JIO STUDY issued on 2 October 1974. When comparing the two assessments side-by-side, a stark picture begins to emerge that is completely at odds with the Defence Department’s peacetime narrative.⁴ For ease of reading I shall simply refer to each assessment by the year it was issued.

17. I would hazard to guess that both 1974 and the 1975 assessments were written by an academic, or at least it had university involvement. Both assessments definitely have that flavour and JIO/DIO has a long history of contracting civilian subject matter experts. Nevertheless, even if the authors were civilians it is also clear that the assessments were prepared with military input and informed by intelligence data that obviously included Malaysian Armed Forces (MAF) intelligence sources feeding back into it. Such input would have been regularly obtained from staff at the Australian High Commission at Kuala Lumpur, RAAF at ABB and also the MAF, including the Malaysian Police Field Force, on a daily/weekly basis as necessary.

18. It is apparent that much of the 1975 assessment is largely based upon the previous 1974 assessment, and a superficial reading of either assessment might not identify any serious changes. However, there are changes in the 1975 assessment that are of significance and make critical additions to the analysis of the threat to ABB. While much remains the same, this paper will primarily concern itself upon what changed between the two assessments in the passage of only twelve months.

19. As one would expect from strategic assessments of this nature, most of both assessments offer a condensed picture of the ABB as it then was, its resident military units, the general base population and also a description of the enemy units in the immediate vicinity. This is a necessary requirement because it cannot assume that the reader would be briefed on all the associated details.

The Presence of a Major Internal Threat

20. As has been highlighted many times, both the 1974 and 1975 JIO reports state very directly that “external overt military threats” are not to be expected. Defence always portrays this line as saying that no threat existed, which is plainly wrong and misleading – evidently deliberately so. **The communist insurgency was entirely internal and no parties external to Malaysia were ever directly involved. In this description both the 1974 and 1975 JIO reports were accurate.** Neither document states that military threats did not exist at Butterworth. In fact, both reports go into great detail outlining insurgent threats to lives and property. In the 1974 report, it has a caveat that even an external threat was unlikely before the end of 1975. In the next report the following year (1975) - and following the fall of Saigon - it declines to even suggest an end-date for an external threat, instead using the phrase “*in the foreseeable future*”. As the reader might suspect, making definitive regional predictions following the fall of South Vietnam would have been be a bold move.

³ JIO Study, 13/75, issued October 1975 – *The Security of Air Base Butterworth*

⁴ JIO Study, 14/74, issued September 1974 – *Malaysia - the Threat to Air Base Butterworth to the End of 1975*

Increase in Enemy Combatant Strength.

21. The next significant departure from the 1974 assessment is that the 1975 assessment has beefed-up its Communist Party of Malaysia (CPA) enemy Order of Battle (ORBAT). In 1974, the report has the local enemy forces as the 5th, 8th, 10th and 12th Regiments. In the 1975 report it has an additional enemy Regiment (the 2nd) in the Area of Operations (AO) and two new company-sized assault units (the 6th and the 8th). Furthermore, the 1975 version reports that this upgrading in enemy forces will probably increase combatant power ranged against Malaysian security forces. **So in a single year, the enemy combatant forces ranged in the vicinity of Butterworth has increased from four regiments to five regiments and included two additional assault companies.**

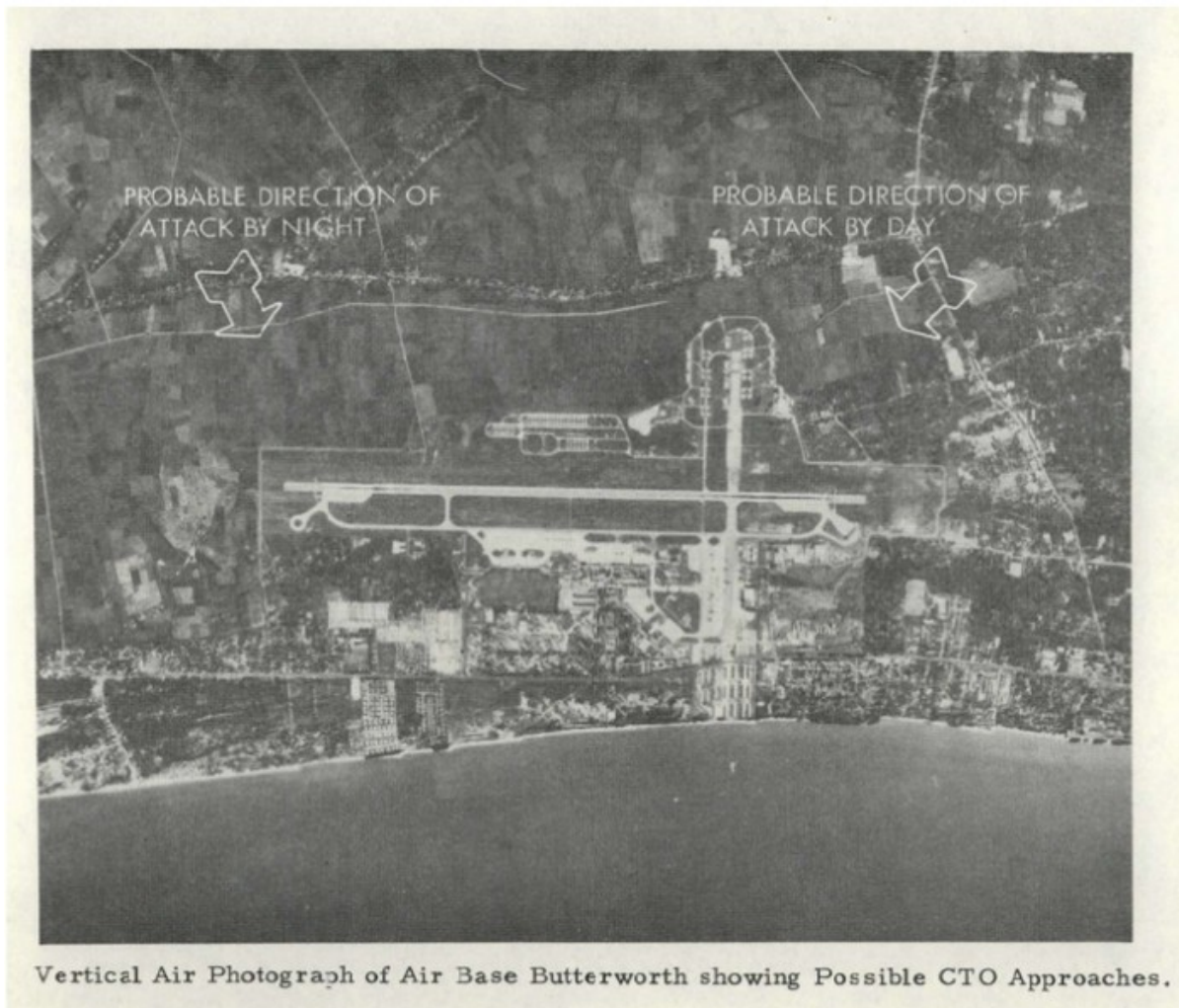
Security Incidents in the Vicinity of Air Base Butterworth.

22. Both the 1974 and 1975 JIO reports reflect a worrying set of security circumstances for the Australian diplomatic, military and government authorities. There is probably no more stark evidence of an increasing security threat than the raw numbers in incident reporting in the vicinity of Butterworth Air Base. In a single year between 1974 and 1975 security incidents near ABB jumped staggeringly. **In 1974 there were 56 such reported incidents, of all kinds. The next JIO report lists 126 such security incidents, which works out to an increase of 125% between two intelligence reports only 12 months apart.**

Assessment of Probable Directions of Attack

23. One area where the 1975 report departs significantly from the earlier version is that it included a map overlay showing the probable direction of enemy attacks on ABB by day and night (see below).⁵

5 1975 JIO Assessment on Butterworth Security (Figure F1)



24. As can be plainly seen, some analyst took the trouble to mark out the probable approaches for a CT attacking force based on tactical level input and assessment at ABB. In doing so they make an excellent case as both approaches are to the East of the air base and close to defensive cover in the wooded area. Also, an attacking CT force would have the benefit of covered withdrawal routes as they would not be contained by the coastline nor trapped in the event of MAF security forces being deployed via the coastal road. Both approaches from the East had little in the way of buildings, villages or other habitation, so secret penetration would have been more favourable. This assessment including the identification of possible approaches is direct evidence, if more is needed, that the potential for a CT ingress onto the air base was more than an idle possibility. The threat was identified and probability of the CT using those approaches underpinned the arrangements in place as part of the plan for the Shared Defence of ABB that involved the OC RAAF Base Butterworth tasking and deploying his forces, including RCB to patrol the inside the airbase and for the RCB QRF to be prepared to dominate those approaches by countering any CT penetration and counter attacking the CTs if required.

The Distribution List for the Assessments

25. In the 1974 JIO assessment the audience was almost entirely senior domestic officials. That is not to say that liaison officers would not have shared the information internationally as per defence considerations and/or local arrangements. The product was primarily designed for national force consumption. This was not the case for the 1975 assessment. For obvious reasons, due to the disintegrating regional political situation, the 1975 product was dispatched directly to all the Five Eyes partners, as well as Kuala Lumpur and Singapore.⁶ Not only that, the entire US Pacific Command all got their own copies. It seemed that Australia was keen to get the message out to all friendly parties due to the evolving nature of the situation. JIO Product Conclusions

26. One might discount all the evidence from all the RCB veterans, and one might discount the evidence from subject matter experts and even RAAF ground operations staff responsible for base security - **however must we also discount the then contemporary intelligence data itself?** At some point the total weight of evidence towards the lived reality of RCB service must be acknowledged. The 1974 and 1975 assessment do not contain the day-to-day operational details where the threat might advance and recede according to unknown enemy intentions. However, they do exemplify the general threat very well. In Defence's latest submission (96d) where, in reference to the threat to ABB as being "unlikely" their statement is made in the context of a threat **external** to Malaysia. In doing so Defence quotes direct from the 1975 assessment - "external overt military attack on Malaysia". This may be true, but it is not the veterans' contention that Malaysia was under the threat of an external overt military threat. **The nature of the insurgency during the period 1970 to 1989 was the result of an internal threat. Chin Peng was Malaysian; it was a civil war. The entire point about both the 1974 and 1975 JIO assessments is that the CTs were very clearly a threat to airbase, that emanated from within Malaysia.**⁷

RAAF Families Under Threat.

27. The Defence Department has played down the threat to RAAF civilian dependants at Butterworth. In fact, Defence goes further, posing at the Tribunal Hearing on the 4th April 2023, that the presence of RAAF families may be a 'silver bullet' answer to the non-warlike status for all who served there. Yet, both the 1974 and the 1975 reports distinctly outline a direct threat to RAAF dependants.⁸ **In fact, in the 1975 report, the threat is elevated to a more sinister degree by a separate category of possible terrorism against the RAAF married quarters.**⁹ It is difficult to reconcile the position taken by Defence with regard to the safety and security of the airbase and families when a document that it most relies upon is actually stating the opposite in each available version. Evidence has been given by former RAAF officers responsible for the security of RAAF families that a Families Protection Plan detailed arrangements for the evacuation of families in the event of the stated threat developing into an overt attack.

6 Five eyes - UK, US, NZ Australia and Canada

7 Even if the insurgency sometimes retreated to, and hid, in the Malay/Thai borderlands, it was still a Malaysian insurgency.

8 1974 – par 41 (d) and 1975 par 48 (e).

9 See section (e) page 16, 1975 JIO Assessment

Concluding Comments

28. Both the 1974 and 1975 assessments are absolutely packed, from start to finish, with not only enemy motivations and military capabilities, but also with the obvious vulnerabilities of the airbase at Butterworth. Of the latter, there are a great many. Hardly a single page instils a sense of security in the reader. I am resisting the urge to repeat quote after quote, and it is difficult to withhold commenting because the examples speak for themselves. The overall impression is one of active threat. Yet, the Department of Defence can only read the line “unlikely for the next 12 months” or “for the foreseeable future” and ignore every other threatening circumstance. To give but one example, a single strand of wire fencing and two RAAF AGD personal, and a dog, was all that was protecting the flight line for four fighter squadrons at night (see page 14 – 1974 assessment). The circumstances continue in the same vein for 21 pages and if read in totality—and without cherry picking - it paints a picture that is completely at odds with Defence’s position.

29. While the 1974 and 1975 JIO assessments were actually replete with warnings of the threat of an attack, it should also be noted that even when addressing the likelihood (or otherwise) of an attack, they incorporated major caveats. To an intelligence analyst it is vital to highlight caveats because it qualifies the veracity of the assessment one is making. You are making certain statements based upon particular factors. If the factors change, then the assessment must change. Or, in these cases, the caveats were time-based. The 1974 assessment states that this assessment suggests that an external attack upon the airbase was “unlikely” for the next 12 months. The 1975 assessment declines to nominate an end-date and just says “the foreseeable future”. The caveats were unusually cautious. It does not explain why the caution, but one could take a defensible educated guess. As of April 1975, seven months after the 1974 assessment was issued, the regional situation had been upended so radically that even the most optimistic security assessment could not have stated with any confidence that an attack by CT forces was in any way “unlikely”. If it did, I would be very interested in seeing the supporting material.

30. On the other hand, the Department of Defence maintains three primary positions with regard to the CT threat to the security of ABB:

- *Firstly, quoting from the strategic 1975 JIO assessment, stating that an **external attack** was “unlikely” “for the foreseeable future”.*
- *Secondly, that the threat was “continually low” throughout a 20-year period. Security assessments that support this confidence remain unknown and Defence has yet to produce a single supporting document suggesting same. Having considered the available intelligence documents I have been unable to locate any reference the threat was rated LOW and yet it is always asserted as such by Defence.*
- *Thirdly, that the Australian Government, and therefore by extension the Department of Defence, does not recognise the Second Malaysian Insurgency at all therefore 19 years of peace, and supposedly, no threat at all by way of policy. This policy is not shared by the Malaysians who should know having experienced well over a thousand casualties.*

31. The veterans have produced numerous primary sources documents that include tactical intelligence products, suggesting a very significant CT threat. These include armed CT troop sightings, Improvised Explosive Devices (IED), other military installations, security and civil infrastructure destroyed, political assassinations and MAL forces either attacked, or other general hostile contacts. As far as can be ascertained, Defence has yet to respond to any of them, probably, I suspect, as this would result in some awkward conversations.

32. The 1974 and 1975 assessments contain elements that require further consideration beyond the scope of this submission. As an example, the reporting concerning the JIO analysis and commentary on how the CPM political instability at the time caused a breakdown in command and control between military elements. The assessments asserts that this command breakdown would possibly create internal competition for the infliction of damage towards the Malaysian Armed Forces and therefore a corresponding increase in the security threat to ABB. Instead of assuring continuing security, it just complicates it further.

33. It is obvious to all parties that critical documents are missing or may never have been created in the first place. **Therefore, the documents that are available should receive proper acknowledgement and correct interpretation.**

34. During the course of the conflict the enemy threat should be viewed by how seriously the precautions evolved over time. Security for ABB went from a single two-metre wire fence to a double apron fence to guard towers to search lights to automatic airfield personal intrusion systems. Eventually additional security measures included the building of aircraft revetments and the wholesale relocation of kampongs abutting the perimeter. None of these developments actually repelled an intruder or an attack. For that kind of security demands an offensive capability and that role was fulfilled at the very beginning by the armed presence and tactics of the RCB that was deployed by the Australian Government to provide a quick reaction force that was an integral part of the overall measures for the defence of the air base, including to be on call to counter any penetration of the perimeter, counter attack enemy forces that had penetrated the perimeter or to deal with enemy forces that had launched an attack from inside the air base.

35. The 1974 and 1975 JIO assessments are very important artefacts in what is an otherwise inadequate and incomplete historical record. It is not in the interest of the veterans to discredit these documents, in fact, we wish to push them to the very forefront of the Tribunal's investigations. They directly support the veteran position in no uncertain terms. Namely:

- *That the enemy threat to Butterworth Air Base was dire, and attacks of numerous types were detailed and anticipated.*
- *That the enemy forces were listed by unit designation which implicitly outlines the qualitative and quantitative damage each enemy unit could inflict by virtue of their combat strength.*
- *Both reports suggest that a favoured method of attack was with indirect artillery-type fire which could cause severe indiscriminate destruction. When the Australian Fire Base at Nui Dat was hit by such mortar fire on the night on 17 August 1966, it resulted in more than two dozen casualties. The Butterworth airbase had at least four squadrons of fighter, bomber and transport aircraft which are particularly vulnerable to mortar/rocket attack.*
- *Both reports nominate a secondary method of attack comprising a small group raid, probably at night, which could cause death and destruction before extracting from the base. Without the RCB there is – pointedly - **no remedy against this type of attack.***
- *It lists that the only other ground defence available at Butterworth Air Base were pairs of patrolling RAAF dog handlers armed with handguns. The only deterrent capable of repelling an enemy force was the fully-armed, reinforced Army Rifle Company.*
-

- *That the political situation with the MCP meant that the enemy was acting independently and not necessarily under the total control of a central command. This introduced an additional dangerous element of unpredictability. It may – or may not - have been in the interests of the MCP to engage the Australians, but the MCP’s influence in controlling their regiments was weak and compromised. The JIO reports both clearly say that local CT commanders might take independent combat action against the air base at any time to gain political influence.*
- *The infantry company excepting - all other precautions employed at Butterworth are only designed to limit damage, or offer an alert once an attack is underway. None can prevent an attack or even act as a deterrent. Revetments do not stop mortars, nor the TOBIAS system prevent intrusions.*
- *Both JIO reports nominate a direct terrorist threat to RAAF dependants. This means that for whatever reasons, the Government accepted the risk. The risk was plainly stated in both reports. Accepting the risk does not indicate civilian safety and arguing such is illogical in the face of this evidence.*
- ***Both JIO reports limit an external attack while at the same time go into pages of detailed descriptions concerning the internal CT insurgency threat.***

36. To answer all this, the Defence Department position is typified in their latest submission. In their submission (96d) they sum up the total threat - apparently in reference to both JIO intelligence documents, and in regard to the report’s very rich detail and nuance, with...

...“JIO reports include the term ‘unlikely’.

Yes, its true, the JIO reports do include the term ‘unlikely’. They also include the terms ‘*external threat*’, ‘*terrorism*’, ‘*attack*’, ‘*mortars*’, ‘*rockets*’, ‘*sabotage*’, ‘*murdering*’ and ‘*kidnapping*’. **The JIO assessments are filled with like terms, and they detail a significant internal insurgency threat that is well supported by the tactical evidence that has been placed before the Tribunal for their consideration. These JIO assessments reinforce the RCB case exceedingly well.**

37. Thank you for your time and extensive efforts.

**Sean Arthur
May 2023**



Friday, 28 April 2023

DJK 08/23

To whom it may concern,

RIFLE COMPANY BUTTERWORTH IN CONTEXT OF THE MALAYSIAN INSURGENCY, 1968-89

I have been asked to provide my professional opinion on the operational circumstances of Rifle Company Butterworth (RCB) during the period 1968-89.

Personal Background and Qualifications

I am a counterinsurgency and irregular warfare specialist with 25 years' experience in the field. I am a graduate of the Australian Defence Force Academy, the Royal Military College Duntroon and the Australian Command and Staff Course. I hold a PhD from UNSW in the political effects of guerrilla warfare, and have published six books and approximately 20 scholarly articles on insurgency, guerrilla warfare, counterinsurgency and related matters. I am a Professor of International and Political Studies at UNSW Canberra, where I teach irregular warfare and special operations to masters' students. I provide irregular warfare training for SOCOMD personnel in Australia, and for US and UK Special Forces. I have commanded Australian troops and/or served as an operational advisor in seven campaigns including Iraq, Afghanistan, Somalia, Colombia, Bougainville, East Timor and Libya. I am an Australian Army reservist in SOCOMD, but I offer my opinion in my personal capacity only.

Rifle Company Butterworth—Operational Role

RCB was deployed as part of a range of measures to protect the Butterworth air base and provide a quick-reaction force to defend the base against threats arising from the Malayan Communist Party (MCP) insurgency. The role of RCB was thus operational, and it remained so until the Hat Yai Agreement ended the insurgency in December 1989.

Although the primary purpose of RCB was to protect Australian personnel and aircraft, Butterworth also served as a Royal Malaysian Air Force (RMAF) base after its handover from Australia to Malaysia in 1970, with aircraft from the base supporting operations against Communist Terrorist (CT) insurgents. Hence RCB played an enabling role in Malaysian counterinsurgency operations throughout the period. Of note, after 1970 Butterworth was a Malaysian airbase jointly occupied by the RMAF and the RAAF. Although the base was used by Malaysian forces to mount operations against the insurgents, the defence of the base was jointly undertaken by the RMAF and the RAAF, with RCB playing a key role.

RCB's location at Butterworth placed it within the principal CT operational areas (in the Malaysian states of Perak, Perlis and Kedah) during the renewed insurgency. For example:

- One major CT operational area (reported in a declassified CIA Intelligence Memorandum of February 1972) was in the vicinity of Kulim, 30 kilometres by road from Butterworth, with several other CT operational areas across the nearby region.¹
- Insurgents were active within 20 miles of the Butterworth base, according to the same document.²
- Numerous other incidents took place in Penang, Perlis, Perak, and other northern locations across West Malaysia, including within 8 kilometres of RCB's location.
- A guerrilla radio broadcast of 1 April 1972 noted that Butterworth 'is only fifteen miles from our Army's [i.e., the CT insurgents'] Operation Area' and referred directly to RCB, noting that the rifle company was stationed at Butterworth to guard the base.³
- The same insurgent broadcast gave the unit identification for the sub-unit then deployed to Butterworth, indicating active and current CT intelligence collection against the base and RCB.⁴

I have seen no specific evidence that Butterworth was subjected to a direct ground attack by insurgents, nor was the base rocketed or mortared, my knowledge. However, the CTs used 3.5-inch rockets to attack two other RMAF airbases, and the Joint Intelligence Organisation assessed that the CTs had 82mm mortars and thus could have used either of those weapon systems to launch an indirect fire attack on the airbase.⁵ Butterworth's central location within the guerrillas' operational area, and the fact that RMAF aircraft operated from the base against the CTs, indicates that the base was directly involved in the conflict.

The fact that Butterworth was not directly attacked, whereas more distant air bases—including RMAF Base Sungei Besi—were attacked, suggests that the presence of RCB deterred the insurgents, by making the base a hard target. This further indicates that RCB played an operational role in the conflict, deterring attacks on Butterworth and facilitating RMAF operations against insurgents nearby.

Relation to other counterinsurgency campaigns

¹ See Centra Intelligence Agency, Directorate of Intelligence, *Communist Insurgency in Malaysia*, Intelligence Memorandum dated 22 February 1972, map at p.6

² *Ibid.* p. 16

³ See Australian High Commission on Kuala Lumpur "Threat to Air Base Butterworth", Telegram 207/2/3/5 dated 12 May 1972, pp. 2-3.

⁴ *Ibid.*

⁵ Joint Intelligence Organisation, *JIO Study 13/75, The Security of Air Base Butterworth* dated October 1975, pp. 10-13

Based on this evidence (and other evidence submitted to the Tribunal) my judgement is that the role of RCB at Butterworth was equivalent to that of the Australian Army Security Detachment (SecDet) in Baghdad during the Iraq War, except that unlike SecDet Baghdad (which protected civilian diplomatic staff at Australia's embassy in the Green Zone) RCB was protecting ADF personnel and equipment, as part of the joint RAAF-RMAF base defence plan, while also enabling RMAF combat operations.

In addition to the SecDet comparison, Australians in Afghanistan during 2003-2005 (after the withdrawal of the Special Air Service Task Force in December 2002, and prior to the Reconstruction Task Force deployment in August 2005) performed de-mining and staff functions, against a low threat level from the Taliban whose leadership group, the Quetta Shura, was based outside Afghanistan and was not formed until October 2003.

Likewise, Australian troops in East Timor under INTERFET (1999) and UNTAET (1999-2002) performed patrolling, defensive and quick-reaction force roles similar to those conducted by RCB. They did so against no armed opposition after mid-October 1999. All forces mentioned (in Baghdad, Afghanistan and East Timor) were, to my knowledge, awarded the AASM in recognition of warlike service, while Infantry personnel were awarded the Infantry Combat Badge (ICB) if they met the additional requirements for the ICB.

It may be argued that CT activity levels waxed and waned over time during the insurgency, so that for some periods of its operational existence RCB was under limited threat. This is a misunderstanding of how insurgency occurs. Insurgents typically do not seek to maintain uniform threat levels across an entire theatre throughout a conflict. Rather, they seek to demonstrate the ability to attack anywhere at short notice, forcing counterinsurgents to defend everywhere, and thereby imposing costs which—according to insurgent strategy—eventually become unsustainable for the government, forcing it to withdraw or negotiate.

Successful insurgencies may take decades to achieve this outcome. Hence, insurgents seek to sustain themselves across a wide area of operations for very long periods of time, by modulating their activity level to avoid becoming exhausted or drawing undue attention from security forces. They do this by avoiding hard targets, attacking only when sure of success, and mounting hit-and-run attacks against vulnerable outposts, patrols and civilians. They tend to avoid well-defended localities and base areas supported by quick-reaction forces or strong garrison elements (such as Air Base Butterworth during this period).

Overall assessment

Based on the above, and on the declassified intelligence reports and open-source historical material I have read, my assessment is that the CT insurgents during 1968-89 regarded Butterworth as central to their area of operations, with aircraft from the airbase playing an operational role in the conflict, making it a target. The fact that the insurgents did not directly attack the base, whereas they did attack nearby areas, suggests that RCB played an effective deterrent role, turning RMAF

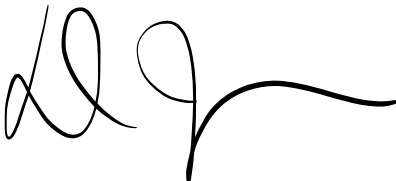
Butterworth into a hard target, and hence facilitating RMAF air operations against the insurgency from the base.

The operational role of RCB throughout this period was thus functionally equivalent, in my judgement, to that of SecDet Baghdad or to troops deployed under INTERFET, while the threat level was equal to or higher than that experienced by troops in East Timor and (at times) Afghanistan. In East Timor, for example, the contact between a Special Air Service Regiment (SASR) patrol and militia at Aidabasalala on 16 Oct 99 was the last combat incident involving Australian troops, and took place three weeks after the initial deployment on 20 Sep 99. For the rest of the INTERFET mission, and (with one exception not involving Australians) during the subsequent UN missions, there was no combat action since the enemy had surrendered or withdrawn across the border into West Timor. In Afghanistan, members of the SASR task force engaged in combat in 2001-2, as did the Reconstruction Task Force after 2005, but during the intervening period (2003-5) ADF personnel in Afghanistan served in an environment with limited enemy presence, and little significant combat.

Given these facts, my professional opinion is that it is logically inconsistent for RCB veterans to be denied recognition of warlike service, including the award of AASM, ICB and similar recognition, given that veterans of the other mentioned campaigns were so recognised.

I would be happy to testify and/or discuss these matters in more detail with the Tribunal, should this be needed.

Yours Sincerely,



David J. Kilcullen

Professor of International and Political Studies

School of Humanities and Social Sciences | UNSW Canberra

Northcott Drive, Canberra ACT 2600 | [REDACTED]

SUPPLEMENTARY STATEMENT**BY GROUP CAPTAIN ROBERT COOPES, MBE**

1. I wish to amplify matters relating to evidence presented to the Defence Honours and Awards Appeal Tribunal (DHAAT), hearing further evidence into Medallic Recognition for service by Rifle Company Butterworth 1970 -1989. The Tribunal Hearings were in Brisbane 3-4 April 2023. I was most impressed by the Tribunal conduct of business and impartial approach to this important matter for recognition of Malaysian service by ADF members.

Role, Tasks and Qualifications

2. I was posted to Airbase Butterworth (ABB), Malaysia, as the Base Ground Defence Officer from 17August1977 through to 31January1979. It was my responsibility to implement the Australian operational response to Airbase defence and to update the Airbase Butterworth Shared Defence Plan. This Plan was agreed and signed in conjunction with the Royal Malaysian Air Force and included Rules of Engagement (ROE) and Orders for Opening Fire (OFOF) for Rifle Company Butterworth and Base Combatant personnel to respond to a declaration of curfew and an incursion or attack on the airbase.
3. My military training enabled me to undertake this task as I graduated from the Australian Army Officer Cadet School in December 1971 with the skills and knowledge required for employment as an Australian Army Infantry Platoon Commander. My tactical and joint training was further enhanced by my graduation from the RAAF Ground Defence Officers Basic Operations Course later in 1972; where I received specialist training to identify airbase key points and vital points specific to the ground defence of airbases and to identify and plan the ground defence requirements. Specific emphasis was placed on the airbase defence requirements to support air operations on a major flying base. The following year, I graduated from the Australian Army All Arms Junior Officers Basic Course at Singleton & Canungra. These courses provided me with an in-depth knowledge and understanding of Infantry doctrine and tactics, military planning and appreciation processes in their application to the planning and conduct of all arms operations.
4. I subsequently had two postings as an Airfield Defence Guard Rifle Flight Commander and participated on major ADF joint exercises to develop my skills in airbase defence operations prior to posting to Butterworth Malaysia. I also trained on the ARA Code Of Conduct and resistance to Interrogation course and Combat Survival Course for combat readiness.

Rules of Engagement.

5. The recent public DHAAT hearing, the Rules of Engagement (ROE) that were issued to Rifle Company Butterworth (RCB) and RAAF Base Butterworth Base Combatant Personnel (BCP) during the period 1971 to 1981 were discussed and analyzed in some

detail. A Subject Matter Expert was called to provide expert opinions on warlike ROE. The ROE discussions included opinions on a sub paragraph in RCB SOP that required both RCB and BCP to 'Shoot to Wound'. During my posting as the RAAF Butterworth Ground Defence Officer, from Aug 1977 to January 1979 inclusive, I was also Acting Senior Ground Defence Officer for three months of that period; I was never briefed on, nor read of, the requirement to 'Shoot to Wound' within any Rules of Engagement or Orders for Opening Fire or detailed in the Operations Order or Shared Base Defence Plan issued to RCB and BCP.

6. The Orders for Opening Fire (OFOF) that I received, and subsequently were briefed to RCB and BCP, were that lethal force could be used to prevent an attack against the airbase personnel and assets, provided the attacker was challenged, warned three times, and would be engaged with rifle fire if continued to prosecute an attack. The use of minimum force required to prevent an attack was part of normal briefs to RCB and BCP. Never to my knowledge, was the requirement to 'Shoot to Wound' issued to RCB and BCP as OFOF, under the ROE detailed in the Airbase Shared Defence Plan. Indeed Malaysian Armed Forces and local Police and Police Field Force Units routinely use lethal force.
7. My view was that had I, at any time, become aware of the ROE/OFOF requirement to 'Shoot to Wound' I would have immediately raised a ROE Change Request to my Air Base Commander for that requirement to be removed from the ROE/OFOF. My appreciation is based upon my knowledge and experience that a "Shoot to Wound" requirement would have been impossible for compliance by RCB/BCP; particularly with a 7.62mm calibre weapon. Soldiers and airmen are trained to fire at the centre of the seen mass of a person when engaging an enemy target. This ensures that a person who is fired upon will be stopped from further advance on our key points. Never in combat in the 1970-1989 was a person engaged with lethal force with an intent to wound. An order to 'shoot to wound' becomes even more impractical if the incident occurs in low light, dark, or battle smoke and heat of combat operations. Most terrorist activity and movement was conducted under the cover of darkness. Add to this the probability of multiple infiltration targets; the imposition of 'shoot to wound' directive becomes untenable.
8. The presence of RMAF personnel, Special Security Police RMAF and Handau on the base by night and day and the presence of locally employed contractors with the tension that weapons are at the action condition, exacerbated by curfew restrictions, was also a severe limiting factor on the use of ROE that required 'shoot to wound'. Hence my statement that had I have known of an OFOF 'shoot to wound' requirement, I would have immediately challenged that requirement as being unrealistic and impossible to comply with and requested non-compliance on operational practicality from Commander Air Base Butterworth.

Intelligence.

9. Evidence presented to the DHAAT also addressed a threat assessment in a JIO Study No. 13/75 of the security of ABB. Although the study assessed that it was unlikely that a threat to the air base would arise from an external overt military attack, the study did assess there was a potential threat to the airbase from the 'CTO and related communist, subversive organizations'. The assessment of a potential threat of CTO attack on the airbase informed to RAAF by Malaysian Intelligence was, in my opinion totally accurate. During my time at Butterworth, I attended regular weekly intelligence briefings (along with other GLO and RAAF CDR staff) provided by staff from the RMR Divisional HQ, Sungei Petani, Headquarters of 6 Infantry Brigade of the Royal Malay Regiment and the Police Field Force Kulim. I also attended regular briefings at 6BDE RM Police Field Force Alor Setar with the Brigade Commander as we had Aircrew Instructors based at the RMAF Flying Training School at Alor Setar.

10. These briefings provided continuous, ongoing intelligence on Malaysian Communist Party (CPM) Communist Terrorist (CT) activities within Peninsula Malaysia and areas close to Butterworth Air Base. This information included enemy capabilities, capacity, and incidents involving the CTs and the Malaysian security forces. This intelligence was then included in Intelligence Reports sent back to Australia by the RAAF intelligence staff and Ground Defence personnel at ABB. However, despite these in-country intelligence reports informing CT activity did we receive any acknowledgment from JIO or other intelligence organizations in Australia of a change to their analysis of the threat posed by CT to Butterworth Air Base. There was an ongoing in country threat that caused frequent local imposition of curfew to meet the declared state of national emergency and martial law on Peninsula Malaysia. Frequent threat assessments were issued by the Malaysian Defence Forces and relayed to us from senior star rank officers in the regional command chain.
11. The in-country intelligence was distilled by RAAF Ground Defence Officers at Butterworth with interpretation by the RAAF Senior Intelligence Officer HQBUT and included in updated briefings to all RCB and RAAF personnel on their arrival at Butterworth, and to the families and dependants of RAAF and other personnel on their arrival. The separate briefing packages included a background to the CPM, the CT, incidents in proximity to Butterworth and Peninsula Malaysia, and the current threat to ABB. Protocols for curfew and no go areas were briefed and briefing packs handed out. The Base Commander, Commander Integrated Air Defence System (IADS), and Commanding Officers of Units on Butterworth were all regularly briefed and updated on intelligence that related to the threat posed by CT to Air Base Butterworth and Australian assets and personnel. All RAAF personnel posted to Air Base Butterworth were part of the Base Combatant Force and could be called on to be called out during curfew and increased threat situations to be armed and assigned to keypoint defence duties to protect the Protected areas and protected places, specifically Australian assets and personnel.
12. The Intelligence received on the threat posed by CT actions toward the airbase, and the subsequent measures taken to ensure the airbase was ready to respond to an attack was reflected in logistic stock policy for weapons and ammunition holdings. The amount and type of weapons and ammunition allocation held in RAAF stocks at Butterworth Armoury and EOD Ready use compound to respond to the threat and facilitate immediate airbase defence operations was a scale to respond to armed conflict. The posture adopted by RCB personal, and the level of ground defence training and weapon readiness imposed on RCB and RAAF BCP was to counter direct attack to the base by CT units.
13. I note that Since the end of World War 2, no airbase within Australia has ever been equipped or stocked with weapons and ammunition on the scale of that was in place at Butterworth during my posting. The level and frequency of weapon training required of BCP at Butterworth was by consequence more extensive and frequent than that experienced or required of RAAF BCP on airbases within Australia. Preparedness of weapons, personnel training and regular rostered rehearsals of patrols and keypoint defence was seen as a direct response to an enemy threat posed by CT units in the Butterworth and Kulim district.

Expectation of Casualties.

14. The Tribunal also discussed and took evidence in relation to the 'expectation of casualties' by BCP and RCB personnel at Butterworth should any form of attack be prosecuted against the base. These assets including facilities, aircraft, equipment and personnel that may be attacked and damaged by CT action. I understood during my tour that in the event of any form of attack against the airbase by CT action, the expectation of casualties was very much present. Indeed accidental casualties did occur throughout my tour with breaks, abrasions and cuts during patrols and QRF operations by RCB and RAAF BCP. The importance of 4RAAF Hospital in this period of ADF history cannot be underestimated. The unit was a Casualty staging Hospital for MEDEVAC patients during the Vietnam War 1963-1974 and for casualties staged through Butterworth from the Sinai during my tour.
15. The CT elements capabilities to inflict casualties were known, and informed to RAAF from Malaysian Intelligence reports. Included details that the CT possessed both direct and indirect fire weapons. The CTs had also targeted Malaysian Military and Police Key Points in relatively close proximity to the Airbase using improvised explosive devices (IEDs). I saw the resultant casualties first hand during a field visit to a RMR Field hospital at Kroh- Baling in March 78. The CTs were also known by RMR to have 81 or 82mm mortars. If weapons of this type were employed to attack Air Base Butterworth mass casualties would have resulted. The Base Commander put measures in place to address the management of a mass casualty situation in the Base Defence Plan. So the expectation of casualties and casualty management was addressed within the Shared Defence Plan with the identification of medical casualty evacuation (CASEVAC) procedures. Ambulances were on standby at 4RAAF Hospital and rostering of drivers and specialist medical staff to respond to defensive operations was part of the shared Defence Plan which included locations where casualties were to be evacuated for specialist medical care.
16. Casualties inflicted during Butterworth Airbase operations that required treatment more extensive than that able to be provided at No 4 RAAF Hospital, were planned to be treated at Penang General Hospital and more serious casualties after triage were planned for Medical Evacuation using RAAF Air Transport to either Singapore or Australia. No 4 RAAF Hospital Executives attended GDOC Orders and briefings and were involved in the airbase CASEVAC and treatment planning process, and their personnel were rehearsed in their CASEVAC role and tasks. BCP and RCB personnel were rehearsed in the rapid recovery of casualties to the nearest CCP, and the provision of first aid for casualties. CCP were also established and manned at RAAF Centre Penang for dependants and for RCB and BCP assigned to armed protective security duties on Pulau Penang during curfews and threat situations. So there was always detailed plans in place for expectation of casualties.

Signed



Group Captain Robert Coopes

Date: 30 April 2023

SUPPLEMENTARY STATEMENT**BY WING COMMANDER GARY PENNEY (RETD)**

I wish to address matters relating to evidence presented to the Defence Honours and Awards Appeal Tribunal (DHAAT), taking evidence into Medallic Recognition for Rifle Company Butterworth Service 1970 -1989, that sat in Brisbane 3-4 April 2023.

Role, Tasks and Qualifications

I was posted to Airbase Butterworth (ABB), Malaysia, as the Base RAAF Ground Defence Officer from 02 December 1979 through to 03 December 1981. It was my responsibility to maintain, update and amend the Airbase Butterworth Shared Defence Plan. This Plan included Rules of Engagement (ROE) and Orders for Opening Fire (OFOF) for Rifle Company Butterworth and Base Combatant personnel in the event of an attack on the airbase.

My qualifications enabling me to undertake this task are based on the fact that I graduated from the Australian Army Officer Cadet School in June 1977 with the skills and knowledge required for employment as an Australian Army Infantry Platoon Commander. My training was further extended by my graduation from the RAAF Ground Defence Officers Basic Course later in 1977; there I received specialist training to identify airbase key points and vital points specific to the ground defence of airbases and identify and plan their ground defence requirements. The following year, I graduated from the Australian Army All Arms Junior Officers Basic Course at Canungra. These courses provided me with an in-depth knowledge and understanding of Infantry doctrine and tactics – particularly in their application to the planning for, and command of, forces involved in the ground defence of an airbase.

Rules of Engagement.

During the recent public DHAAT hearing, the Rules of Engagement (ROE) that were issued to Rifle Company Butterworth (RCB) and RAAF Base Butterworth Base Combatant Personnel (BCP) during the period 1971 to 1981 were discussed. The ROE included a sub paragraph that required both RCB and BCP to 'Shoot to Wound'. During my posting as the RAAF Butterworth Ground Defence Officer, from 02 December 1979 to 03 December 1981 inclusive, I was never briefed on, nor read of, the requirement to 'Shoot to Wound' within any Rules of Engagement or Orders for Opening Fire contained within any Operations Order or Shared Base Defence Plan issued to RCB or BCP. The Orders for Opening Fire (OFOF) that I received, and subsequently briefed to RCB and BCP, were that lethal force could be used to prevent an attack against the airbase personnel and assets, provided the attacker was challenged, warned three times, and continued to prosecute an attack. The use of minimum force required to prevent the attack was briefed to RCB and BCP. Never to my knowledge, was the requirement to 'Shoot to Wound' issued to RCB and BCP as OFOF, under the ROE delivered by the extant Airbase Shared Defence Plan.

I wish to state that had I, at any time, become aware of the ROE/OFOF requirement to 'Shoot to Wound' I would have immediately raised a ROE Change Request to my Base Commander for that requirement to be removed from the ROE/OFOF. This assertion is based upon my knowledge and experience that a "Shoot to Wound" requirement would have been impossible for compliance by RCB/BCP. Soldiers and airmen are trained to fire at the centre of the seen mass of a person when engaging an enemy target. This ensures that a person who is fired at will be stopped – never in combat is a person engaged with lethal force with an intent to wound. Further, an order to 'shoot to wound' becomes even more unrealistic if the incident occurs in low light, dark, or battle smoke obscuration environments. Add to this the probability of multiple targets, the imposition of 'shoot to wound' becomes untenable. The presence of MAF personnel and Security Police on the base by night and day and the presence of locally employed contractors would have also been a severe limiting factor on the use of ROE that required 'shoot to wound'. Hence my statement that had I have known of an OFOF 'shoot to wound' requirement, I would have immediately challenged that requirement as being unrealistic and impossible to comply with.

Intelligence.

Evidence presented to the DHAAT also addressed a threat assessment in a JIO Study No. 13/75 of the security of ABB. Although the study assessed that it was unlikely that a threat to the air base would arise from an external overt military attack, the study did assess there was a potential threat to the airbase from the 'CTO and related communist, subversive organisations'. The assessment of a potential threat of CTO attack on the airbase was, in my opinion accurate. I say this because during my time at Butterworth, I attended regular monthly intelligence briefings (along with other RAAF staff) provided by staff from the Headquarters of 6 Infantry Brigade of the Royal Malay Regiment and the Police Field Force. These briefings provided continuous, ongoing intelligence on Malaysian Communist Party (CPM) Communist Terrorist (CT) activities within Peninsula Malaysia and areas within close proximity to Butterworth. This information included enemy capabilities, capacity, and incidents involving the CTs and the Malaysian security forces. This intelligence was then the subject of Intelligence Reports sent back to Australia by the RAAF intelligence staff and Ground Defence personnel at ABB. However, despite these in-country intelligence reports to the contrary, at no time did we at Butterworth receive any indication from JIO or other intelligence organisations in Australia of a change to their analysis of the threat posed by CT to Butterworth.

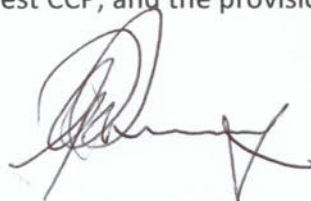
The in-country intelligence was distilled by RAAF Ground Defence Officers at Butterworth and included in briefings to all RCB and RAAF personnel on their arrival at Butterworth, and to the families and dependants of RAAF and other personnel on their arrival. The briefings included a background to the CPM, the CT, incidents in proximity to Butterworth and Peninsula Malaysia, and the current threat to ABB. The Base Commander, Commander Integrated Air Defence System (IADS), and Commanding Officers of Units on Butterworth were all continuously briefed and updated on intelligence gained that related to the threat posed by CT.

The Intelligence received on the threat posed by CT actions toward the airbase, and the subsequent measures taken to ensure the airbase was ready to respond to an attack, was reflected in the amount and type weapons and ammunition allocation held in RAAF stocks at Butterworth, the posture adopted by RCB personal, and the level of ground defence training and readiness required of RCB and RAAF BCP. Since the end of World War 2, no airbase within Australia has ever been equipped nor stocked with weapons and ammunition on the scale of that in place at Butterworth during my posting at Butterworth. Further, the level and frequency of weapon training required of BCP at Butterworth was far more extensive than that experienced or required of RAAF BCP on airbases within Australia.

Expectation of Casualties.

The Tribunal also discussed and took evidence in relation to the 'expectation of casualties' by BCP and RCB personnel at Butterworth should any form of attack be prosecuted against the base and its assets (facilities, aircraft, equipment and personnel) by CT action. I would state that in the event of any form of attack against the airbase by CT action, the expectation of casualties was very much present. The CT elements were known, through Malaysian Intelligence feeds to the Airbase, to possess both direct and indirect fire weapons. The CTs had also targeted Malaysian Military and Police Key Points in relatively close proximity to the Airbase using improvised explosive devices (IEDs). The CTs had attacked two other airbases by indirect fire using 3.5-inch rockets. The CTs were also known to have 81 or 82mm mortars. If weapons of this type were employed to attack ABB mass casualties would have resulted. As a consequence, the Base Commander in his appreciation and plan put measures in place to address the management of a mass casualty situation. To this end, the expectation of casualties was addressed within the Shared Defence Plan with the identification of medical casualty evacuation (casevac) procedures that included the identification of Casualty Clearance Points (CCPs) for BCP and RCB casualties within the airbase, allocation of Unit tasks and responsibilities for casevac, identification of casevac routes, and the identification of casevac security. No 4 RAAF Hospital at ABB was the location where casualties were to be evacuated for specialist medical treatment. Casualties requiring treatment more extensive than that able to be provided at No 4 RAAF Hospital, were planned to be further evacuated using RAAF Air Transport to either Singapore or Australia. No 4 RAAF Hospital Executives were involved in the airbase casevac and treatment planning process, and their personnel were rehearsed in their casevac role and tasks. BCP and RCB personnel were rehearsed in the immediate recovery of casualties to the nearest CCP, and the provision of first aid for casualties.

Signed:

A handwritten signature in black ink, appearing to be a stylized name, possibly 'R. [unclear]', written over a horizontal line.

Date: 16 April 2023

Statement by MAJ (Retd.) J. Grant CSM

Introduction

I have been asked to provide advice and opinion on the order “**shoot to wound and not to kill**”, which I am advised were part of the Rules of Engagement for personnel deployed as members of Rifle Company Butterworth (RCB).

The following information of military experience and qualifications it provided.

At age 19 in 1962 I enlisted in the British Army joining my local infantry regiment. The Gordon Highlanders for an enlistment period of 22 years. I served for 9 years, reaching the rank of Sergeant. As part of my career progression, I attended The Junior NCO, Skill at Arms Course which was conducted at the School of Infantry in Warminster, Wiltshire. The course instructors were members of the Small Arms School Corps (SASC). On completion of the course, I was invited to apply to attend the six-month, selection course to be accepted into the SASC.

I attended the Advanced Skill at Arms Course one month after completing the JNCO course, again at the School of Infantry, which gave qualifications to plan and conduct all forms of infantry live fire range practices on Field Firing Ranges. On completion of this course, I was again invited to attend the selection course. I chose to attend and was accepted into the SASC in mid-1971.

The Small Arms School Corps (SASC) are a small corps of professional SNCO, WO and Officers who advise and instruct Infantry weapon trainers. They are responsible for maintaining the proficiency in the use of small arms, support weapons and range management. SASC advisors and instructors are strategically positioned throughout the British Army to enhance operational training, and ensure marksmanship standards are met. The SASC is manned entirely from volunteers who transfer into the SASC from All Arms and Services, although primarily from the Infantry.

In 1980 I was selected to fill the post of Exchange Warrant Officer with the Australian Infantry Corps at the School of Infantry, Singleton NSW for a period of two years. The post was held within Specialist Wing, Small Arms Section, where we conducted a number of courses including Small Arms Coaching Course, Sniper Instructor Course and Range Qualifying Courses.

On completion of the two years posting, The Director of Infantry (DInf.), Col. Tony Hammett, interviewed me and suggested that I may wish to return to Australia on completion of my service with the British Army to be involved with the introduction into service of the new family of Small Arms amongst other projects being developed.

With the support of my family, I applied to return to Australia and was accepted. We returned to Singleton in January 1985 to take up the post as Wing Sergeant Major (WSM) of Small Arms Wing. There we conducted the same fleet of courses as before but were also involved on the selection and acceptance trails for the new family of Small Arms.

In 1989 I was commissioned as a Captain (PSO) within DInf., and was tasked with raising a Training Team of one WO2 -Team SM and six Sergeant Instructors from all Corps. This I did and we spent the next two years conducting courses for the F88 Austeyr and the F89 Minimi LSW nationwide for all three services but primarily for Army. During this period, I also wrote the doctrinal publications for both weapon systems.

On completion of the two years introduction into service I was posted to DInf. As the Staff Officer, Grade 2 (SO2) Small Arms. This was a newly established position and as it turned out an extremely busy one. The Director was responsible for providing advice on all matters related to Small Arms

to the Chiefs of all three services. This included safety, doctrine and Live Fire Ranges and Training Areas. I was awarded the Conspicuous Service Medal (C.S.M.) in the 1995 Australia Day Honours list for my contribution in improving safety in the field of skill at arms.

I separated from the service in December 1996 after a total of 34 years' service with 25 of those years being involved with infantry weapon employment, training and safety.

Skill at Arms Training

Since I enlisted in the 1960s, Skill at Arms training with individual weapons i.e. Rifles, has focussed on marksmanship and accurate target engagement to the maximum effective range of the particular individual weapon in service at that time. For the 7.62mm Self Loading Rifle (SLR) that was 300m as an individual and 600m as part of section firing.

To achieve this the stages of marksmanship were as follows.

Grouping followed by Zeroing

Elementary Application of Fire

Advanced Application of Fire

Marksmanship Test

This sequence has not changed to this day and only the standards achievable with the latest family of small arms has been applied to the training continuum. It should be noted that the target boards are designed to cater for a single point of aim to be taken to allow for the rise and fall of shot over the range of 300 metres to be contained in the centre of the target. With the new target boards which I designed for the F88 Austeyr, which has an optical sight, these scoring areas had to be elliptical rather than rectangular.

Having completed this basic training, the natural progression was to partake in Field Firing as an individual followed by group in Platoon and Company live fire exercises.

In all of these live firing exercises the objective was to strike the centre of the target with well-aimed shots, which was commonly known as "the centre of the seen mass". At no stage of training was there the requirement to "shoot to wound". On deployment, be it on Active Service or in Aid to the Civil Power, I find it implausible that in any situation the order to "Shoot to Wound" could be issued. The reasons for this statement are discussed below.

Background

I understand that RCB was under the operational command of the OC RAAF Base Butterworth and was allocated the following tasks to be undertaken within the base perimeter:

- a. cordon and search;
- b. internal base patrolling;
- c. protection of RAAF Service Police/SSP at established road blocks;
- d. protection of Key Points;
- e. crowd dispersal;
- f. providing a quick reaction force (QRF) of section strength (on immediate standby on a 24 hour a day basis 7 days a week);
- g. providing a reserve force to be activated on deployment of the QRF;
- h. operating mobile tactical lights on likely penetration points;
- i. manning of listening posts and standing patrols by night, and
- j. operating Tobias Intruder Detection Equipment.

RCB also provided a QRF was also on call to respond to threats to designated key points and to RAAF Married Quarters. They also patrolled the base perimeter by day and night.

Weapons

When carrying out its tasks the RCB QRF was equipped with the following weapons:

- a. 7.62mm Self Loading Rifles (SLR) - a single shot self-loading rifle with an effective individual range up to 300 metres;
- a. 5.56mm M16 Rifles - a single shot or 3-round burst self-loading rifle with an individual effective range up to 300 metres;
- b. 9mm Pistol - individually fired rounds effective for up to 50 metres; and
- c. 7.62mm General Purpose Machine Guns (GPMG) - a weapon that fires a burst of rounds in a cone of fire (see below), continuously whilst the trigger is pressed. It is not possible to aim to wound with a machine gun. The weapon is specifically designed to provide a large volume of automatic fire into a general area.

The following additional weapons were also available and were held in the RCB armoury:

- a. M203 Grenade Launcher – attached to some M16 rifles and which fired a 40mm exploding grenade that randomly distributes metal fragments;
- b. 66mm Short Range Anti-Armour Weapon (SRAAW);
- c. 84mm Carl Gustav Medium Range Anti-Armour Weapon (MRAAW);
- d. M79 Grenade Launcher;
- d. M26 Grenade;
- e. Claymore Mines (an anti-personnel mine); and
- f. M26 Hand Grenades.

Grenades and anti-armour weapons cause random blast and fragmentation over a broad area.

Comment

These weapons could not or would not permit soldiers to **'Shoot to Wound'**.

Cones of Fire

Every small arms weapon system has a dispersion angle applied to cater for the inaccuracies of which are the result manufacturing of the weapon and ammunition. The Cone of Fire also accounts for the acceptable deviation caused by errors associated with the firer and machining tolerances.

For small arms this is calculated at ± 40 mils when firing from a static position to a static target. If firing from a moving position to a moving target this is increased to be ± 60 mils.

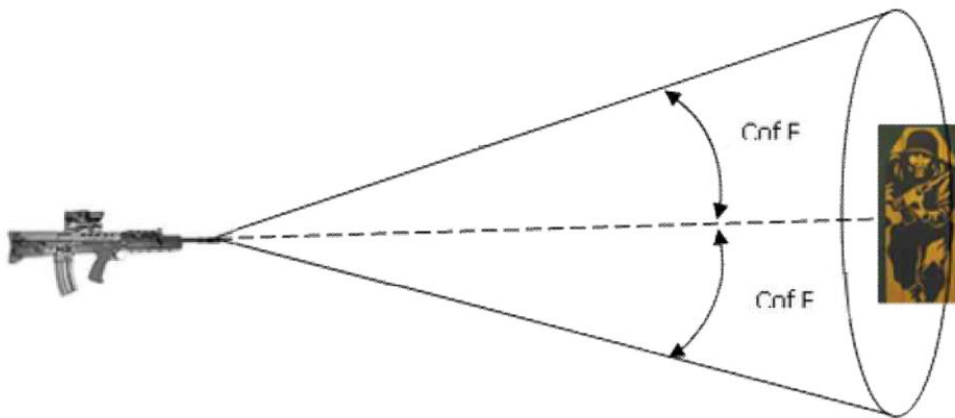


Fig 2 - 1. Cone of Fire around Point of Aim

The SLR or the M16 are the only weapons available to the RCB that could possibly take a definite aiming mark; add this Cone of Fire to the best firers being capable of achieving a grouping size of 150mm at 100m, the spread of a shot could be in the region of 550mm at 100metres. Accordingly, it can be seen that any other engagement technique other than aiming at the centre of the seen mass is both futile and dangerous.

Summary

Since I joined the army in 1962 and up to the present day, marksmanship doctrine and training has not changed. For infantry soldiers it is understood that in the stress of any engagement there is only one shooting technique that can be followed instinctively and that is to aim and fire at the centre of the seen mass. Even with the vagaries of the light, wind and clarity of the target this is still the most effective method of engaging a target.

Signed this day: 9 May 2023

MAJ (Retd.) J. Grant C.S.M.

STATEMENT BY MAJOR P.G. STAMMERS, CSM (Ret'd)

My Military Background

I served continuously in the Australian Regular Army from June 1967 to July 1999 and in the Active Army Reserve from July 1999 to August 2001; a total of 34 years.

I served as an Infantry soldier, non commissioned officer and warrant officer for 23 years and as a commissioned infantry officer for 11 years attaining the rank of Major before my retirement. Prior to my being commissioned in December 1990, I was appointed Regimental Sergeant Major of the 6th Battalion, The Royal Australian Regiment.

My service included 12 months in Vietnam with 9th Battalion, The Royal Australian Regiment (1968/69), 6 months in Uganda as part of a Commonwealth Military Training Team (1982), and a 2-year exchange posting with the British Army's Small Arms School Corps (1984-86). I also was in command of several military training teams tasked to conduct weapon training for the armed forces of PNG, Indonesia, Malaysia and Brunei.

A summary of my postings relating to weapon training are as follows:

- Two years in the UK with the British Army's Small Arms School Corps where I trained British Army personnel in all aspects of weapon training; from the very basics through to field firing where all weapons are employed in a live-firing combat scenario.
- Two years at Small Arms Section at the Australian Army's Infantry Centre where I led a team of specialist instructors delivering training to the ADF. This included courses in Small Arms Coaching, Sniping, Master Coaching and Reconnaissance/Surveillance.
- After I was commissioned to the rank of Captain, I was tasked to raise a new unit titled the Marksmanship Training Detachment. Our role was to improve the shooting standards and weapon handling of the ADF through the conduct of small arms coaching courses, training teams and combat shooting competitions. My duties included the conduct of the annual Australian Army Skill-at-Arms competition (AASAM). I remained in this posting for 3 years.
- In 1996 I was promoted to Major and appointed Staff Officer Grade 2 Small Arms as part of the Directorate of Infantry. At the time, the Director of Infantry was the ADF's Training Adviser on all aspects of small arms training, development, and doctrine. I was the Director's principal staff officer who provided this advice.
- In 1997, during Operation Pollard, the SASR Squadron deployed to Kuwait was experiencing some problems with the F88 Austeyr weapon. I was tasked to visit the Special Forces group in Kuwait to investigate their concerns and make recommendations. At the completion of my visit to Kuwait I provided personal briefs to the Deputy Chief of the Army and the Commander of Land Command.

I was awarded a Conspicuous Service Medal in the 1999 Queens Birthday Honours List for my services to the ADF in small arms training and development.

Rules of Engagement – RAAF Base Butterworth

It has been brought to my attention that the RAAF Rules of Engagement produced in 1978 for Rifle Company Butterworth's protection of the Butterworth Air Force Base in Malaysia contains the words interalia: **"shoot to wound and not to kill"**.

At no time in my lengthy Army career have I ever heard this term used. The Australian Army is responsible for all aspects of small arms training, development, and doctrine on behalf of the three services of the ADF. It has always been policy, when required to open fire, to **aim at the centre of the seen mass**. This ADF policy is detailed in the Manual of Land Warfare, Part 2, Volume 4, Pamphlet 1, 1983, Section 6, paragraph 121, which states: "The correct point of aim on any target is the centre of the visible mass". This doctrine remains current today.

Why "Shoot to Wound and not to Kill" is Impracticable

Infantry Rifle Sections are equipped with a variety of weapons that include semi-automatic rifles, machine guns, grenade launchers, hand grenades and claymore mines. Optic sights, which permit more accurate shooting, were only introduced into Infantry Rifle Sections in 1989 when the Austeyr Rifle was introduced into service in the Australian Army.

Given the variety of weapons available in an Infantry Rifle Section during the period 1973 to 1989, none of which were fitted with optic sights, it's impossible to guarantee that any gunshot or fragmentation wound would not have resulted in death. Blood loss/shock/organ damage resulting from wounds can all be fatal.

Nowhere in the Australian Defence Force weapon training curriculum are individuals taught to shoot to wound, and not kill.

Why "Aim at the Centre of the Seen Mass"?

Put bluntly, an enemy need to be killed/incapacitated before they kill friendly forces. Aiming at the centre of a seen mass provides the greatest chance of this occurring.

Individuals engaged in close combat are under extreme stress, so all actions need to be swift and instinctive. Aiming and firing at the centre of a seen mass are essential to achieve this. This method is initially taught during recruit training and reinforced during all advanced combat training. Aiming at the centre of the seen mass is instinctive to all trained Infantrymen.

P.G.E. Stammers

To WHOM IT MAY CONCERN

I, Lieutenant Colonel Peter John Michelson, OAM, (Retired) would like to emphasise, in addition to my earlier Statutory Declaration, the tactical nature of the deployment of Delta Company 6RAR to RAAF Butterworth between October 1975 and March 1976.

I totally endorse the comments made by Gary McKay, MC, OAM who was my Second in Command, and who was an experienced, battle hardened, competent and consummate officer. I cannot add to Gary's comments.

For myself, by the time I arrived in Butterworth, I had been a Platoon Commander for five years, including two on Active Service, I had been an instructor, for two years, training a C young men to become platoon commanders at the Officer Training Unit, Scheyville. I had been an Adjutant for three years and a Company Commander for two years.

As for the expectations of casualties; firstly as previously stated, I had become aware that there was insufficient ammunition stored in Butterworth and that the RAAF were not permitted to transport a resupply. On being told that replenishment would come by sea, I sent a message to HQ FF Command stating that unless stocks were not forthcoming, I believe I said within 36 or 48 hours, that I would be unable to defend RAAF Base Butterworth. Ammunition arrived promptly.

Furthermore, taking my role seriously, when deployed to meet hitherto mentioned threats to the Base in December 1975 and January 1976 in which rockets or mortars might be fired at us. I ordered my company to dig in and, due to the prospect of flooding, to construct sand-bagged strong points. I was told these were inappropriate, to which I responded that I would only dismantle my defences if I received an order to do so in writing. No such direction was forthcoming.

My decision to "dig in" was based on my operational experience during "Confrontation" in Borneo, underpinned by service in South Vietnam. For example, during the first night at battle of Coral one of my soldiers was killed and several

others were injured by shrapnel from mortars. Whilst later, entrenched at FSB Coral, my platoon, despite being targeted by 100s of RPGs remained unscathed.

At RAAF Butterworth when twice ordered to deploy in response to a credible CT threat. This included, as their previous recent activities had shown, the use of mortars and rockets. And, because I had already had firsthand experience, over two years, of handling battle casualties, (for instance, my citation

"Early in the day Lieutenant Michelson's forward section became separated and suffered three casualties. Exposing himself to enemy fire from at least two positions he reorganised his platoon and moved to locate the casualties. With little thought for his own safety in an exposed position he calmly organised their evacuation and then led his men to clear all opposition from two strongpoints. In this action his platoon killed at least six enemy.")

it would have been a dereliction of duty had I not arranged to maximise protection as well as ensuring that possible casualties were appropriately and hastily treated.

Peter Michelson

Peter Michelson

8 May 2023

Supplementary Statement

Lieutenant Colonel (Retd) Gary McKay, MC, OAM

As previously stated in my submission No. 053, I deployed to RAAF Butterworth as the Second in Command (2IC) of Delta Company, 6 RAR between October 1975 and March 1976. My rank was captain. I had been commissioned for seven years including a tour of duty in South Vietnam in 1971.

As part of my duties and role as a Coy 2IC, I would be responsible for assuming command if the Company Commander (Major Peter Michelson) became a battle casualty. I was also responsible for the replenishment of ammunition including small arms for rifles and GPMG M60 machine guns, and HE M26 grenades to the troops if and when contact with an enemy force eventuated.

I was also responsible through my HQ element for the collection and evacuation of battle casualties to our Company Aid Post (CAP) and then on to the RAAF Butterworth Base Hospital. I liaised several times during contingency based exercises ordered by the CO Base Squadron with the Hospital duty staff and admissions staff for where we would bring casualties if the base was under attack. Our CAP in the RCB Company Headquarter building was to be a holding point before onward movement, as the approaches to the hospital by vehicle could be subject to hostile fire if the Base perimeter was penetrated or under fire from indirect weapons, including mortar fire.

My company medic and company quartermaster staff were all briefed on how we would collect and evacuate casualties and get them to immediate first aid. My Company Support Section (a total of nine men) were to be the protection element of any evacuation team tasked with battlefield evacuation. These arrangements were the result of an appreciation of the situation at Butterworth and a plan I prepared following my deployment in advance of D Company being deployed to the airbase. That plan included integrating our measures with measures involving the RAAF hospital as directed in the base defence plan.

I am in no doubt the command team of D Company expected that in the event of an attack on the airbase that our Company would incur casualties as our role was a key part of the defence of the airbase, particularly in providing a QRF that was tasked to counter any penetration of the perimeter by stopping the enemy and then to counter attack by killing them and/or forcing them to withdraw.

Gary McKay

24 April 2023

SUPPLEMENTARY STATEMENT BY LTCOL (R) A.H.JENSEN MG

RIFLE COMPANY BUTTERWORTH

Ref: RCB review group submission 65b

As stated in the reference, I was OC B Coy 2/4 RAR which was deployed to RAAF Base Butterworth from August to December 1975 to protect the RAAF Base.

My role was to provide a ready reaction force against Communist Terrorists (CT) incursions into the Base. I expected that this would involve fire and movement in contact with the enemy and we could have casualties.

We knew that CT were armed with 82 and 60 mm mortars, Chicom rifles and machine guns as well as some rockets and 3.5 inch anti tank rocket launchers.

Pre deployment briefing referred to CT attacks in the area 10 to 25 km from Butterworth which were increasing during the period leading up to our deployment in Sep 75. JIO reports have since shown some 57 incidents in 1974 and then another 174 incidents up to Oct 75.

6 Malay Infantry Brigade barracks at Sungei Patani some 30 km North of Butterworth was attacked in Oct 75 and the training and live firing ranges at Gurun some 55 km North of Butterworth was attacked about the same time.

There was no doubt that RAAF Butterworth Base was a potential target for harassing fire and limited ground attack.

I briefed my Platoon Commanders on this very real enemy threat and my company were well aware of their Rules of Engagement.

Our planning included rapid reaction to perimeter attacks as well as casualty evacuation to the company aid post and then to the base hospital.

Whilst at RAAF Butterworth we regularly saw Malay Air Force Jets taking off to provide fighter ground support to Malay Infantry involved in contacts with the CT.

In the event the airbase was attacked we would have incurred casualties. In addition, my platoons were required to travel to the firing ranges at Gurun and the roads to the north of Butterworth were regularly subject to ambush by the CTs. If these convoys had been attacked we would have incurred casualties.

A.H. Jensen

EXPECTATION OF CASUALTIES – STATEMENT BY 1203062 LTCOL R J LINWOOD, ASM (Retd)

I was the Officer Commanding B Coy 1 RAR (RCB) at ABB from 9 Dec 81 to 17 Feb 82.

Higher Direction

Our pre-deployment training accorded with the General Directive at the time (Documents 19790706 and 19790706A- *Field Force Command Staff Instruction 2/79 – General Instructions for the Australian Rifle Company at Butterworth*). The following elements of that document might be re-visited in order to make context of this statement:

- Para 7a – Inclusion of two medics.
- Para 22 – possibility of encounters with ‘belligerents’ while outside the base on training.
- Para 23a – availability of SAR rotary aircraft.
- Para 118 – operational ammunition AS WELL AS training ammunition.
- Annex A - Rules of Engagement.
- Annex B – Pre-deployment security training.
- Annex C - Carriage of ball ammunition on field training activities.

All other RCBs (at least from Sep 73 when the reinforced companies deployed direct from Australia) were governed by this, or a similar, directive from the Mounting Authority. All directives in turn referenced the applicable higher (classified) as listed in Annex F to Submission 066. This means that all RCBs’ actions regarding expectation of casualties were based on higher direction.

In my company’s specific case the following experiences are pertinent.

Pre-deployment preparation

Following the prescribed training requirement, we spent six weeks confirming competence in the set tasks. All tasks included the possibility of both battle casualties and non-battle casualties. Individual first aid training for DP1 readiness required all ranks to be trained and tested in the management of battlefield trauma. This includes gunshot wounds, blast and fragmentation/penetrating trauma, fracture management, resuscitation, field stretcher use and battlefield medevac procedures by stretcher bearer carriage, vehicle and rotary aircraft.

A three-day First Aid course using the standard syllabus of the time was conducted. High emphasis was placed on the use of graphic imagery of real war wounds from Vietnam, along with moulage and other scenario simulations to maximise training realism and prepare soldiers for what they might face for real. This training involved the Regimental Medical Officer and his senior NCOs who were Royal Australian Army Medical Corps (RAAMC) specialists, as well as the Infantry medics of junior NCO rank.

My commanding officer, himself a veteran of the Malayan Emergency 1948-60 and Vietnam, endorsed and encouraged this component of the preparation, knowing full well that if RCB were engaged in a firefight, casualties would almost certainly occur.

In-country deployment

RCB’s real primary task is well established. There was no doubt that had a shooting engagement occurred whether inside the base, or during training outside of it, real casualties would have eventuated. To that end, all ranks carried personal shell dressings (*Figure 1*). These are used for the immediate staunching of ‘bleed-out’ in the case of penetrating trauma. Per our SOP, these were taped to the upper left part of all rank’s field webbing which means anyone can find one on a casualty, even in the dark. Every man also carried a stretcher liner which doubles up in the Infantry as a field stretcher when two poles are fixed through each side; a field expedient additional to permanent stretchers carried at times by stretcher bearers. Every section



of 10 men also carried a substantial medical kit of supplementary wounding first aid supplies. The two medics assigned to RCB as mandated extras both carried advanced kits with resuscitation and more advanced first aid items including certain drugs that only RAAMC were allowed to carry and use when operationally deployed.

Ongoing practice and simulation, given the expectation of casualties, occurred at ABB (*Figure 2*). Using the experiences of our Vietnam veteran members of my RCB company, we created scenarios for all possible wounds that might accrue. People don't just get shot in a firefight; at ABB there was also the known possibility of incoming indirect fire which generates blast (pressure and burns) and fragmentation. Indeed, this had already happened at another air base previously where rocket fire had been suffered. Note from *Figure 1* that my company also wore helmets on occasions to condition troops for this possibility had we received indirect fire.

Our company practised all modes of casualty evacuation mentioned above, as exemplified in *Figure 3*. We also deployed RAAF ambulance and other vehicles using both the field expedient and issued stretchers, moving simulated casualties from the point of injury to the Emergency entrance at 4 RAAF Hospital. At least two of these scenario-based medevac activities also included RAAF medical personnel; had real casualties occurred, they would be handling the casualties when we brought them in. In fact, my company had several real non-battle casualties including a SAR aerial medevac from the Kulim area.

Ask any RCB veteran who deployed; they were in no doubt that any of us could become battle casualties. It is the lot of the Infantry.

Post-deployment

A review of my post-deployment report (Document 19820216) indicates a commander's mindset at the time that casualties were indeed expected and therefore had to be planned for. Comments about combat enhancement – increased types of ammunition, sniper deployment - indicate that we company commanders were under no illusion regarding why we were at ABB. That was to fight if necessary to carry out the real tasks in our classified directives. That, and the role of Infantry needed to carry them out means a clear expectation of casualties which one has to prepare for as an integral element of what Army knows as '*battle procedure*'. Not to be so ready would be nothing less than dereliction of duty and the potential loss of soldiers' lives by commanders.

Wider evidence of expectation of casualties

The Tribunal is invited to review Annex L to Submission 066 for a wider perspective within which my own experiences sit.

RJ Linwood, ASM

LTCOL (Retd)

OC B Coy 1 RAR (RCB)





Figure 1. Shell dressings taped to upper left webbing strap (near the heart)



Figure 2. Realistic in-country battlefield trauma training. This photo is not of my company, but we did the same thing, typical of the serious approach taken to handling expected casualties. Veterans will confirm the location is the RCB's spartan barracks at ABB



Figure 3. SAR-based medevac training at ABB