

Defence responses to remaining questions identified as ‘undertaking further work’ in Defence Supplementary Submission EC23-000372 of 31 Jan 23 and topics raised at or subsequent to the Inquiry Hearings on 3/4 April 2023

28 Apr 23

INQUIRY INTO MEDALLIC RECOGNITION FOR SERVICE WITH RIFLE COMPANY BUTTERWORTH

1. Remaining questions identified as ‘undertaking further work’ in Defence Supplementary Submission EC23-000372 of 31 Jan 23.

Rules of Engagement:

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

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

Defence has no information to provide in relation to these questions.

2. Topics raised at or subsequent to the Inquiry Hearings on 3/4 April 2023.

- a. Threat/Expectation of Casualties

During the period of service at Butterworth the relevant assessment of threat was that conducted by the Joint Intelligence Organisation (JIO). JIO reports include the term ‘unlikely’. For example, JIO Study No. 14/74 Issued Sep. 1974 included the assessment that ‘it is unlikely that any threat to Air Base Butterworth will arise from an external overt military attack on Malaysia’.

For current operations, Military Threat Assessments (MTA) provide assessments of the threat to ADF personnel and capabilities. MTAs express threat in levels – Very Low to Very High. Defence refers to our response to question 6(b) in submission 096b of 31 January 2023 concerning Military Threat Assessments.

- b. Substantially more dangerous

Defence acknowledge the use of ‘substantially more dangerous than peacetime service’ in submissions to Government and letters to individuals in the period 2011-2013. No information has been identified to explain why the term ‘substantially’ appeared in these documents.

- c. Clarke review

Defence has not identified any further relevant documents relating to the Clarke review.

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d. Australian Treaty Series 1971 No 21.

Further to the documents identified, Defence has located and refers the Tribunal to Australian Treaty Series 1971 No 21.

[Five Power Defence Arrangements \[1971\] ATS 21 \(austlii.edu.au\)](https://austlii.edu.au/au/other/dfat/special/FivePowerDefenceArrangements1971ATS21)

e. Veteran submissions and information

Defence acknowledge and note the additional information and submissions provided by veterans to the Tribunal at, or subsequent to, the Inquiry hearings of 3/4 April 2023.

f. Definitions

Defence acknowledge the Tribunal’s view on the meaning and intent of the term ‘aligned’ in the 1993 Cabinet Document recommendation related to the award of medals.

Defence’s view, as detailed in previous submissions, remains that the 1993 Cabinet definitions for “warlike” and “non-warlike” do not apply directly to the terms within the medal regulations.

The suggestion that Cabinet intended that the 1993 definitions of “warlike” or “non-warlike” were to be applied directly to and/or operate as an independent test for consideration of whether an operation was to be recommended for a medal, is not in Defence’s view supported by:

- the use of the discretionary term ‘may be recommended’ in the column ‘Medals’ in the table at attachment D of the 1993 Cabinet document;
- the contents, recommendations and outcomes of CIDA, Mohr and Clarke reviews subsequent to 1993;
- Government’s 2001 approval of the ADF Medals Policy and in particular the conditions for the award of the Australian Service Medal including where there was no declaration of “non-warlike”;
- evidence of successive Government’s recommendations to the Governor-General for medal declarations for “non-warlike” service where there was no nature of service classification (nor an independent assessment of service against 1993 definitions) or a classification of “peacetime”; and/or
- the process and practice followed by Defence to consider medallic recognition, the outcomes of which have been presented to and accepted by successive Governments.

The assessment and classification of nature of service occurs prior to or shortly after the commencement of an ADF operation. It may change during the deployment. However, consideration for medallic recognition only occurs at a later date and ultimately is a discretionary decision based on consideration of multiple relevant factors.

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The process and practice for the recommendation for the award of any medal commences on receipt of a request to consider medallic recognition. The consideration of medallic recognition may include a number of relevant factors including a nature of service classification (the outcome of a nature of service assessment and not the assessment itself), the number of ADF members involved, the duration of an operation, existing medallic recognition for that service such as foreign awards and/or existing Australian awards which could be applied to that service. An assessment or an independent test of service against the definitions of “warlike”, “non-warlike” or “peacetime” does not occur as part of the consideration for medallic recognition.

Following consideration of relevant factors, Defence may recommend to the Minister that they recommend to the Governor-General that they declare an operation for the purpose of medallic recognition.