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**TRANSCRIPT OF PROCEEDINGS
TRANSCRIPT-IN-CONFIDENCE**

**DEFENCE HONOURS AND AWARDS APPEALS
TRIBUNAL**

PANEL:

MR STEPHEN SKEHILL, Chair

AIR COMMODORE TONY GRADY (Ret'd), Member

REAR ADMIRAL ALLAN DU TOIT (Ret'd), Member

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

MONDAY 03 APRIL 2023

ROYAL ON THE PARK HOTEL, BRISBANE

DHAAT RCB 03/04/2023

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Transcript-in-Confidence

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HEARING COMMENCED

THE CHAIR: Right. Good morning, everybody.

5 On behalf of Rear Admiral du Toit, Air Commodore Grady, and myself, I welcome you all. And thank you for your presence. We are going to have a couple of busy days.

10 So, I just wanted to say at the outset, I'd be grateful if everyone could keep what they need to say to what they need to say.

15 Defence has not challenged any of the facts asserted by veterans in these submissions, with two exceptions which I think are irrelevant. And that means that essentially these two days are devoted to working out what we should make of the uncontested facts.

20 The veterans' groups have asked that we hear from a number of witnesses. And we are happy to do that. but again, I would hope that those witnesses, who have all made submissions, wouldn't be repeating everything they've said in their submissions. They're welcome to add new assertions of fact if they wish. And they are welcome to emphasise those asserted facts that they think are most pertinent. But I am keen that we make the most of the day and tomorrow by focusing on the application of the law and the rules to what are essentially uncontested facts.

25 We'll—I don't think we'll take a break before lunch. But we'll certainly take a break during the afternoon. And I don't want to set a time by which we'll necessarily stop in the afternoon. I think when exhaustion sets in, we might pull up stumps. But I am keen to make the most of these two days, they're very valuable.

30 Beyond that, I don't want to make any other opening remarks such as I made at the commencement of the hearings in Canberra in November. I just ask that you take those as read.

35 Now the first item on the agenda is to invite a submission from the representative groups, which I understand you've asked to make. And we'll happily hear that. And Defence will obviously have an opportunity to respond.

40

So, I don't know who's taking the running.

MR FULCHER: I will do that.

THE CHAIR: Okay. Thanks, Mr Fulcher.

MR FULCHER: We've got a document that we've put together just to highlight the official awareness of the threat to the base. We've only got one copy here today. But we'll send you that electronically as soon as we can.

THE CHAIR: Okay, thank you.

LIEUTENANT COLONEL MICKELBERG: Do I email that to Mr (indistinct)?

THE CHAIR: Yes, please, if you would. To both would be great.

MR FULCHER: Okay. So, I'm speaking for the Rifle Company Butterworth Review Group. And this is—it's largely an overview of our—just stuff we want to say about the Defence submission.

So the latest Defence submission provides the Tribunal with an insight into the approach that Defence has taken towards RCB veterans over many years. It goes some way to explain the frustration you may hear in our voices from time to time.

This submission is indicative of the Defence approach and that it continues to make claims unsupported by any evidence. Defence makes little effort to acknowledge the substantial body of evidence, on public record, put to the Tribunal by the veteran groups and previously presented to Defence from our research.

Defence intimates, in its response, that specialist defence assets would not be used to investigate RCB group claims and submissions as this matter was not considered a priority.

Defence's failure to address important questions put to it by the Tribunal, such as the comparison of service matrix, the military threat assessment, and the changed role of RCB, is all too familiar to the veterans in this room. And is part of the reason that so many here have made, or are making, submissions to the Royal Commission into Veteran Suicide.

It is also disappointing, as Defence has previously said, that the Tribunal was the most appropriate forum to review RCB recognition but now fails to provide the Tribunal with the information it requests to do that job.

Veterans have provided a lot of evidence to the Tribunal, including the comparative service matrix. All defence provides is an excuse that it does

not compare service. There are two things to say about this excuse. One, it's not true. And two, Defence is required to compare service under its own and government policy.

5 As to the truth of the matter, I just want to read a short passage from a letter from Minister Billson to the former Chair of the RCB Group in 2007. And this was a letter from Mr Billson that—well it was going to be non-warlike. But it says:

10 *By way of comparison, units that were allotted for duty in the same broad time period were fighting in South Vietnam and were engaged in operations in Borneo, Sarawak, and other parts of Malaya. Defence considers that to reclassify the activities of the RCB in Malaya from 1970 to 1989 as warlike, or comparable to other periods of special duty in the same region at the same time would not be appropriate.*

20 So, Defence is happy to compare RCB service with dissimilar service in order to justify denying the RCB claim but is unwilling to compare RCB service with comparable service in the matrix because that is against Defence policy.

25 As to the requirement, the CIDA inquiry, the Committee of Inquiry of Defence Awards, and I know we're going to go into the medals policy later, but the medals policy reiterates the importance of the CIDA principles.

And principle three says:

30 *That to maintain the inherent fairness and integrity of Australian system on honours and awards, care must be taken that in recognising service by some the comparable service of others is not overlooked or degraded.*

35 But for RCB, Defence simply refuses to apply this principle, even though it is endorsed by its own medals policy. It begs the question, how does Defence account for the comparable service of others without comparing service? In its own policy, defence note that this principle, as with others from the CIDA inquiry is important, particularly when assessing past activities like RCB.

40 In response to the Tribunals question on the changed role of the RCB, Defence speaks a lot about the RAAF and not at all about RCB's role in enclosure four of their submission. Which is strange because the reason

was clearly explained by the Chief of Defence Force in 2001. And he said:

5 *In February '88, the then Minister for Defence announced a reduction of the RAAF presence at Butterworth. In December '89, Chin Peng, Leader of the Malaysian Communist Party, signed a peace accord with the Malaysian government. These events resulted in the RAAF presence being dramatically reduced and the quick reaction role of RCB abolished.*

10 *Since 1989 Butterworth has provided a good overseas training ground for Army personnel, albeit still under the name of RCB. The key element was the end of hostilities between the Malaysian Communist Party and the Malaysian government. As the quick reaction force role ended shortly after the peace accord, within a couple of days, I believe, after the accord was signed in 1989. That is, RCB was no longer tasked to meet the communist terrorist threat because there wasn't one, the war was over.*

20 The New Zealand Report makes some important points regarding the difficulties of retrospective reclassification that are pertinent to Defence's latest submission. Missing documents is one issue, the report points to as problematic. And Defence appears consistently unable to find important documents.

25 Another is the problem hindsight, knowing what actually happened and applying that to the determination rather than assessing what was known or believed at the time of the service. Defence does this throughout its submission.

30 One can only assume that it has done this as looking at what was known at the time rather than what is known now would not support its narrative.

35 Defence continues to ignore a best pay lip service to the knowledge and experience the RCB and RAAF veterans have of their deployments to Butterworth.

40 Another pitfall identified by the New Zealand Report is overreliance on the wording in official documents, rather than examining what the reality on the ground was. Again, Defence has no regard for what the reality was. This can be determined from a plethora of documents, and from the veterans themselves, but prefers to point at words and phrases in official documents far removed from the area of operations.

Even here at this examination is at best superficial. It does not address key documents. For instance, the Defence committee admitted in 1973 that said when the RCB is sent from Australia for security duties at Butterworth it could be put out publicly as being for training purposes.

5

The shared Defence plan of Butterworth, which makes Airbase Butterworth, all its assets and personnel, both Australian and Malaysian, a single entity for Defence situations and place them under the command of the OC RAAF Butterworth. It provides clear operational tasking for RCB in the defence of the airbase and unambiguous rules of engagement.

10

In 1973, the Chief of the General Staff visited Butterworth, and in a briefing to him it was noted that there were increased concerns about the possible threat to base security.

15

The Joint Intelligence Organisation Study of 1975 comprehensively examines Butterworth security to a degree that likely CT attack approaches and possible methods of attack are identified. The same study lists 123 communist terrorist siting's and incidents in proximity to Airbase Butterworth. All Defence has to say about this important study is that it puts the threat to Butterworth as low, all in uppercase.

20

But that word, low, does not appear anywhere in the document in either upper or lower case.

25

Defence emphasises training but has had no regard to the minutes of the Chief of Staff Committee of October 1973 which recorded that the Chief of Air Staff, quote:

30

Supported the Chief of the Naval Staff's comment that in moving away from Butterworth for the training the committee was losing site in the primary of the company.

The Defence submission is significantly flawed because it provides no evidence to support its assertions, it's internally contradictory, ignores major pieces of evidence, fails to answer important questions, and is a replete with irrelevant information and inaccuracies.

35

Thank you.

40

THE CHAIR: Okay. Thank you, Mr Fulcher.

I gather you were reading from a document.

45

MR FULCHER: Yes.

THE CHAIR: It might be helpful to us if you could email that to us.

MR FULCHER: Yes.

5

THE CHAIR: And if you would also copy that into Defence at the same time.

MR FULCHER: Yes.

10

THE CHAIR: And Colonel Mickelberg, the document that has been tendered, if you wouldn't mind, you were going to email that to us. Could you also email it to Defence.

15

LIEUTENANT COLONEL MICKELBERG: I don't have an email address for them.

THE CHAIR: Okay. We'll do it.

20

LIEUTENANT COLONEL MICKELBERG: I've sent it to Mr Kopplemann and (indistinct).

THE CHAIR: Yes, all right. We'll make sure that Defence has it.

25

LIEUTENANT COLONEL MICKELBERG: And I'll get the opening statement to them as well.,

30

THE CHAIR: Yes. Now you have tendered this document, which I haven't obviously read, but appears to be a series of quite strong documents that are noted about the threat to Airbase Butterworth. Thank you for that. Are there any other documents that you want to tender at this time?

35

LIEUTENANT COLONEL MICKELBERG: No.

THE CHAIR: Okay, thank you.

40

LIEUTENANT COLONEL MICKELBERG: But the intention there, Mr Chair, is that at some stage, during the agenda, we're going to address ROE threat and the expectation of casualties.

THE CHAIR: Yes.

45

LIEUTENANT COLONEL MICKELBERG: That document will be germane to that.

THE CHAIR: Certainly.

5 LIEUTENANT COLONEL MICKELBERG: But we're handing it up now because we were asked to hand up documents.

THE CHAIR: Yes. No, that's excellent. Thank you very much. Dr Robards, are you wishing to make an opening statement?

10 DR ROBARDS: Some direct (indistinct) will be made. No, I have got an opening statement on behalf of Defence.

THE CHAIR: Okay, thank you. Brigadier?

15 BRIGADIER HOLMES: Thank you, Chair, Admiral du Toit, and Air Commodore Grady.

20 As we start this session today, I would like to acknowledge the traditional custodians of the land in which we are meeting. I pay my respects to their elders, past, present, and emerging.

25 I would also like to pay respects to the Aboriginal and Torres Strait Islander men and women, they are a proud history of service in the Australian Defence Force, the defence of Australia, in times of peace and war.

30 We also acknowledge the veterans who are attending today's proceedings in person, the Veterans Advocates, families, and other persons who are observing the proceedings through live screen.

I'd also take this opportunity to recognise the recent passing of a Defence honours and awards appeal Tribunal member, Rear Admiral James Goldrick.

35 Rear Admiral Goldrick's significant service in the Navy and Defence is well known and admired. However, his large contribution to this Tribunal may not be as well appreciated.

40 Chair, to you and the other members of the Tribunal, and the support team in particular, who are Rear Admiral Goldrick's colleagues and friends, we pass on our condolences, and we thank him for his services. Lest we forget.

45 THE CHAIR: Thank you, Brigadier. Those words are very well said. And James is a very sad loss. But let's go on.

BRIGADIER HOLMES: Thank you, Chair.

5 My name is Brigadier Mark Holmes. I have several responsibilities.
However, relevant to today's proceedings are in my role as a Reviewing
Officer for Nature of Service Directorate, in the Australian Defence Force
Headquarters.

10 And Dr Paul Robards, is the Acting Assistant Secretary of People
Services. Defence Honours and Awards Directorate is within People
Services Division of the Defence People Group.

15 We also have with us today, Colonel Damian Copeland, sitting behind me,
who is the Director of Operations and International Law in our Military
Legal Services. And he will support our discussions around rules of
engagement and any of the things that you might wish to ask of Defence
and the rules of engagement later on today.

20 Chair, we thank you for the opportunity to be here today on behalf of
General Angus Campbell, Chief of Defence Force, we acknowledge the
important work that the Tribunal is undertaking with this inquiry into
medallic recognition for service with Rifle Company Butterworth.

25 At the outset, we would like to restate the Defence position. Defence
maintains a position that the service at Butterworth in Malaysia from 1970
to 1989 was not warlike service and does not meet the criteria for warlike
service. It is appropriately classified as peace time service and the
medallic recognition afforded to that service, through two Australian
service medal variants is also appropriate.

30 This inquiry was directed by the previous government which has asked the
Tribunal to have regards to the New Zealand government's recent decision
to extend eligibility for the New Zealand Operation Service Medal to a
larger portion of New Zealand Armed Forces personnel, who served in
35 Malaysia and Singapore between 1959 and 1974.

40 The Tribunal was asked to consider whether this decision should bring
about any change to the Australian Medallic Recognition for Service with
Rifle Company Butterworth between 1970 and 1989, including whether
that service should be recognised with an Australian active service medal.

45 Australia has long provided medallic recognition to Australian veterans
who served in Malaysia. The new recognition for a particular cohort of
New Zealand veterans provides a level of parity with Australian medallic
recognition for similar service.

Australia though, extends medallic recognition through to 1989. Whereas the New Zealand report only recommended medallic recognition to 1 January 1974.

5

The New Zealand report also found that New Zealand service in Malaysia from 1974 to 1989 was non-operational and therefore does not meet the most important criteria for medallic recognition as operational service. The New Zealand report made no case for warlike service recognition and in Defence's view it has no impact on Australian recognition.

10

In considering the service of Rifle Company Butterworth veterans it is also important the service of other personnel at Butterworth is not overlooked. In particular I refer to the Royal Australian Air Force, many of whom were posted to the Airbase Butterworth with their families, and other Australian Defence Force personnel who served in Butterworth.

15

As a small footnote, Defence would like to thank Mr O'Haire in his submission of 135, for seeking clarification, that in our submission we incorrectly stated the death of Private Sutherland, who was in fact a member 6 RAR on exercise in Malaysia who with that unit in Singapore, who died on 7 October 1971 by lightning strike. He was not a member of the Rifle Company Butterworth. So we will correct that record here today.

20

25

I appreciate the panel will have a number of questions of Defence today. We will endeavour to answer them to the fullest of our ability, Chair. However, I would welcome the opportunity to take further questions on notice as we have done throughout.

30

We have, Chair, completed additional work on question opposed. And in accordance with the agenda we'll table those with you, if you wish, or answer them as they come about today. I seek your guidance.

35

The remaining Defence representatives and I here, thank the Tribunal for the opportunity to support this inquiry and look forward to providing the information to help with your consideration.

Thank you, Chair.

40

THE CHAIR: Thank you, Brigadier. These—sorry. Please, come back to you. These folders that have appeared on our desk, are they—

LIEUTENANT COLONEL MICKELBERG: They're from us.

45

THE CHAIR: They're from you? Okay. I wasn't aware of that.

THE CHAIR: Okay.

5 LIEUTENANT COLONEL MICKELBERG: Essentially, they will become relevant later in the hearing.

THE CHAIR: All right. Fine. Thank you for that. Brigadier, are there any further documents that you want to tender today?

10

BRIGADIER HOLMES: So we have the further responses to questions that we were unable to answer on 31 January—

THE CHAIR: Yes.

15

BRIGADIER HOLMES: Which we're able to send to Jae—Mr Coghlan or provide them to you.

THE CHAIR: All right. Well, we'd like to receive those as quickly as we can. So, if you can send those ASAP, like, you know, by lunch time at the latest, that would be good.

20

And does that answer all of the outstanding matters that you said in your January submission were receiving further work?

25

BRIGADIER HOLMES: So there are one or two questions that we're not sure are ours to answer—

THE CHAIR: Not?

30

BRIGADIER HOLMES: And we've made a note of those in or amongst it. So—

THE CHAIR: Okay. So—

35

BRIGADIER HOLMES: So yes, with the exception of two, which I don't believe are ours to answer but we've made that comment in the questions.

THE CHAIR: Okay.

40

And to the additional documents, that you're providing to us include any further end of tour reports?

BRIGADIER HOLMES: Other than those that we submitted on 31 January, no.

45

THE CHAIR: No. Okay.

5 BRIGADIER HOLMES: No, we have simply answered—so, Chair, I did
do the sums some time ago. But on 23 November we had 120 questions.
We answered 100 of them on 31 January. The remaining ones are on ten
pages.

10 THE CHAIR: Yes.

BRIGADIER HOLMES: Answering those.

THE CHAIR: Yes.

15 In the documents that you've previously provided there were, I think, 10
end of tour reports. By rights, there probably were between 70 and 80 end
of tour reports that were completed. When at least one veteran saw that
you provided 10, he communicated to us the view that they'd been
20 deliberately selected to cast service in a particular way.

And I think Mr Koppelman spoke to Mr Heldman(?) and said it would be
good if you could find and give us all of the end of tour reports. Do we
know—and I think, and Mr Heldman may need to answer this, I think
we've been told that that's all you could find at that time. Is that correct?

25 MR HELDMAN: That's correct, Chair. One of my staff members, Brett
Mitchell, liaised with Gail (indistinct) research cell, providing the same
access that we did to those documents.

30 THE CHAIR: Yes.

MR HELDMAN: And has found no further. That's the (indistinct).

35 THE CHAIR: Okay. So is Defence able to give—because we don't want
to set off another conspiracy theory, is Defence able to give an assurance
that those 10 end of tour reports were not deliberately chosen to reflect a
particular view, or to support a particular view, but were all that you were
able to locate at the time.

40 BRIGADIER HOLMES: So the latter, Chair. So the ones that we were
able to find at the time. As a standing request for information we will
seek as many as we can find.

45 THE CHAIR: Okay, thank you.

BRIGADIER HOLMES: Happy to share as many of those as can be found. If the submissions or the veterans have copies of them—

THE CHAIR: Yes.

5

BRIGADIER HOLMES: We would appreciate a copy of them.

THE CHAIR: I think you'll find, and I've tried to look—I tried locating it this morning, but I couldn't. But a recent submission to the Tribunal said—made reference to a named gentleman, who was another submitter, who apparently said that in 1990 he held a complete set of end of tour reports.

10

So it might be worthwhile—I'll try and find the reference. But you might look for it also. It would be good if we could get any others that might exist.

15

BRIGADIER HOLMES: Of course.

THE CHAIR: So, thank you for the questions that you answered previously. Thank you for the questions that you are now telling us you've answered and will give us. And hopefully that's not going to cause us to ask further questions.

20

BRIGADIER HOLMES: I have no doubt, Chair.

25

THE CHAIR: There is one answer that you've given though that is causing us concern. And that's what I read as an outright refusal to provide a detailed assessment at Attachment F to the RCB Review Group submission.

30

Attachment F, you might recall, is the table that seeks to analyse a whole lot of different service operations that have been either originally or subsequently classified as warlike. And it seeks to argue that those are equivalent or comparable to RCB service. And Mr Fulcher, in his opening statement, has particularly referred to your refusal to provide that assessment that we had asked for.

35

I'm disturbed that you didn't provide a written response. I think the three of us are disturbed. Instead you've said operations are not compared against each other to determine the nature of service. The nature of service assessments are not influenced by precedent. And operations are assessed on their own merits.

40

5 Now we certainly agree that every operation's got to be assessed on its own merits. But the suggestion that comparisons are not made or not relevant is contrary to the CIDA principles that were endorsed by government. And that Defence is, from time to time, asserted its complying with.

10 It's contrary to the whole rationale for the Mohr Review, contrary to the whole rationale of the Clark Review, contrary to a number of statements made by ministers over time, contrary to Defence's current practice in reviews before this Tribunal, individual reviews.

15 Now, we can't force you to provide a detailed response as we requested. But I have to say to you that your refusal leaves us in a position where we've got to think what we make of that refusal.

20 And it may be that your concern that a proper comparison with those other service operations would show that RCB service should be classified as warlike. Or alternatively it may be that that comparison would show that some other service operations have been wrongly classified as warlike. There doesn't seem to be a middle ground there.

25 So I need to put to you that your refusal to provide what we requested is unhelpful and leaves us in a position where we may be driven to one or other of those conclusions. Up to you if you want to respond to that. But I feel the need, in fairness, to put it on the table.

BRIGADIER HOLMES: I might make comment on a couple of things that you've mentioned there, Chair.

30 The conflation between the medallic recognition and nature of service, I think, is unhelpful. In the individual considerations that you have conducted, medallic recognition and comparisons in medallic recognition, are very, very, different from those of nature of service.

35 As it indicates in our enclosure, operations are not compared against each other to determine nature of service. The comparison table that has been provided, in the draft that we have seen some time ago, mixes up that terminology, mixes up medallic recognition with nature of service recognition, which are separate considerations.

40 Defence is not in a position to provide a comparison table, but leave open to you, Chair and your staff, to conduct your own comparison and to determine whether you wish to compare those elements or not.

45 Defence is not prepared to do that.

THE CHAIR: Okay. As I said, we're not in a position to be able to fortunately do it.

5 I have to say to you though that your suggestion that medallic recognition and nature of service are different propositions, and you know, you talk about conflating, is something that we discussed at the earlier hearing. And it's something that we will discuss later today, but it's something on which we remain to be convinced. We think very much, at this stage, that
10 the definition of warlike and non-warlike for medallic purposes is no different than it is to the definitions for the nature of service. But we will come to that later in the day.

15 MR FULCHER: If I could say something on that, Chair.

THE CHAIR: Yes.

20 MR FULCHER: I can find it, I can't exactly remember where I read it in the documents, but it's to do with the break in the nexus between medallic recognition and veterans' entitlements, which I think is what the Brigadier is talking about.

25 It's very clear in there that they wanted to break the nexus because they didn't want people not to get a medal in fear that they would then be entitled to veterans' entitlements. So, the thinking of Defence, or whoever decides these things, was if we give them a medal, they'll get entitlements and we can't afford that, so we won't give them a medal. And they wanted to break that nexus and say, if you give them a medal and then you've got to assess them against the—for their entitlements. They can do
30 that separately.

Defence wants to turn it around, I think, and use the break in nexus between medals to do precisely that, deny entitlements. And I don't think that that was the intent of the breaking of that nexus.
35

THE CHAIR: Yes. Well if you can locate—

MR FULCHER: Yes.

40 THE CHAIR: —what—the document you're referring to, you might draw it to our attention.

BRIGADIER HOLMES: Chair if I can just clarify my remarks.

45 THE CHAIR: Yes.

BRIGADIER HOLMES: I'm not here to talk about veterans in five minutes because our representatives, I can't see at the table, so I'm not an expert in that area.

5

The nature of service is prepared and conducted and assessed before the operation commenced, before soldiers get medallic recognition occurs after, some time after as we know.

10 THE CHAIR: We know.

BRIGADIER HOLMES: So in terms of a nexus between the two, one is preparing for deployments, operations, and conducting of activities. The other is recognising what has happened—

15

THE CHAIR: Yes.

BRIGADIER HOLMES: —at the end. The veterans' entitlements piece is connected to the front, not the medals at the back.

20

THE CHAIR: Yes, look—

BRIGADIER HOLMES: So at the end—if I might—

25 LIEUTENANT MICKELBERG: (Indistinct) changed too. I mean, I can give you any number of examples, and I'm sure the men can, where service has been reclassified. Rwanda is one, Namibia is another.

30 THE CHAIR: Yes. Now Mr Hannaford I cut you off earlier on and I said I'd come back to you—

MR HANNAFORD: Chair, we'd like an opportunity to speak—

35 THE CHAIR: Right, okay. Yes, of course. Just before you do, this issue of the interrelationship between nature of service, veterans' entitlements and medallic recognition is important. And we will come back to it later in the day or tomorrow depending on—

40 BRIGADIER HOLMES: Every review and government decision for the last 20 years have done the same thing, Chair. I imagine you'll do the same—

THE CHAIR: Yes.

45 BRIGADIER HOLMES: —reviewed and unpicked it all.

THE CHAIR: Mr Hannaford.

5 MR KELLY: Before I start, Chair, and I might be wrong, but I suspect that the fellow who has the custody of those end of tour reports might be in this room today.

THE CHAIR: Right. I hope he is.

10 MR KELLY: It will be Colonel Linwood.

THE CHAIR: No, that's not the name. I would have recognised that name.

15 MR KELLY: Okay.

THE CHAIR: Yes.

20 MR KELLY: Well, if I may, prior to the last public hearing, Defence indicated that they held the belief that the Tribunal was the most appropriate venue for this inquiry and that they would support any finding made by the Tribunal. I'm paraphrasing there.

25 At that public hearing, the Chair directed Defence to not continue in the pursuit of either claim that service at RCB was peace time service. Defence ignored those directions.

30 The Chair indicated that a raft of questions would be sent to all parties for a response by a reasonable time. Defence largely ignored the questions or claimed the evidence was not found, despite it being largely present in the submissions of veterans.

35 Over the course of the RCB claims, Defence has gone from a position of denial that the communist insurgency ever took place, to a renewed position that Australian troops were never invited to participate. And underlying all that, is the perennial deception of the training lie. The totality of Defences positions cannot coexist. One has to ask, whose side are they on?

40 In the faith of irreputable primary evidence, Defence has prevaricated and obfuscated at every turn, including briefing successive ministers in accordance with their position to further deny RCB veterans their rightful claim. Why would they do that?

It's likely that submissions made by Defence are more a reflection of their feared act should the RCB veterans be successful in gaining recognition of their services, more like Defence will have to defend similar applications from other groups.

5

Rather than admit that they have failed all these veterans, Defence should accept the reality of the situations brought about by mismanagement, and in some case, ignorance of the outcomes of some earlier decisions. Yet, Defence appears to want to bury their heads in the sand and hope it'll all go away.

10

We, the RCB veterans, have stood by and witnesses Defence civilians, and senior officers, refuse to accept that in fact there was an internal conflict occurring in Malaysia during the period '68 to '89. Decisions being made without taking one scrap of notice whatsoever of what the deployed RCB soldiers on the ground at the time had to say or what the supporting primary evidence reveals to be the facts of the situation.

15

We've all seen the recent case of Trooper Schulz whose being tried by media, without any consideration being given to what was happening on the ground at the time. Armchair Generals are passing judgement on troops and their lived experience.

20

Prime Minister Billy Hughes said, "When you come back, we'll look after you." That commitment rings hollow in the present day. It manifests itself in the Royal Commission on veteran suicide.

25

At the last public hearing, the Chair discounted the merit of examining the circumstances of RCB service in the context of the prevailing legislation. In fact, there is a presumption that legislation not be applied retrospectively. It's a kin to moving the goal posts after the game has started.

30

It was Lord Denning who said, in *Roe v Minister of Health*, "We must not look at the 1947 incident with 1954 spectacles".

35

It remains our position that the incurred data test is both correct and relevant in the examination of the circumstances of RCB service, and not the later definitions for legislation. However, if in the alternative the Tribunal wants to examine RCB service in the light of more recent definitions, it is our position that the only substantive position between non-warlike service and warlike service is the possibility of direct contact with an identified enemy.

40

5 From the primary evidence, it is abundantly clear that there was a strong possibility that any contact with the communist terrorists would be direct, and there was a likelihood of casualties. Such contact would be more likely by virtue of the activities of the QRF, the Quick Reaction Force, whose sole purpose was to engage in combat with any individual or group who attempted to, or was successful in, breaching the airbase perimeter, at which point rules of engagement are irrelevant.

10 Activities external to the airbase also carry the possibility of contact with the communist terrorists and should not be discounted. Four RAAF hospital was available to receive casualties on 24-7 basis.

That ends my submission, Chair.

15 THE CHAIR: Thank you, Mr Kelly. I'll give Defence an opportunity to respond to that in a minute—

MR KELLY: And I'll send it to you.

20 THE CHAIR: Thank you. If you would send it.

MR KELLY: No problem.

25 THE CHAIR: I just want to correct a couple of things that you said there.

At the last hearings, the Tribunal did not direct Defence that it couldn't argue that RCB service was peace time. What we said was that, as things stood at the time we saw the competition as between—the contest as between warlike and non-warlike. Defence is perfectly entitled, if it wishes, and it does apparently, to argue that RCB service was peace time. That's something that the Tribunal will obviously have to consider.

30 I think there was something else you said there that I thought was incorrect. It probably doesn't matter much. But I think it was around the application of—

MR KELLY: Incurred danger test.

35 THE CHAIR: Incurred danger test and previous legislation.

40 What I said to you at the last hearing was that if you try to apply the previous legislation it doesn't get you what you're seeking.

MR KELLY: Yes, true. True.

45

THE CHAIR: So, under the DEA the incurred danger test is applicable only to schedule 2 service and RCB service is not in schedule 2—under the act, schedule 2. Under the act as it stands, if you’re going to get the veterans entitlements that you seek, you need a ministerial declaration of warlike service. And incurred danger is not in the definition of warlike service.

Nor will it get you an AASM. And it’s similarly the case with allotted for service. Allotment is not a criteria for the AASM. It is a criteria under the VA for some other service. So, you know, it’s important that I say to you again that pushing for the application of previous law, which is no longer applicable. It can’t get you what you’re seeking.

The current law can if you meet the tests in it. And that’s the—that’s what we’re approaching this on.

It’s also the case that if you look at the previous law, which for most of the period was the Special Overseas Service Act, allotment is not a key criteria. The key criteria is warlike operations.

A test for allotment, that was put down in a ’63 Cabinet decision, only applies where you’ve got a warlike operation.

So, you know, we need to be careful. I’m concerned that you’re not talk yourself out of what you’re seeking. We’re trying to assess whether you can get what you’re seeking by reference to what is applicable law today.

Because you can’t get a service pension under a repealed Act, and you can’t get a AASM unless you meet the test for the AASM. So it’s – you know, important that I try to correct that. And that was, you know, a large focus of our discussions on the previous occasion. Now, Defence, Mr Kelly, said some things about your approach and your attitude. I don’t know whether you want to respond to it.

BRIGADIER HOLMES: I might just clarify a couple of things, Chair.

THE CHAIR: Yes.

BRIGADIER HOLMES: And you’ve done part of that work already, thank you. We wrote down our words very deliberately, and I think I have been misquoted. I just want to clarify. I say two sentences here that enforces our work with the Tribunal. “We should acknowledge the important work the Tribunal is undertaking with the Inquiry into Medallic Recognition for Service with Rifle Company Butterworth, and the Defence representatives here and myself thank the Tribunal for the opportunity to support this

inquiry and look forward to providing information to help with other – your other considerations.”

5 The comment that we are going to apply the things that you suggest or talk about until we’ve had a report agreed by government recommendations and through is not what I’m implying here. I’m saying that I am going to help you understand the things and try and answer your questions as best of my ability. The Australian Government doesn’t recognise that there was a second insurgency. As a government department, the Department of
10 Defence can’t make comment to that and will not be making comment to that, as a department of our government. It’s not in the official history. It’s not in our government records as saying so. So I am unable to clarify that any further.

15 My understanding, Chair, is we’re talking about RCB deployments. We’re not talking about all of the other things. And whether this effects other deployments, other operations, other veteran service, that is now our concern. We are supporting your consideration of RCB medallic recognition. The comment about the quick reaction force being engaging
20 in combat, I think I’ll reserve remarks on that when we talk about rules of engagement and a clarification about those rules of engagement. I’m happy to entertain a little bit here if you wish, but I think you’ve got that on the agenda, and I think we can cover that at a later time.

25 THE CHAIR: Yes. And look, just because it’s been a recurring issue, it seems to me that the question of whether or not there was a declared second emergency in Malaysia isn’t relevant. That – if there was, that was between the Malaysian Government and the communist terrorists. What is relevant is the threat of communist terrorists to Air Base Butterworth and to
30 Australian personnel and assets there. And that threat can exist completely regardless of - - -

LIEUTENANT COLONEL MICKELBERG: In isolation.

35 THE CHAIR: Yes. In isolation. So I just think that’s a – it might be an interesting historical issue, but I don’t think it’s relevant.

LIEUTENANT COLONEL MICKELBERG: Yes. I personally agree with you. But I think the point that Peter was making is that Defence for years
40 has consistently denied that there was a second emergency. Now, our Malaysian allies suggest otherwise. Indeed, the Malaysian CDF on the 50th anniversary of RCB said as much. He said – he thanked RCB for being deployed to protect the air base.

45 THE CHAIR: Yes.

LIEUTENANT COLONEL MICKELBERG: He acknowledged the fact that there was an emergency. So to suggest otherwise is complete bloody nonsense.

5

THE CHAIR: Yes. But that may be or may not be right, but what I'm saying to you is I think - - -

LIEUTENANT COLONEL MICKELBERG: (Inaudible words.)

10

THE CHAIR: What I'm saying to you is I think it's irrelevant to the current issue before us.

LIEUTENANT COLONEL MICKELBERG: Yes.

15

THE CHAIR: And, you know, I'm concerned that we confine ourselves to the relevance.

MR FULCHER: Yes.

20

THE CHAIR: Okay?

MR FULCHER: Well, I've found the document that I referred to.

25

THE CHAIR: Yes.

MR FULCHER: It's just a short paragraph. I'll read it out and we'll email it to you.

30

THE CHAIR: Okay.

MR FULCHER: It's from a Cabinet submission. And it says, "A constant theme in the Moore Report is the inappropriateness of maintaining any connection between the award of medals and entitlements to repatriation benefits. This is consistent with the theme of CEDA which considered that matters relating to honours and awards should be considered on their merits, and should not be influenced by the possible impact, real or perceived, on veterans' entitlements."

35

40

THE CHAIR: Yes.

MR FULCHER: So that's saying that getting a medal, don't worry about what it's going to cost us. If they're entitled to a medal, they should get it, and then what follows, follows.

45

5 THE CHAIR: I think it's – now that you've identified, I recollect the passage. I think it's quite clear that there are three separate things. There's conditions of service which arise from a declaration by the Minister for Defence of service as warlike or non-warlike which would take the conditions up from the ordinary conditions of service. There is a determination – I think it is – under the Veterans' Entitlements Act of warlike or non-warlike service. And there is a declaration by the Governor-General under the AASM and ASM recs of warlike or non-warlike. And they're three separate things. They don't cross over.

10 The real question is whether the terminology is defined in the same way between the three. They all use common terminology. Are the definitions different. And we'll come to that this afternoon or later in the course of today and tomorrow. Okay? So unless anyone else wants to say anything in a preliminary nature, I'm keen that we hear from the witnesses that you wish to hear us from, because this goes to the facts and, as I say, they may introduce new facts. They may want to stress the significance of facts. Once we've got the facts on the table, then we move on to “what the heck do we make of them.” So I think your first witness is Lieutenant Colonel Michelson who I think we can see on screen, albeit small. Can we make it larger?

(Audio feedback.)

25 Why are we listening to me?

(Audio feedback continues.)

30 Exactly. The miracles of modern science. Lieutenant Colonel Michelson, can you see and hear us?

(Audio feedback continues.)

35 Looks like we've lost him. So can we avoid his playback - - -

UNIDENTIFIED SPEAKER: Yes.

40 THE CHAIR: And if you – do you have any problem with hearing from Colonel Charlesworth before - - -

LIEUTENANT COLONEL MICKELBERG: No.

THE CHAIR: Okay. Because it seems that we've somehow dropped - - -

LIEUTENANT COLONEL MICKELBERG: It would've been nice but – because Charlesworth was one of the platoon commanders - - -

THE CHAIR: Yes.

5

LIEUTENANT COLONEL MICKELBERG: - - - but we can manage it.

THE CHAIR: Okay. All right. Colonel Charlesworth, can you see and hear us?

10

LIEUTENANT COLONEL CHARLESWORTH: Yes, I can.

THE CHAIR: Okay. Thank you very much, sir. Welcome, and thank you for making your time available. As you're going to give evidence – oh – about the - - -

15

LIEUTENANT COLONEL MICHELSON: I'm here.

(Audio feedback.)

20

I'm back. Hello?

UNIDENTIFIED SPEAKER: Lieutenant Colonel Michelson.

25

THE CHAIR: Yes. Can we speak to – yes, can we speak to Colonel Michelson?

UNIDENTIFIED SPEAKER: (Indistinct words.)

30

THE CHAIR: No, we're still getting blowback.

(Audio feedback continues.)

UNIDENTIFIED SPEAKER: (Indistinct words.)

35

THE CHAIR: So that could only be these two.

If there's anybody who is observing these proceedings remotely through YouTube, if they could possibly turn YouTube off, because I think it's – that seems to be – what's causing us difficulty. So that's only people, who are observing remotely, with a view to speaking.

40

(Audio feedback continues.)

MR FULCHER: I was just wondering if we could get the Defence opening statement. If you've got that in writing.

5 THE CHAIR: I don't – they were sending it to us. I don't know whether we've got it yet.

UNIDENTIFIED SPEAKER: We can check. I've got a (indistinct) in support of our (indistinct) send that again?

10 THE CHAIR: Yes, please.

UNIDENTIFIED SPEAKER: (Indistinct).

15 THE CHAIR: I'm going to take a chance and say something and see if we've got it working. Think we're right?

UNIDENTIFIED SPEAKER: (Indistinct).

20 THE CHAIR: So we - it looks like we might be okay, so we can hear from Lieutenant Colonel Michelson first. So, Colonel Mickelson, you can hear us? You may need to turn your microphone on, sir.

25 LIEUTENANT COLONEL MICHELSON: Yes, good morning. Good morning, Mr Chair. I can hear you loud and clear.

THE CHAIR: Excellent. Thank you very much.

30 <LIEUTENANT COLONEL PETER MICHELSON, affirmed.

THE CHAIR: All right. Thank you very much. Up to you.

35 LIEUTENANT COLONEL MICKELBERG: Thanks, Mr Chair. Peter, would you start by giving us just a brief insight to your background and rank on retirement, please?

40 LIEUTENANT COLONEL MICHELSON: Yes, I retired as a lieutenant colonel. I joined the British army and was commissioned in the Durham Light Infantry in about July 1964. I was posted to Hong Kong. In Hong Kong I amongst other things became the leader of the demonstration platoon for internal security, and deployed some several times in Hong Kong when there was civil disturbance. Following my Hong Kong service I went to Borneo during confrontation where I soldiered against the Indonesians, the PKAD in particular, and against the communist CTs.

5 As my regiment was being disbanded, I applied to join the Australian army. It was commissioned in London in 1967. I arrived in Australia in March '67. I was posted to 5 RAR. At very short notice, I think, a platoon commander in 1 RAR was sacked. I joined 1 RAR six weeks before they deployed to Vietnam. I soldiered in Vietnam as a platoon commander for the whole of the tour. I was the battle of Coral. I was mentioned in dispatches after a battle at the village of - or small town of Long Nguyen which lasted for about eight hours.

10 And for the purposes of today, I was the OC of Delta Company 6 RAR in Butterworth since the end of '75, '76 for about five months. We - my company was actually deployed a month earlier which curtailed the amount of training we did before departing overseas. Thank you.

15 LIEUTENANT COLONEL MICKELBERG: Thank you. I'd like to start by asking you, on deploying to Butterworth, were there any significant issues that you considered needed to be addressed as a matter of urgency?

20 LIEUTENANT COLONEL MICHELSON: When I - I'm not quite sure exactly when - it's 48 years ago, but shortly after my arrival in Butterworth, I became aware that there was a deficit of small arms ammunition. On enquiry, I was told that resupply was to be by sea because the RAAF had stopped flying ball ammunition. In my imperious British mind, I sent a message, I think, to Field Force Command saying that if ammunition was not forthcoming within the next 36 or 48 hours I would no longer be able to defend the air base. I can tell you that ammunition appeared by air before that deadline.

30 LIEUTENANT COLONEL MICKELBERG: Thank you. Were there natures and quantities of ammunition held in store for RCB that you considered larger and different than a rifle company would normally have access to in Australia in peace time?

35 LIEUTENANT COLONEL MICHELSON: Absolutely. Difficult to quantify. I mean, you could talk about what a battalion might hold and what a rifle company would hold, it's a little difficult to quantify, but certainly in Butterworth it would be fair to say that the arms and ammunition that we carried were sufficient for not only Defence but to take offensive action for the duties which we were sent to Butterworth to do.

40 LIEUTENANT COLONEL MICKELBERG: Thank you. When you were deployed, what was your understanding of the primary task of your company?

45

LIEUTENANT COLONEL MICHELSON: I was under the belief that I went to Butterworth to protect the Australian properties, specifically the RAAF Base and its interests.

5 LIEUTENANT COLONEL MICKELBERG: And as part of preparing your company before deploying from Australia, did Headquarters Field Force command as the mounting headquarters mandate that security training in relation to tasks related to the security of the air force be conducted?

10 LIEUTENANT COLONEL MICHELSON: I can't say that specifically because I don't remember it - direct communication to myself from Field Force command. But certainly my commanding officer left me in no doubt what my duties were to be when I got to Butterworth.

15 LIEUTENANT COLONEL MICKELBERG: Okay. And what do you understand - what training did you have the company undertake before they deployed?

20 LIEUTENANT COLONEL MICHELSON: As I mentioned earlier, we got at short notice deployed to Butterworth a month before our due departure date, so our training was cut short, but I seem to recall doing things that I had done in my British army days, specifically in keeping the peace, in training the soldiers how to deploy in defensive emergencies, as well as in general for refreshing ourselves for coordinate searches, patrolling, anti-ambush, et cetera, et cetera.

25 LIEUTENANT COLONEL MICKELBERG: Okay. And on arriving at Butterworth, what information was your company briefed by the RAAF base staff as to the nature of the CT threat, where the designated vital points were on the base, and the nature of tasks undertaken by your company including the QRF?

30 LIEUTENANT COLONEL MICHELSON: That again I can't remember specifically. Certainly I was briefed, and as the OC of the rifle company I was pretty much left to my own devices to determine what to do. I was aware of the threat. I had been involved in the first - not in the first emergency, but the beginning of a second emergency in Borneo. I had seen action against the CTs. I understood that defending an air force base is -
35 with 120 soldiers - and I may say my company was a composite company. It included all arms and services, not just the rifleman.

40 But probably the most important thing to do was to ensure that our (indistinct) reaction force was able to get to a strong point which I later
45 when deploying on the base had created.

LIEUTENANT COLONEL MICKELBERG: Okay. And was it made clear to you that your primary purpose by the OC of the RAAF base was the defence of the air force base?

5

LIEUTENANT COLONEL MICHELSON: Absolutely, and when we were deployed, it was the commander of the base who tasked me to do that.

LIEUTENANT COLONEL MICKELBERG: During your deployment, were alert levels raised, and if so, under what circumstances do you recall?

LIEUTENANT COLONEL MICHELSON: My company deployed twice, and once before Christmas - once to the end of '75 at Christmas, and then secondly for the Chinese New Year. I understood that the base had been penetrated, that there was activity around the base, and the base commander told me to be prepared to defend the base.

My reaction was to create my own strong points, to dig in. the water table was quite high. To have security for my soldiers, I needed sand and sandbags. I chose to do this by going to the only place at Butterworth where there was sand which was in front of the RAAF yachting facility. Having put my sandbags on the - and dug into the airfield, I was again confronted by the base commander who told me to return the sand and to fill in my holes. I told him that I would only do that if I had that order in writing, and I have to say that no such order appeared in writing.

I thereupon deployed my soldiers I saw accordingly. At that particular time we had previously had magazines with bullets with a red tape, and when I deployed those tapes came off, but my soldiers were under no doubt that we were expecting - perhaps expecting people to come into the perimeter, and we were also expecting if that happened, to react accordingly. I myself carried a weapon and a hand grenade to this period.

LIEUTENANT COLONEL MICKELBERG: And so your soldiers were carrying, as you and I would understand it, first line ammunition?

LIEUTENANT COLONEL MICHELSON: Absolutely.

LIEUTENANT COLONEL MICKELBERG: Including for machine guns?

40

LIEUTENANT COLONEL MICHELSON: Certainly. And the point, sir - in fact, my sandbag positions, as you would expect, were built around strong points for machine guns.

LIEUTENANT COLONEL MICKELBERG: Okay. And those strong points, were they established on likely approaches assessed to the base?

5 LIEUTENANT COLONEL MICHELSON: I don't remember who told me to put - no-one - I don't believe anyone told me to site my company. I believe that I did that myself, but I would be open to - you know, 48 years is a long time - I'd be open to somebody saying that these were the approaches. I don't recall that. I recall that it was down to me to do, and I did that.

10

LIEUTENANT COLONEL MICKELBERG: Okay.

15 LIEUTENANT COLONEL MICHELSON: And later, I actually asked the base commander, especially over the Christmas period, if he would - because my soldier - and the weather was terrible - because my soldiers were deployed, would it be possible that the air force base could make a token effort to have people other than the Defence guards on standby, to which I was told "The defence of the base is your responsibility; no."

20 LIEUTENANT COLONEL MICKELBERG: And you mentioned there were two occasions when the company was reacted. What was the second occasion?

25 LIEUTENANT COLONEL MICHELSON: The second occasion was similar to the first. I can't remember in which order, but the base - there had been sightings of people in a graveyard outside the perimeter fence, and there had been a likely incursion in the fence and I believe that I - one of my platoons - I think you're speaking to Lieutenant Colonel Charlesworth later - one of his sections deployed outside the fence to help clear the immediate vicinity.

30

LIEUTENANT COLONEL MICKELBERG: Okay. Is it your understanding that the ROE that were provided by the base commander for your company permitted the use of lethal force?

35

LIEUTENANT COLONEL MICHELSON: I don't like the nexus between myself and the base commander, but I certainly understood that if there was an - if people put my soldiers in danger then we would respond accordingly.

40 LIEUTENANT COLONEL MICKELBERG: Okay. Is it your view that in the event that there was an attack on the base that it was likely that you might incur casualties?

45 LIEUTENANT COLONEL MICHELSON: I would - the answer to that question is, as an experienced soldier, I would say anyone who's armed

with a weapon is dangerous, and that whereupon that weapon might not be fired at you, ricochets also happen, so we were prepared that casualties were possible.

5 LIEUTENANT COLONEL MICKELBERG: And where would you see those casualties being treated in the event that they did occur?

10 LIEUTENANT COLONEL MICHELSON: I believe that my sections were issued with extra medical equipment, that each platoon had a platoon medic, and that if the casualties were serious, they would be transferred to the base hospital where I knew that Malaysians themselves who were evacuated from combat situations on the Thai border went for treatment. I also, by the way, because I was interested in what was happening around me without reference to anybody else - and I think I did this for my platoon commanders too - I arranged to travel in a Royal Malay helicopter and I went up to the Thai border to see what the Malaysians were doing.

15 LIEUTENANT COLONEL MICKELBERG: Based on your knowledge and experience as a career infantry officer, do you consider that the mission and task undertaken by your company to protect the airbase at Butterworth were no different than those undertaken at Australian bases in between - sorry, then in 1975, and 1976 and subsequently during your career?

20 LIEUTENANT COLONEL MICHELSON: I never had occasion to defend an Australian base.

25 LIEUTENANT COLONEL MICKELBERG: Right, okay. And during the period 1970 to 1989, is it to your knowledge that Australian soldiers routinely carried weapons and live ammunition to protect army bases?

30 LIEUTENANT COLONEL MICHELSON: Not in Australia.

35 LIEUTENANT COLONEL MICKELBERG: And also during that same period, 1970 to 1989, do you recall at any time ROE and orders for opening fire being issued to army personnel involved at providing security at army bases in Australia?

40 LIEUTENANT COLONEL MICHELSON: Not at all.

45 LIEUTENANT COLONEL MICKELBERG: Are there any final remarks that you would like to make before we conclude your evidence?

50 LIEUTENANT COLONEL MICHELSON: I don't think so. I think the important thing for me is that the ammunition came quickly, it would

indicate that somebody back in Australia, at least, was aware that we were in some degree of a difficulty.

5 And I think that the fact that the intelligence told me and others that the CT's were operating in the area and that post the Tet Offensive of 1968, this had given Chin Peng a great deal of help in that he might be able to fulfil his ambitions. I understood that there was a CT camp about 90 kilometres away from the base. And I understood that there were activities of CTs around the area. And that of course, because it was a
10 foreign country for me, that the people who were CTs were just members of a community who were fighting for a cause that they believed in.

LIEUTENANT COLONEL MICKELBERG: So, I guess, the last thing I would ask you is, in your view, was your mission an operational mission?
15

LIEUTENANT COLONEL MICHELSON: Absolutely. And I deployed. I deployed in anger.

LIEUTENANT COLONEL MICKELBERG: Thank you.
20

LIEUTENANT COLONEL MICHELSON: I know that there's a—the question that I would ask is, if the mission to Malaysia was sent to train, what were we expected to train for in Malaysia. As I understood it, I went down with my company, one platoon at a time, to the old British Jungle Warfare School at PULADA, where for one week or so, my soldiers
25 trained. They trained for jungle warfare. But if you imagine a large concrete strip of runway, and a few huts and a wire fence, can somebody tell me what training I was supposed to be doing there? It wasn't training in support of defending the base.

30 And that's where I would conclude.

LIEUTENANT COLONEL MICKELBERG: Thank you. That's all I have at the moment.
35

THE CHAIR: Thank you, Colonel.

LIEUTENANT COLONEL MICHELSON: Thanks, Mr Chair.

40 THE CHAIR: Defence, do you have any questions of Colonel Michelson?

BRIGADIER HOLMES: I've just got a couple of points of clarification.

45 THE CHAIR: Yes, please. That's okay.

BRIGADIER HOLMES: Good morning, Colonel Michelson. Brigadier Mark Holmes.

5 LIEUTENANT COLONEL MICHELSON: G'day Mark.

BRIGADIER HOLMES: Thank you for your remarks.

10 Can you give us any insight as to why you think there was no defensive positions already placed prior to you setting them in 1975-76?

15 LIEUTENANT COLONEL MICHELSON: I can tell you with my hand on my heart that my soldiers dug in. I can tell you with my hand on my heart that I provided sandbags. I can't say, because it's 48 years ago, that there were no other, or that there were no previous positions. But I certainly had my soldiers dug in and I told you the response that I had when I did that. Whether I, in my wild mind, has chosen to do that somewhere else other than put in positions, I can't say. I can't remember. But I certainly dug in. My soldiers certainly filled in sandbags, and we
20 certainly deployed machine guns and soldiers in anger.

BRIGADIER HOLMES: Yes. And I have no doubt. The coordination with the Malaysian security guards, other RAAF defensive assets, that was all conducted by yourself or by your platoon commands?
25

LIEUTENANT COLONEL MICHELSON: I again believe that I was instrumental in helping to make the operational centre a little more cohesive than it had been before. But that might be self-advancement. I certainly dealt with people in the operations centre, as did my platoon commanders.
30

BRIGADIER HOLMES: Do you think your experiences in Vietnam may have influenced your personal response at RCB or, you know, provided better grounding for the way that you deployed your troops?
35

LIEUTENANT COLONEL MICHELSON: A difficult question to answer. And we all have a history. And my history came through the British Army, I'd already been to war. And I went through the tragedy of when my very first deployment in war in Borneo of having a soldier—one
40 of my soldiers was drowned.

When you're a platoon commander with 20 or 30 guys in the middle of nowhere, away from help, this is a pretty—a pretty hard thing to come to terms with.
45

Likewise in Vietnam at the Battle of Coral, on the first night one of my soldiers died in my arms. These are all things that have a huge impact on the service community, as you well know.

5 BRIGADIER HOLMES: Yes.

LIEUTENANT COLONEL MICHELSON: How it affected me as a platoon commander, a company commander when I got to battle with, I would just say that I took—I would like to believe I have a good sense of
10 humour. On the other hand, I took my job very seriously. I understood that, as I mentioned before, life is precious, and I'd seen a lot.

As far as my own company was concerned, my company 2IC Gary Macar(?) had an MC and my CSM and my CQMS and all of my senior
15 NCO's had Vietnam experience. I think that some of the junior NCO's too were Vietnam veterans. So amongst us there was a lot of experience, not just mine.

BRIGADIER HOLMES: Yes.

20 LIEUTENANT COLONEL MICHELSON: I had the responsibility.

BRIGADIER HOLMES: Yes. No, no, I appreciate that. Thank you very much for your answer.

25 My last question is related to your guard responsibilities in Australia. Your soldiers would have done some routine guard mount, guard duties at the front of their barracks back in Australia?

30 LIEUTENANT COLONEL MICHELSON: Absolutely. That's a yes and no question. I'm not sure when we started to pay civilians to look after that. Perhaps after my time. But certainly guards—certainly soldiers mounted guard in the evening.

35 BRIGADIER HOLMES: Do you recall if they were armed at all?

LIEUTENANT COLONEL MICHELSON: They certainly carried weapons. I have no clue about—I don't remember whether they had
40 magazines on their rifles. I can't recall.

BRIGADIER HOLMES: Thank you. That's all the questions I have, Chair.

Thank you very much Colonel Michelson.

45

LIEUTENANT COLONEL MICHELSON: Thank you, Brigadier.

THE CHAIR: Rear Admiral.

5 REAR ADMIRAL DU TOIT: Colonel Michelson, good morning.

Just one question from me, you mentioned that your—you had a composite force. And you also mentioned that each of your platoons had a medic attached to it. Was that specifically towards deployment, or was
10 that a normal course of action, to have a medic attached to you?

LIEUTENANT COLONEL MICHELSON: It's normal. I think that we—I think all we did was upgrade the scale to make sure that they were—and I think when you speak to Lieutenant Charlesworth, he'll be
15 able to either amplify my comments.

REAR ADMIRAL DU TOIT: Thank you.

LIEUTENANT COLONEL MICHELSON: It's a long time ago. 48
20 years. And it's been a hell of a life since. So, you know, Butterworth was three months of my life. I can absolutely say, to finish my statement, that my company deployed, my company carried live ammunition, we carried first line ammunition, we deployed on the airfield, and some of my
25 soldiers went outside the wire and looked for CT's.

THE CHAIR: Okay, thank you, Colonel.

AIR COMMODORE GRADY: Colonel Michelson, Air Commodore Grady, good morning.
30

I've got a series of questions, I apologise. But I'm just intrigued, as part of the preparation, which you indicated was concaved somewhat, but I'm intrigued to understand whether you were aware of or ever had access to thread assessments that were done prior to your deployment. Any
35 particular, starting with say the ANZUK threat assessment of '72. Did you ever see that document?

LIEUTENANT COLONEL MICHELSON: No. I can't say, you know—I can't say what happened in terms of the briefings that I had. I certainly
40 would have talked to the officer. I know that there was training for my platoon commanders. I don't recall ever attending any formal training session.

AIR COMMODORE GRADY: Okay. And similarly, given that you deployed up there in late '75, November '75, if my memory serves correctly.

5 LIEUTENANT COLONEL MICHELSON: October, I think. October, November, yes.

AIR COMMODORE GRADY: Which is coincidental with the date that the JIO threat assessment for Butterworth was conducted or published.
10 Did you ever see that document?

LIEUTENANT COLONEL MICHELSON: No.

AIR COMMODORE GRADY: Did you ever see the Director of Airforce Intelligence Situation Reports, which had spelt out the security situation around Butterworth?
15

LIEUTENANT COLONEL MICHELSON: Again, I just have to say that I don't recall.
20

AIR COMMODORE GRADY: Okay. Had you had access to end of tour reports from previous RCB commanders?

LIEUTENANT COLONEL MICHELSON: Again, I don't recall. And I just put out, in the sense that we left quickly. And I don't know why the company before us came home early. But we were planned to go a month after we actually set off to go. So, I don't remember. I don't remember. It was pretty rushed. I really don't remember.
25

AIR COMMODORE GRADY: All right. So, I am just trying to get a sense of whether you had formed, prior to your detachment, a sense of the likelihood of casualties. You mentioned previously that you thought they may have been possible. But I was just wondering on what basis you formed that view?
30

LIEUTENANT COLONEL MICHELSON: On the fact that I've been a soldier in war. And that I know that when people start shooting weapons, they don't have to be actually firing at you, I was aware that the CT's had mortars, I believe, and rockets. And, as they're area fragmentation weapons, they can cause casualties.
35
40

AIR COMMODORE GRADY: Of course. But I just want to nail down on this. But in your view, casualties were possible, but would you go as far to say that they were expected?
45

LIEUTENANT COLONEL MICHELSON: I don't think that's a question that I can answer. That was 48 years ago. I have no idea what I thought at the time. I just know that people die in war—or in battles, or in combats, or in the streets when some hapless person pulls out a pistol and starts shooting at other people. So I can't remember what I thought in 1975, absolutely.

I would like—and just, by the way, in my life since then, I was in the International Red Cross, the French Red Cross, the Swiss Red Cross, and other similar organisations. I served in Rwanda and the Congo, in Namibia, in Ethiopia. So, and a lot of this is all mixed in with then and now.

AIR COMMODORE GRADY: I appreciate that. And I admire your clarity thought, to be frank, for events that occurred 48 years ago.

I just want to go back to the ANZUK threat assessment, which had indicated that the most likely method of attack on Butterworth was likely to sabotage by the planting of booby traps and such devices. Did the RCB have a role—did that ever feature at all in say briefs at base level or actions that were required or levied on the RCB?

LIEUTENANT COLONEL MICHELSON: I can't—again, I can't really remember. But the mobile patrols that we had, and when you speak to Bill Charlesworth, who was much nearer the ground than I was, I would imagine that that was part of the briefings that I gave, and others gave. That there were possibilities of people coming into the base. But I don't remember.

AIR COMMODORE GRADY: Okay. Both the 1972 threat assessment from ANZUK and the 1975 JIO assessment, related the likelihood of attack on Butterworth as unlikely. Were you aware of that at the time?

LIEUTENANT COLONEL MICHELSON: No, I just, as I mentioned before, from my own knowledge, and again part of what was and part of what is, of course, because I've done research subsequently. So some of my research that I've been doing before appearing before this Tribunal, might melt into my memory of before.

So, you know, I am certainly aware of what happened in Malaysia. And I was part of it. As a 20-year-old, I was a platoon commander, who was deployed to Borneo, where I again saw action against CT, so I was aware of who they were and what they were doing.

5 And, as I mentioned before, of my own volition, I put myself on a Royal Malay Airforce helicopter and took myself to go and have a look at what was happening in the field beyond us. Because I didn't know that that there were CT's around, about what they might do to us. I knew they had rockets. I can't put my hand on my heart and say that I was aware of the booby trap incident. But there you go.

10 AIR COMMODORE GRADY: I think you mentioned that you received a brief on arrival at Butterworth in relation to the threat.

15 LIEUTENANT COLONEL MICHELSON: Yes, but I don't remember in specific detail. That's why I don't—I have this hang up about didn't I go to prepared positions in 1975, I don't believe so. But I can't say that emphatically.

20 And I do know that my company was at—my 2IC, specifically much more than myself, was very much involved in making the joint operational command centre more efficient than it had been. And this was specifically because of the threats that we received late December '75 and early January '76.

25 AIR COMMODORE GRADY: Over and above the arrival security brief, do you recall getting periodic threat updates? As in formal briefs around changes in CT capability or intent. Anything along those lines?

LIEUTENANT COLONEL MICHELSON: Well, absolutely. Especially for the twice that we were deployed.

30 AIR COMMODORE GRADY: Cool. But there wasn't a standing or more formal arrangement that you gave you periodic updates?

35 LIEUTENANT COLONEL MICHELSON: I can't recall. As an individual, I would of course talk to my Defence—the Airforce guard, I can't remember the title, I am sorry, the ground Defence people's—I would have informal talk to them, for sure. But I don't remember sitting down in a room with a map and people having a pointer and saying this, that, and something else. I can't recall.

40 AIR COMMODORE GRADY: Right. In terms of the posture that was being set there is it true to say that QRF aside, that RCB soldiers surrendered their weapons every evening? Is that a true statement?

UNIDENTIFIED SPEAKER: Surrendered or secured?

LIEUTENANT COLONEL MICHELSON: Secured. Secured the weapons, yes.

AIR COMMODORE GRADY: Right.

5

LIEUTENANT COLONEL MICHELSON: At my time we had people, of course as you know as a ready reaction force. So those people were armed.

10 AIR COMMODORE GRADY: No, I accept that. But they were the only people armed for the period of the QRF activation or the period of—QRF period of duty, I'm getting at.

15 LIEUTENANT COLONEL MICHELSON: When—I can say this from myself, when we were activated on the two occasions that we've already mentioned, I can't remember which weapon I carried. I suppose it was a pistol. But I really don't remember. But I certainly remember carrying hand grenades, and they were with me constantly.

20 AIR COMMODORE GRADY: Right.

LIEUTENANT COLONEL MICHELSON: I actually took them to the Mess with me.

25 AIR COMMODORE GRADY: Absent of a particular threat from the base during a standard, you know, situation green or lower, the only people armed on base from an RCB perspective was the QRF. Is that true?

30 LIEUTENANT COLONEL MICHELSON: Yes. To the best of my knowledge, yes.

35 AIR COMMODORE GRADY: All right. So there's been a fair bit made, even today, of the nexus between the RCB operations and Vietnam. So, this next question might appear a bit contentious, and I apologise, but I'm going to ask. Were soldiers in Vietnam required to surrender their weapons nightly?

40 LIEUTENANT COLONEL MICHELSON: No. We kept our weapons with us.

AIR COMMODORE GRADY: All right.

45 I'm going to ask you to provide an opinion in relation to a response that came from the RCB Review Group, which itself was a response to a

question that we had put to them. And it was to do with the degree of weaponry, or I think in those days you might have referred to it as the status of weapons readiness.

5 But the actual response—the question itself, what was mandated degree of weapons readiness for RCB personnel while on duty? And the response says, the QRF—sorry, I’ll skip ahead. It says,

10 *QF standing patrol, centuries and ambush patrols were in the action condition, magazine loaded, and weapon cocked.*

And that was in relation, in the context of having live ammunition.

15 You mentioned in the testimony you gave a moment ago, that your recollection was that live ammunition was carried in taped magazines. So, do you agree that the statement from the RCB Review Group that they were routinely in the action condition with live ammunition is an overstatement?

20 LIEUTENANT COLONEL MICHELSON: The answer to that question is that each company was different. And I was only there for five months out of 20 years. So my experience may have been different from others.

25 Ammunition security was important to me. I think that the ready reaction force was a force that was armed and ready to react, hence its name. And it was armed, the rest of—and my officers slept in the officer’s Mess, which was actually some distance away, as we know, from the airfield itself. The sergeant was likewise. My soldiers were in barracks.

30 To the best of my knowledge they, as I mentioned before, were not armed. Just the reaction force. And I can only speak about the end of December ’75, beginning of ’76.

35 So, you know, collective memory over the period clearly is a little different from my few months.

40 AIR COMMODORE GRADY: I just want to focus down on the configuration of each of the soldiers. And I accept that there were a range of weapons carried in the QRF. But let’s just focus on the, say, the SLR.

45 My understanding, from the testimony that you just gave, was that live ammunition was carried in taped magazines. And I am assuming that those taped magazines were held in specific parts of the soldiers webbing. So that a conscious action was required to access that live ammunition.

Did you carry blank ammunition as well?

5 LIEUTENANT COLONEL MICHELSON: Absolutely definitely not.

AIR COMMODORE GRADY: Definitely not. Okay. We'll come back to that point. Because there are a couple of submissions that suggest that RCB soldiers carried a mix load of blanks and live ammunition. Would that surprise you?

10 LIEUTENANT COLONEL MICHELSON: It would quite surprise me. But again, you know, 48 years ago. Maybe my memory is telling me something that is not true. I would just be very surprised if that was the case, knowing that—I guess it's possible that people had a magazine with
15 blanks in and a magazine that was taped. It is possible. I really can't remember. I'd just be surprised that that was the case.

AIR COMMODORE GRADY: I just want to get an understanding of the standard, you know, nightly QRF drills. Is it your memory that, given that
20 live ammunition was held aside, that the magazines that were fitted to those weapons then would have either been empty, in the absence of blank ammunition having been issued. That only magazines containing no rounds would have been available to carry out those drills. Is that true?

25 LIEUTENANT COLONEL MICHELSON: I don't remember. All I remember is that when we deployed, I told the soldiers to take the—to un-tape their magazines. And when you speak to someone a little lower
30 down the food chain that was more intimately involved with the soldiers, and I don't mean that in any disrespectful sense, they will tell you because they lived with them.

And I'm sure when you speak to Lieutenant Charlesworth, he will answer those questions. Because he would know—he was much closer to that
35 than I was. I really don't remember. I'm just—it's possible that there was blank ammunition, I just really—it's a bad thing to mix—as we all know, to mix blank and live rounds. And so I'd just be surprised. But I can't say for sure.

40 AIR COMMODORE GRADY: Okay. The 1978 Unit Standing Orders for the company, admittedly issued after your time there—

LIEUTENANT COLONEL MICHELSON: Yes, absolutely.

45 AIR COMMODORE GRADY: And referring to the degree of weapon readiness, they'd be very clear in the sense that they require all weapons to

be unloaded until such time as there is a direct threat present, and when sub-ordered by the QRF commander.

5 Does that ring true with the degree of weapon readiness that you had employed during your tenure?

LIEUTENANT COLONEL MICHELSON: As I said before, I'd be very surprised if we had the magazines with blank ammunition in them. I think that's taboo. But that said, I absolutely know that there was a magazine that was taped. And I absolutely know that I ordered that that tape be removed.

15 I don't remember how the soldiers—whether the soldiers except for the QRF, had magazines on their weapons in the normal day. I can't—I absolutely can't remember.

AIR COMMODORE GRADY: I just want to move quickly—

20 LIEUTENANT COLONEL MICHELSON: But I certainly didn't carry any weapon during—until we were stood to December and January.

AIR COMMODORE GRADY: Thank you. Just moving onto rules of engagement. I am intrigued just to what rules of engagement you were actually using in 1975.

25 LIEUTENANT COLONEL MICHELSON: According to Peter Michelson. I don't—

30 AIR COMMODORE GRADY: Imagining—we have quite specific access to rules of engagement. But they are dated December 1978—

LIEUTENANT COLONEL MICHELSON: I've read those subsequently.

35 AIR COMMODORE GRADY: And they're quite detailed—

40 LIEUTENANT COLONEL MICHELSON: I've read those subsequently. And I don't remember, and this is the problem, I don't remember—as I said to you, notwithstanding order—and I appreciate the service that you come to, that you represent the, in a sense the RAAF. I was pretty much left to my own when I got there, as I recall. And I met the base Commander two or three times, and I was just left to my own. And I ran my company as a small (indistinct 2.53.44) I guess.

AIR COMMODORE GRADY: All right. Well, that in mind, there was a RAAF operations order dated one of 71 which actually contained ROE. Were you aware of that document?

5 LIEUTENANT COLONEL MICHELSON: Not specifically, no. But that doesn't mean to say I didn't see it. It was—I just come back to 48 years ago.

10 AIR COMMODORE GRADY: You sure? My research would indicate that it did apply to Army members. And I mean there may be other views about that around that table. But, what's key, even though it wasn't quite as detailed as the subsequent ROE is that there are two key elements that are the bottom line here. And let me read them to you because it may jog your memory.

15 But at para 17, of Op Order 171, and in relation to firing, it says:

Before firing at all remember:

- 20 a) *You must not fire unless firing is the least force necessary.*
b) *Shoot to wound and not to kill.*

That second bit about a directive to shoot to wound and not to kill, does that—do you remember that?

25 LIEUTENANT COLONEL MICHELSON: Absolutely, definitely not. And I think I pretty well would if someone above me had given me that paper or someone above me had told me that—as I mentioned, I think that I was pretty much left to my own. And I'm not sure, you know, in a court of law how I'd go because if things had array because I think that I just
30 used my own judgement. But I can't really remember.

AIR COMMODORE GRADY: What is interesting is that both of those sentences about not firing unless it's the least force necessary and the shooting to wound and not to kill, are resented in both, the RAAF Op Order
35 171 and subsequent versions of the RCB ROE that came out.

LIEUTENANT COLONEL MICHELSON: And I have to say—

40 AIR COMMODORE GRADY: This is not a new development. It seems to have been an enduring theme of the rules of engagement.

LIEUTENANT COLONEL MICHELSON: And of course I'd have to say that during my deployments in the British Army in Hong Kong during travels I had a very similar set of orders to follow. So, I already had good

guidance, whether I remember or not. Those specific papers that you mention, the '78 paper clearly was after my time.

AIR COMMODORE GRADY: Yes.

5

LIEUTENANT COLONEL MICHELSON: The '71 paper clearly covered me.

AIR COMMODORE GRADY: What's not clear yet to me personally is the point at which the 1978 rules of engagement format was introduced. Does the RCB Review Group have any sense to when that style of RCB was first published?

10

UNIDENTIFIED SPEAKER: First rules of engagement out of operation order 1/71, that follows a similar format. However, we do have a range of other rules of engagement. I think we've got about 10 of them. And they do not all contain shoot to wound. They do not all contain it.

15

AIR COMMODORE GRADY: All I do know is that 1/71 certainly did. And by the time it got to December '78, it certainly did. So you're suggesting that any versions in the interim were of variance to that?

20

MR FULCHER: Yes, they did not all—they all contained similar things. It's just that some of them did not contain the shoot the wound.

25

A shoot to wound, as anybody an inventory man here can tell you, is a nonsense anyway because Australian doctrine there is no shoot to wound. Infantry soldiers are not trained to shoot to wound. We're trained to shoot for the centre of the scene mass, which is about there.

30

And there's a specific reason for that. Because even if you look at me now, I'm only about that big. So if you are staying for the scene mass, the way that ballistics work, you might hit the person somewhere. So to say shoot to wound is impossibility.

35

AIR COMMODORE GRADY: I understand that, in execution, but I'd put it to you that ROE is an expression of command intent. Do you agree with that?

40

MR FULCHER: Not entirely. ROE are—and I think Professor Dale Stevens will be able to enlighten on this, the rules of engagement, in effect, are a—there's a political element to them of what the government wants to project that its doing. Wants to, you know—so there's no direct relationship between the rules of engagement and the threat and

environment. And the threat in environment is what's the important, not the rules of engagement.

5 The rules of engagement may well say—and I think most rules of engagement will have a graduated resort to force. And most of them will say minimum force necessary.

10 AIR COMMODORE GRADY: Chair, we'll come to this as we unpack ROE. And I agree with you that contrary, i.e. modern ROE include a political dimension, that's expressed as the national policy indicator. And that command intent then hangs off that.

15 THE CHAIR: Mr Fulcher, so we don't lose site of it, you said that you have around 10 versions of ROE, would you mind—

UNIDENTIFIED SPEAKER: Annex—

THE CHAIR: Would you mind copying those—

20 UNIDENTIFIED SPEAKER: Annex 12 to 66—

MR FULCHER: Yes. Submission 66, annex G.

25 THE CHAIR: Annex G?

MR FULCHER: Yes.

UNIDENTIFIED SPEAKER: It lists all of them—

30 THE CHAIR: Lists and—

UNIDENTIFIED SPEAKER: It lists all of them—

35 MR FULCHER: It lists all of them—

THE CHAIR: It lists them. Are the documents there?

UNIDENTIFIED SPEAKER: Yes.

40 THE CHAIR: Excellent. Because—

UNIDENTIFIED SPEAKER: (indistinct)

45 THE CHAIR: Yes. Okay, that's fine. Thank you very much.

LIEUTENANT COLONEL MICKELBERG: Mr Chair, if I just can make a couple of comments in relation to a couple of the Air Commodore's questions.

5 So, one of my postings was Adviser to the Deputy Chief of Army, and the three services on Small Arms Policy. Mandatory: never mix blank with ball, ever. I spent 30 years of my career alike in the Army and at no time did we ever tell soldiers to mix blank and ball. In fact, if that happened, often you'd find that the NCO officer that was responsible would get charged. The other comment I'd make - - -

AIR COMMODORE GRADY: I agree with you. I'm surprised but I'm referring specifically to very specific - - -

15 LIEUTENANT COLONEL MICKELBERG: I know.

AIR COMMODORE GRADY: - - - text as part of a submission.

LIEUTENANT COLONEL MICKELBERG: I've read those submissions. In fact, I've read all of them, as we have. The other comment I'd make is, the point you make about the minimum use of force, I'm sure Defence's own ROE expert will talk about this later, would agree that this concept of the use of minimum force is an underlying principle of ROE. It has been probably since Hannibal was around. Although, probably not, he probably used the ROE after they'd kill them. But, the fact is, and I've looked at ROE from Butterworth through to East Timor, Cambodia, Iraq, Afghanistan, they all talk about minimum force and a graduated use of force. In the same way that the RCB ROE were articulated. They might couch it in a different way.

30 AIR COMMODORE GRADY: I'm not focused on that dimension at all, I'm focused on the shooting to wound dimension.

LIEUTENANT COLONEL MICKELBERG: Yeah, well, to be frank again, and I would agree totally with (indistinct) I'm sure if you ask any infantryman in this room, including probably the ADGs who are here, they would tell you that is rubbish. Anyone who would say that would be putting soldiers at risk.

40 AIR COMMODORE GRADY: One of the key principles of ROE is if there is an inability to comply with it needs to be highlighted to the command chain because it clearly runs counter to command intent, right? we can sort of unpack this all you like, but the point is there was an obligation on the RCB that if they couldn't comply with the ROE to highlight that to the chain of command. Did that ever happen?

5 LIEUTENANT COLONEL MICKELBERG: So, what happens with
ROE, and I had this discussion just recently is when it all comes down to
brass tacks, the arbiter of when to engage is the soldier or ADG on the
ground. They decide what is the threat circumstance, are they going to
injure or kill me or one of my counterparts? Are they going to damage the
property that I've been designated to guard? And if they are, and I
challenge them, and they continue to look like they're going to do it, or are
doing it, then I decide to pull the trigger.

10 THE CHAIR: I don't think that answer is to the question that the Air
Commodore Grady asked you. He asked, as I understand it, was there ever
a request by RCB to change the ROE because they were not capable of
compliance?

15 LIEUTENANT COLONEL MICKELBERG: I think the answer to that
would be that – and I was only platoon commander there in '75, but I
know what my company commander would've said, is that you and your
section commanders and platoon sergeant need to exercise your
20 professional military judgement and training to carry out your tasks,
including how you apply full force.

THE CHAIR: Okay. Well, just I can, Mr Kelly's been trying to say
something.

25 MR KELLY: Air Commodore, can I just take you back a step, we often
talk about this switching out of ball and blank ammunition. Ask any
infantry soldier what that requires, it's not just removing tape. An M60
machine gun to change from blank to ball you've got to take the barrel off
30 and fit an entirely different barrel. If an SLR or any other small arms is
fitted for firing blanks, it normally has a blank firing attachment attached
to the muzzle. You cannot, it is in fact life threatening to switch the
magazine and fire ball ammunition.

35 AIR COMMODORE GRADY: I'm not disagreeing with you, I'm just
simply saying – I didn't write it, but I'm saying there is a submission out
there from one of the lieutenant colonels who is an RCB commander who
very specifically makes the statement that mixed loads were carried. So, I
agree with the concerns in relation to it, I'm just simply asking whether
40 that ever occurred on lieutenant Michelson's push?

MR KELLY: I can't recall, and this is my personal experience, I can't
recall blank firing attachments ever being present at RCB.

45 AIR COMMODORE GRADY: Right.

MR KELLY: In my experience, although - - -

5 AIR COMMODORE GRADY: I was going to ask about that, I mean, clearly, I'm hoping there wasn't a situation in which blanks were carried but BFA's weren't fitted.

MR KELLY: There were M60 blank barrels, I never saw - - -

10 AIR COMMODORE GRADY: Indeed. All right, I think we can draw a line under that. I completely understand where we're coming from. I think I'm almost finished with lieutenant colonel Michelson, I did have a whole range of other questions but I have the answers to that through previous answers.

15 LIEUTENANT COLONEL MICHELSON: And I would've been absolutely surprised if – my memory's surprised, as others have said ball and blank were mixed, it's just drinking arsenic. It's crazy and I have to rely on memory but I would be utterly surprised that whoever said that, I think might have had a lapse of memory as well.

20

AIR COMMODORE GRADY: Look, I do have one final question and it's in relation to the statement you made about the flying in at relatively quick notice of ammunition where there had been a shortage of particular nature of ammunition and you know, based on the fact that you had indicated you could no longer defend the bas until that ammunition was flown in, that would've occurred in relatively short time, do you recall you discovered those deficiencies on arrival?

25

30 LIEUTENANT COLONEL MICHELSON: I can't put my hand on my heart and say on arrival, but certainly well before we were deployed. I can't remember what brought it to mind, you know, we did routine inspections, and it then came to my notice that we had a deficiency of ammunition and I applied to be resupplied and I was told a story of what we related.

35

AIR COMMODORE GRADY: All right. Do you have any sense of how long those deficiencies had existed?

40 LIEUTENANT COLONEL MICHELSON: No clue, not at all.

AIR COMMODORE GRADY: Right. I'm done, thank you.

MR McCLUSKEY: (Indistinct) the Lieutenant Colonel about some issues because he was my company commander when I was a digger at that time.

5 THE CHAIR: Okay.

MR McCLUSKEY: There's a couple of questions that I think are pertinent.

10 THE CHAIR: Okay. well, perhaps if you could come up so you can be heard on the microphone.

MR McCLUSKEY: I'll just stand here. Lieutenant Colonel, my name's Michael McCluskey and I was a private soldier over in Butterworth when you were there. I was in 5 section 11 platoon under the command of Lieutenant Keith Fraser who's (indistinct) and the questions that I would like to ask you, sir, is when you were in Butterworth, what sort of punishment authority did you have which was different to what you would have had had you had been in Australia?

15

LIEUTENANT COLONEL MICHELSON: Gees, that's a question out of the blue.

MR McCLUSKEY: I'll put it bluntly; did you have the powers for punishment of a commanding officer?

20

LIEUTENANT COLONEL MICHELSON: I think so. I think I had the powers of a CO, I think.

MR McCLUSKEY: Yep. All right. and, the last question is; I did many a guard duty at 6 RAR, and the only weapons that we had when we did guard duty was a pick handle. We never had weapons.

25

LIEUTENANT COLONEL MICHELSON: That's a great point, you're absolutely right. Thanks for jogging my memory.

30

MR McCLUSKEY: Thanks, sir. Thank you very much.

LIEUTENANT COLONEL MICHELSON: Lovely to see you, good to see you.

35

THE CHAIR: I just want to say, Colonel, thank you very much for being available and thank you very much for the frankness and measured way in which you gave your evidence. It's greatly appreciated. So, we may move on to Colonel Charlesworth.

40

45

LIEUTENANT COLONEL MICHELSON: Thank you very much, Mr Chair, my pleasure.

5

MR KELLY: Chair, it might assist the Tribunal to know that the arms where the weapons and ammunition were stored at RCB was probably half the distance from this room from the furthest barracks that the soldiers slept in. so, we were always with our weapons and ammunition at very short order. On a 24/7 basis there was someone sleeping inside – I know you know that, but.

10

THE CHAIR: Yes. Your weapons were locked up but they were close by.

15

MR KELLY: Exactly. Except when you are on QRF, of course, then you carried them.

THE CHAIR: That was certainly may understanding. Yes.

20

MR FULCHER: Could I just – is this thing on? Just in terms of the rules of engagement, and obviously, you are going and getting the ones that from our database, just to keep in mind that they are all couched in terms of directions to sentries and guards. The QRF was neither of those. The QRF was to be called out for counter-penetration and counterattack and to defend incursions onto the base.

25

AIR COMMODORE GRADY: Can I counter that by saying that para 9 I think of one of the appendices of Op Order 1 of 71, suggests – in fact, directs, that the rifle company is held against those same orders despite the fact that they are written for sentries and guards. It is very specific in that regard. I'd happy for you to counter that view if you can find one but it seems very clear to me that the intent in Op Order 1 of 71 was to apply to the RCB.

30

35

LIEUTENANT COLONEL MICKELBERG: Can I make one other point in relation to something the Air Commodore had to say about the threat to the base. I may be misquoting you, Air Commodore, but I believe you alluded to the fact that the threat was unlikely?

40

AIR COMMODORE GRADY: No, I said the likelihood of attack was unlikely.

LIEUTENANT COLONEL MICKELBERG: The likelihood?

45

AIR COMMODORE GRADY: I've never offered a view on threat level.

5 LIEUTENANT COLONEL MICKELBERG: The JIO threat assessment says, para 66, sub para B, "There's a potential threat to the base from the CTO and related communist subversive organisations." It's pretty clear.

10 AIR COMMODORE GRADY: In summary that same document actually wraps that up with an assessment that an attack on the base is unlikely, capitalised.

15 LIEUTENANT COLONEL MICKELBERG: It also, I might point out, I'm sure you know, because you've obviously read it, but it maps out likely approaches by day and night on the base which would suggest to me that someone has given some serious thought to communists' attack on the base.

20 AIR COMMODORE GRADY: Notwithstanding, the assessment is that the attack is unlikely. Now, I didn't write the JIO report, I'm simply quoting from it.

LIEUTENANT COLONEL MICKELBERG: I understand that.

25 AIR COMMODORE GRADY: I can provide you a paragraph number that very clearly, in sum, says that their considered view is that the likelihood of an attack on the base, admittedly, inside the next 12 months; it's caveat, is unlikely.

30 LIEUTENANT COLONEL MICKELBERG: So, it begs the question, I guess, why were we deployed there in the first place? And, we'll address this when we come to the threat on ROE and expectations of the casualties' issues, the paperwork put up shows that from the very highest levels, including the chief of the air staff, secretary Defence who briefed the Prime Minister and whole range of others, were very concerned about the threat to the security of the base and the safety of Australians and their
35 dependence and our property. It's pretty clear to me, but we'll come to it.

40 THE CHAIR: Look, I think you can have a clear perception that there is a threat that needs to be dealt with and provided for and defended against even if it is unlikely. Because you can't say it isn't going to happen, you can be remiss in not dealing with that, so, I don't know that there is a dichotomy or a difference there.

45 LIEUTENANT COLONEL MICKELBERG: I'd agree, and that's why we have a defence force, at the end of the day. it's why we have a defence policy; it's deterrence.

5 AIR COMMODORE GRADY: I think there were genuine concerns, as you say, up to and including the chief of air staff, real concerns about the security, right? But, they were still couched against the likelihood of an attack that sprang from the JIO report.

10 MR KELLY: From what the deputy DMI in the Malaysian military made representation to the Australian High Commission in Kuala Lumpur that there was a likelihood of an attack on Butterworth. I can't off the top of my head recall - - -

AIR COMMODORE GRADY: I've read that.

15 MR KELLY: You've read it? Okay. So, if we look outside the bubble of what that the Australian intelligence organisations believe to what the Malays believe, it's consistent with what the Malays have always said - - -

20 AIR COMMODORE GRADY: And we'll come to this but the CIA also had a view.

MR KELLY: Yes.

AIR COMMODORE GRADY: Yes.

25 THE CHAIR: Let's move on. I'm very conscious of the time and if I could hear from Lieutenant Colonel Charlesworth. Are you leading that, Lieutenant Colonel Mickelberg?

30 LIEUTENANT COLONEL MICKELBERG: Yep.

THE CHAIR: Over to you.

35 LIEUTENANT COLONEL MICKELBERG: Do you want to swear him, or swear at him?

THE CHAIR: Yes. Thank you for making yourself available. I apologise for the hiccups in getting to you with technology and as you are going to give evidence about the facts of your service at Butterworth, we'd like you to do that under affirmation. Are you happy to do that?

40 LIEUTENANT COLONEL CHARLESWORTH: Yes, I am.

THE CHAIR: Okay, thank you. Marylin?

**<LIEUTENANT COLONEL PHILLIP CHARLESWORTH,
affirmed**

5 THE CHAIR: Thank you. Phil, would you like to start by giving us a
brief insight into your military service and your rank on retirement,
please?

10 LIEUTENANT COLONEL CHARLESWORTH: I retired as a
Lieutenant Colonel in October 2000 after almost 30 years of service. I
graduated from the Royal Military College in 1974 and was allocated to
infantry, and posted to 6 RAR. As we know Delta company 6 RAR are
deployed to Butterworth in November 1975. I was a platoon commander
15 in that company. As far as my subsequent service went, a normal range of
regimental training and staff appointments including a return to airbase
Butterworth as company commander of February 1983 with C Company
of second fourth battalion in the Royal Australian Regiment. Other
highlights in my service were a year as a UN military observer in India
and Pakistan, Kashmir, and an integrated exchange posting to the US in
20 1989-90 where I spent some time with the US combined arms command
and US army south com assisting the Peruvians to deal with a communist
terrorist organisation known as Sendero Luminoso. We were instrumental
in refocusing their training towards counter insurgency.

25 So, subsequently that was that. I just make the point now that the 6 RAR
had been deployed to Singapore from July 1971 to December 73.
Peter Michelson has already mentioned the experience base of the troupes
that deployed and my platoon was no exception. My platoon sergeant,
section commanders, two section two IC's and two soldiers all had
Vietnam experience. 12 members of the platoon had served in Singapore
30 with 6 RAR and half that number had already done a deployment to Rifle
Company Butterworth. That's my background at this time.

35 LIEUTENANT COLONEL MICKELBERG: Thank you. Prior to
deployment, could you give us an insight briefly to the types of training
that a - your platoon undertook in preparation for their duties at
Butterworth?

40 LIEUTENANT COLONEL CHARLESWORTH: Well, I think Peter has
already mentioned the fact that one of the unusual aspects of the preparation
was the defence aid with the civil power which was crowd control which
we'd not done before. Obviously, we'd done the full range of the company
level training, certainly concentrating on counter insurgency, the normal
aspects - the training you would undertake at that time. We also went
through an extensive briefing process that looked at the security situation.
45 Yes, we did have those briefings. I cannot recall the detail of each of the

documents that was alluded to, but certainly it all jumbles together and came up with a cogent threat scenario that we were - we understood.

5 There was also enhanced medical training so that the soldiers were at no doubt that there was an expectation that some of their number may be become casualties. As, again, Peter pointed out there was a company medic allocated - sorry, a platoon medic allocated on this occasion. Under normal circumstances the platoon medics would be located at the RAP. As we were going to deploy, and we deployed as group so then the medic was with us.
10 There was augmented carriage of shell dressings, each member had two, and there was a section med kit with augmented dressings, and I'm not sure whether there were different carriage of drugs authorised for outside of the country but--

15 LIEUTENANT COLONEL MICKELBERG: The nature of the medical training, and you've mentioned the augmentation in relation to extra shell dressings and other medical supplies. In your view what caused that to occur, in terms of - in the context of the sorts of weapons that you thought you might be having to deal with in relation to the CTO threat?

20 LIEUTENANT COLONEL CHARLESWORTH: The only thing that we were aware of when it came to specific mention of capability with the CTO, was the fact that they had rockets and the possibility of indirect fight, mortars in particular. As you know, these are indiscriminate weapons when
25 fired into a base, whether or not there was any intent to target specific areas, we don't know. But clearly if that did happen, then there was a possibility that people could be wounded, and that's the sort of thing that we focused on. I suppose in addition to that we looked at gunshot wounds and the like, so we were familiar with the sort of things that soldiers could encounter in the event that there was a conflict - direct conflict. Of course, the junior
30 commanders with Vietnam experience were able to enlighten the younger soldiers on exactly what to expect.

35 LIEUTENANT COLONEL MICKELBERG: In the event of casualties after immediate treatment at the section level, where would you see casualties being evacuated to if they required evacuation?

40 LIEUTENANT COLONEL CHARLESWORTH: I don't think we ever really considered what would go beyond accumulating casualties in the platoon headquarters location. In some cases that was quite a way from where the troupes were deployed on the ground. Presumably, if the base was under attack, there is a base plan that would have been activated that would ensure that the hospital, ambulances and the like were available to recover casualties to the hospital. The medics in particular were there to
45 ensure that the casualties were stabilised as best as possible and then when

there was a subsequent timeframe in which to get people to the hospital, that would occur.

LIEUTENANT COLONEL MICKELBERG: Okay, thank you.

5 Obviously when you were a platoon commander you were rostered as a duty officer during the rotation, as I was, and you would have been responsible for having oversight of reacting the QRF to various vital points. Is that correct?

10 LIEUTENANT COLONEL CHARLESWORTH: Yes, I was duty officer in the ground defence operation centre, and the communications we had were back to the company which enabled us to pass information both ways. So, in the event that there was a need to activate anything from the company, we would go to the company headquarters which was manned
15 by the company 2IC at that time, and they would then order the deployment and then feedback would come from the company net through me to the - whoever was running the GDOC at that time.

LIEUTENANT COLONEL MICKELBERG: Okay. Now, during your
20 deployment Major Nicholson has - sorry, Colonel Nicholson has referred to two periods where the company was activated in response to raised alert levels from the base. Would you relate to us your recollections of those two occasions.

25 LIEUTENANT COLONEL CHARLESWORTH: Okay. Both were red letter days, what that means is that there was a known threat, normally promulgated by the CTA that there was going to be an attack on a facility somewhere. The Christmas deployment, nothing happened basically, we
30 deployed on to the ORPs, nothing happened. The Chinese New Year deployment was a little different. Again, we deployed but there was a breach in the perimeter fence. We'd mentioned the cemetery that projected into the base from the perimeter fence which - on the north-western side of the base boundary.

35 Once the breach was detected, and the wire had been cut, and at that time we weren't sure whether people had already gone into the base, or whether there was an attempted to put people into the base subsequently, we'll never know. But the RAAF service police were reacted to investigate the breach. Two members arrived in a vehicle who both had sidearms. I then
40 requested the section commander to detach members of his section to assist them to go outside the wire because there was a movement observed in the trees behind the cemetery. Four members were detached and they extended through the breach for a distance of about 80 to 100 metres and then propped, enabling the service policemen to come behind them and
45 then move into the fringe of the camp on to the north.

5 They remained in situ after they'd prepared the positions as best they
could for about 40 minutes when the police then withdrew and they then
covered the exit from the period out - the area outside the wire, and
covered the area until such as time as trades people arrived to close the
breach. It was a temporarily closed, it was just wired up, but we certainly
had the position under observation for the remainder of that night until the
breach was properly fixed subsequently. There was one soldier who was
involved in that deployment outside the wire that I've spoken to and he
10 said that they were quite concerned about what could have happened and
they spent very little time getting back inside the wire where it was more
comfortable for them, but it was certainly of concern that there could have
been a contact and they were ready for that.

15 LIEUTENANT COLONEL MICKELBERG: In the context of where the
wire had been cut, that position relative to the flight line for example, or
the engine run up area. What sort of field of view, or field of fire would
that have provided?

20 LIEUTENANT COLONEL CHARLESWORTH: As I said the cemetery
projected into the base perimeter that was wired off. However, it gave a
perfect field of observation down the flight line. You can imagine two
squadrons of mirage craft parked from one end to the other with no
attempt to separate or protect the flightline at that time. So, a) it provided
25 observation of activity on the flightline, b) if there was an intent to engage
the flight line with direct fire unobserved, then it could have been done.
And that was the concern, obviously it was - it needed to be dealt with and
it needed to be properly secured so that something like that couldn't
happen.

30 LIEUTENANT COLONEL MICKELBERG: What degree of weapon
readiness were your soldiers at when your platoon was deployed as part of
that company call out?

35 LIEUTENANT COLONEL CHARLESWORTH: We were in the loaded
condition. That was a standard when we went on to the ORPs in
particulate where our positions were, and then it was up to the section
commander as to whether or not there was a need to go beyond the loaded
condition. I cannot recall whether there was any request from people in
40 the - on the ground to heighten their level beyond the loaded condition, I
don't think there was because there was never any real threat to people on
the ground at that time with the exception of those that went outside the
wire, but even then, I'm advised that they did not go beyond the load
condition.

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LIEUTENANT COLONEL MICKELBERG: When you say the load condition, the magazines were not taped, they had ball ammunition, and the magazine was fitted to the weapon.

5 LIEUTENANT COLONEL CHARLESWORTH: Correct.

LIEUTENANT COLONEL MICKELBERG: Okay. How long did the section - how long did your platoon remain activated during that second red letter day?

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LIEUTENANT COLONEL CHARLESWORTH: So, the normal deployment process was to go out for about a week. I don't think we were out for a week on that second occasion though. And it may well have been tied in with other activities in the country at that time, I mean, there's very little information that you can source at this time that would indicate that there were things going on elsewhere. But certainly, I cannot recall being on the ground for a week, it would have been less than that and probably proximate to the actual Chinese New Year itself. As you'd be aware, and I'm sure other members were aware at the time, there's a lot of fireworks going off, there's a lot of noise, there's a lot of activity that put us on edge but at the same time we needed to put into context what was actually happening. So, I don't think we went out for a week second time round.

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25 LIEUTENANT COLONEL MICKELBERG: When you were conducting these activities. Was it your view that there was the potential for you - for your platoon to take casualties?

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LIEUTENANT COLONEL CHARLESWORTH: Absolutely.

LIEUTENANT COLONEL MICKELBERG : In the event the based was attacked.

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LIEUTENANT COLONEL CHARLESWORTH: Yep, I think the positions that we occupied were obviously geared towards where we perceived a threat to be, and in both north and south operational readiness platforms we had kampungs adjoining the perimeter fence where somebody could have quite easily secured their position without being observed, so to me that reinforces the requirement that the OC stipulated that we prepare positions that could be defensible and you could fight from. So, the need to have sandbag walls and what have you was vindicated, but, yeah, I mean there was an expectation that anything could happen. Fortunately, it didn't, but we were in a posture where we could engage those threat areas, and at the same time look at what was available

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to us in terms of the overall picture of about - where the likely threat was coming from, in this case the north east.

5 LIEUTENANT COLONEL MICKELBERG: Was the GDOC activated during that period?

LIEUTENANT COLONEL CHARLESWORTH: Yes.

10 LIEUTENANT COLONEL MICKELBERG: At that time, or indeed at other times, were you deployed to the GDOC to act as a liaison officer on behalf of RCB?

15 LIEUTENANT COLONEL CHARLESWORTH: Yes. I think where we had people on the ground it was almost redundant to have a platoon commander on the ground as well, so the section commanders occupied defended localities that were mutually supporting and also covering the likely threat. Having access to the company net obviously enabled us to communicate, plus we had our own internal communications. But yes, I was in the GDOC, I was a liaison officer on behalf of the company but
20 also a duty officer on other occasions too, if necessary, required further action from the company.

LIEUTENANT COLONEL MICKELBERG: Did the company activate its own operations room to coordinate the actions of the three platoons?
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LIEUTENANT COLONEL CHARLESWORTH: Yes, the company headquarters CP, if you like, was in the RCB buildings, I can't recall exactly which one, I think it might have been one of the offices and was
30 manned by the company 2IC plus the range of communicators and other people.

LIEUTENANT COLONEL MICKELBERG: I want to move now to during your time as a platoon commander. Did you conduct, or did you and your platoon conduct live firing at locations away from the air base?
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LIEUTENANT COLONEL CHARLESWORTH: Yes, we did. We conducted classification range shooting at the ranges near Sungai Petani. We also conducted field firing practices up at Gurun range, which is some distance up country in Perak, about 50 kilometres I believe anyway. Yes,
40 we conducted activities outside the base there.

LIEUTENANT COLONEL MICKELBERG: Was there, in your view, the potential for your platoon to be ambushed? Given that the CTs had already demonstrated a willingness to ambush other Malaysian security forces?
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LIEUTENANT COLONEL CHARLESWORTH: Exactly, and that's the reason why we considered that to be a threat. So, on that basis whenever we moved outside the base to move to areas where we were going to be conducting other activities, like, range practices, we ensured that we moved tactically. So, there was one section per truck, they were spaced, we had communications between vehicles, and the vehicles were configured to ensure that we could engage any attempt to ambush us from the vehicles itself. So, centre seating, sandbagged floors and the like. Yeah, I mean the threat was real because it had happened elsewhere and we saw it necessary to take those precautions when we moved outside.

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LIEUTENANT COLONEL MICKELBERG: Where the light firing was conducted, what measures did you take to protect your men from the possibility of contact with the CTs in the event that they were in the area? In other words, when you arrived what actions did you take?

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LIEUTENANT COLONEL CHARLESWORTH: Well, I think as it was closer to the border and there hadn't been - there was known activity around the area and we knew that because when we went to pick up the keys to the range, we also picked up two sentries which were armed, but we received a briefing on what was happening in the area. So, yes, there was a possibility that there were CTs there, so my response to that was when we arrived at the range gate, the platoon dismounted, shook out and advanced some hundreds of metres into the range complex and then propped and enabled the vehicles to come in, and then we moved forward to the areas that we were going to be firing from. So, there was a need to ensure that we weren't at risk from any sort of direct attack from the CTs.

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LIEUTENANT COLONEL MICKELBERG: Was your platoon carrying a mix of blank and ball at that time?

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LIEUTENANT COLONEL CHARLESWORTH: Absolutely not. We were going up to conduct live firing practices, so there was no blank ammunition whatsoever. We had a mix of - particularly for field firing practices, I mean classification practice is quite straight forward, it's just ball ammunition for marksmanship, but when it comes to field firing it's a little different, you've got the full range of ammunition types plus grenades, plus if we were using any support weapons firing from a flank may be there as well. Yeah, I mean, we were fully kitted and spurred, no doubt about that, but no blanks.

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LIEUTENANT COLONEL MICKELBERG: What condition were the weapons in? In terms of weaponry operational readiness?

5 LIEUTENANT COLONEL CHARLESWORTH: When we moved in to the - well, we were in the loaded condition on the trucks anyway, so when we came in to the range complex we remained in the loaded condition. I do not recall whether any of the forward elements, like, scouting groups for example were going to anything beyond that, and from memory they would have asked whether or not that they could action, but I don't recall that being the case, so everyone was still in the load condition.

10 LIEUTENANT COLONEL MICKELBERG: I want to move now to the QRF. You mentioned that you on many occasions were a duty officer responsible for calling out the QRF. Was the QRF regularly rehearsed in call outs to the married quarter areas?

15 LIEUTENANT COLONEL CHARLESWORTH: Not regularly, but it did happen. There were from memory two key points just north of the married quarter area, so we used to go out in the wee small hours to exercise that response. It was very different to a response inside the base because you had to negotiate the public road to get to the key points, and there was concern that we didn't want to intimidate any of the locals. It may have been out in the wee small hours of the morning, so having people move towards a vital point to protect it. They're the occasions that we did it, as I said it was rare but I can recall on at least two occasions trying to ensure each of the platoons - each sections had a go outside the wire.

25 LIEUTENANT COLONEL MICKELBERG: Based on your knowledge and experience as a career officer. Was a mission and task undertaken by your platoon as part of Delta company to protect the air base at Butterworth, no different than undertaken at Australian bases at the time of your deployment?

30 LIEUTENANT COLONEL CHARLESWORTH: I do not recall doing anything similar in Australia under any circumstances. The only thing that springs to mind was the Hilton bombing response in 1978, but that wasn't base security, that was something completely different. But no, I mean, what we did in Butterworth I have not done anywhere else in Australia routinely.

40 LIEUTENANT COLONEL MICKELBERG: During the period 1970 to 1989, is it your understanding that ROE and OFOF were issued to army personal routinely to provide security at army bases in Australia?

LIEUTENANT COLONEL CHARLESWORTH: No.

LIEUTENANT COLONEL MICKELBERG: That largely concludes what I have to say. Are there any final comments that you'd like to make?

5 LIEUTENANT COLONEL CHARLESWORTH: No, I'd just like to
reiterate that clearly we were there to undertake an operational
deployment. Even when the CA briefed the company group he said,
"Men, this is for real", so we weren't going out there to pussyfoot around
and undertake something that couldn't be done in Australia. We were
there to do a job, simple as that, and that was the defence of the base and
10 the assets and personal. I think the limitations on what training was
available inside the base had already been highlighted by Peter Michelson
and I concur. I mean, we had a 25 metre range where we could of very
little other than to conduct subcalibre range practices and shoot pistols but
apart from that - I suppose the ground sensors at Tobias were also being
15 used, but there were very minimal opportunities to do the sort of training
that would be special to warrant a deployment to that part of the world.

20 The other thing I'd touch on, is I mentioned coming back subsequently as
a company commander in 1983, and I took it upon myself to go to the
areas that were of concern when I was a platoon commander, to ensure
that there wasn't a need to look at special measures being adopted to
counter any threat that the - may have been perceived.

25 What I was enthused about and observed to be a positive step was the fact
that the aircraft were now secured by revetment or were placed under
cover, and the cemetery that was a risk before had either been relocated or
removed, and there was a development - a urban development taking place
on the other side of the wire with some distance between the wire and the
closest housing.

30 So, we didn't have to worry about that any more from that perspective, so,
it was heartening to see that there were some changes that had been adopted
regardless of the costs involved, I think that might have been a limitation
initially. But clearly, that was perceived as a threat that needed to be dealt
35 with and was dealt with accordingly.

40 The other thing is that the Malaysian rate of effort in that time in 1983 was
significant. We had two squadrons of Royal Malay Air Force aircraft, one
of the bombers, 12 Squadron F-5s, and the others were the Nuri 61s, the
helicopters, 3 Squadron. Both were flying, in the case of the F-5, bombing
missions on an almost daily basis, and in the case of the Nuris, troop
insertion, recovery and CASEVAC. So it was all happening.

45 But at the same time, we weren't approached by the base commander to
undertake any specific or additional tasks that would warrant a response in

the event that there was an additional threat to the base. So it was business as usual for the air force and business as usual for us.

5 LIEUTENANT COLONEL MICKELBERG: Thanks, Phil. Mr Chair, before I hand Phil over to yourself and Defence, I'd just like to bring to your attention CO Base Squadron's report for RAAF Butterworth, which we have a copy of here, for the period December 1975 to January 1976. And it says at page 6 para 51 under the heading "Operational":

10 *GDOC was manned by Defence Section, that is the RAAF Defence Section, and 6 RAR personnel during the period 21 January '76 and 31 January '76. Reason: Possible ground threats to F-111 aircraft.*

15 I'm happy to give you a copy of that.

THE CHAIR: Please.

20 LIEUTENANT COLONEL MICKELBERG: We'll have to get it photocopied.

AIR COMMODORE GRADY: I think we've got a copy.

25 THE CHAIR: Okay.

LIEUTENANT COLONEL MICKELBERG: That concludes that bit.

30 THE CHAIR: Thank you, colonel. Thank you, LIEUTENANT COLONEL Charlesworth. Defence, do you have any questions of LIEUTENANT COLONEL Charlesworth?

BRIGADIER HOLMES: Just a couple, please, Chair.

35 THE CHAIR: Yes.

BRIGADIER HOLMES: Hello, Lieutenant Colonel Charlesworth, Brigadier Mark Holmes.

40 LIEUTENANT COLONEL CHARLESWORTH: Mark.

BRIGADIER HOLMES: Just a couple of questions of fact if you wouldn't mind, please. You indicated on the second red letter day that the breaches in the northwest side through the fence, that the actions were under police control and some soldiers were attached to that, to the police?

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5 LIEUTENANT COLONEL CHARLESWORTH: The request was from the service policemen to secure an area outside the wire, so that they could move safely to where they wanted to move to the fringe of the kampung. So I don't think there was a command issue, it was the fact that they wanted to put people out in the event that there was a direct threat to them.

BRIGADIER HOLMES: Yes.

10 LIEUTENANT COLONEL CHARLESWORTH: So that they could then proceed with their investigation.

15 BRIGADIER HOLMES: I see. Was there a report on what went through the break in the wire? So was the thing identified, the person identified at any stage? So there are reports of a lot of unauthorised entry and traffic and people moving through and around this particular area, was there a person identified having gone through? Was anybody caught?

20 LIEUTENANT COLONEL CHARLESWORTH: No. I don't believe so. As you say, there had been sightings of numbers of people in the cemetery area before, so it was always something that needed to be scrutinised, and whenever we patrolled past the area, we ensured that we approached it with a high degree of caution. So no, I don't believe anyone was detained, I don't believe anyone was seen going in to the base. As I said, when the SPs responded, it was unclear at that time whether or not people had already come into the base or gone back out, or whether it was something that was going to be used subsequently. So it was unclear.

30 BRIGADIER HOLMES: Okay, thank you. The QRF orders that we all refer to in a number of the documents from field force command – sorry, field force headquarters, refer to the QRF patrol orders of the day, daytime, in a vehicle to patrol the perimeter. This is a part of the perimeter, and was it identified during one of those patrols, or was it a separate activity done by the police?

35 LIEUTENANT COLONEL CHARLESWORTH: No, I think the – it was certainly detected by the rifle company, I can't recall exactly when, but certainly I had a section proximate. I don't know whether it was them that discovered it, or whether it was discovered some other way. But the police responded very quickly and that's why we – I mean, it was probably mid-afternoon when the breach was discovered, so there was a need to do something before it got dark, and that's why they took the action they did. But no, I can't recall how it was uncovered.

45 BRIGADIER HOLMES: How it was triggered.

LIEUTENANT COLONEL CHARLESWORTH: Yes.

BRIGADIER HOLMES: All right. Can I go to your range practice, please, or the training that you conducted? You indicated you moved tactically.
5 Was that something that you did all of the time anyway when travelling with troops outside of the base?

LIEUTENANT COLONEL CHARLESWORTH: When we went outside, yes. Even to other exercises that we conducted with the air force. There
10 was a SAR exercise where we actually went to one of the beaches. But when we moved, we moved tactically. The other major move that took place was when we took the support group from Butterworth down to Johor. There was a road party that moved through known risk areas, so the moves that were undertaken there were tactical as well.

15 Peter Michelson may have more information on how that happened, but I'm certain that – well, I know that they moved tactically, and they moved from secure point to secure point as much as possible during the day.

BRIGADIER HOLMES: Okay. I understand what you're saying there. I think the thing that I'm trying to work out whether it was a part of normal routine and training and preparation, so that you were – every activity you were doing while the company was in Malaysia, you were taking the opportunity to train, move as you would doing all of the things as much as
20 you can, but was there a threat to you at the time?
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LIEUTENANT COLONEL CHARLESWORTH: That's why we moved the way we did.

BRIGADIER HOLMES: Yes, okay.
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LIEUTENANT COLONEL CHARLESWORTH: There was a threat, perceived or real, didn't matter. I mean, there was a threat, so we conducted ourselves accordingly.
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BRIGADIER HOLMES: Those moves were only done when you were in uniform and moving as a formed group, it wasn't something that you put specific instructions around when your soldiers had time after hours or were not in uniform and conducting activities out and around the base?
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LIEUTENANT COLONEL CHARLESWORTH: Correct.

BRIGADIER HOLMES: Okay. You mentioned a year that the air force – I'm sorry – that Air Base Butterworth was particularly busy with lots of air

movement, much air traffic. It was the time of your deployment you were talking about?

5 LIEUTENANT COLONEL CHARLESWORTH: This was the second deployment, in 1983.

BRIGADIER HOLMES: So it's not the 1975 deployment? '83 deployment?

10 LIEUTENANT COLONEL CHARLESWORTH: No. Yes.

BRIGADIER HOLMES: I see. And which unit was that with?

15 LIEUTENANT COLONEL CHARLESWORTH: 2/4 RAR.

BRIGADIER HOLMES: Thank you. That's all I have, thank you, Chair.

THE CHAIR: Thank you. And do you have any questions?

20 AIR COMMODORE GRADY: I've got a couple. LIEUTENANT COLONEL Charlesworth, Air Commodore Grady, good morning – good afternoon.

25 LIEUTENANT COLONEL CHARLESWORTH: Good afternoon.

AIR COMMODORE GRADY: You'll be pleased to know I've only got a couple of questions.

30 LIEUTENANT COLONEL CHARLESWORTH: Thank you.

AIR COMMODORE GRADY: I think I heard correctly, I had a question here about whether you had insight into the basis for the elevation of security over the Christmas there on your first detachment. I think I heard you say that the basis of both those activations were red letter days, is that correct?

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LIEUTENANT COLONEL CHARLESWORTH: Correct.

40 AIR COMMODORE GRADY: And that, almost by definition, a red letter day is an event by which the CT has disclosed an intent to do something at Butterworth.

LIEUTENANT COLONEL CHARLESWORTH: A non-specific intent, yes.

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AIR COMMODORE GRADY: Yes, that's right. But it's forecast in advance?

LIEUTENANT COLONEL CHARLESWORTH: Yes.

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AIR COMMODORE GRADY: When you deployed on both of those activities, do you recall the level of GDOC activation? Given that – we'll come to this later I think when we get to some of the RAAF guys, but you may recall – I think there was a baseline level then of green, amber, red?

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LIEUTENANT COLONEL CHARLESWORTH: Yes. I remember those. I cannot recall exactly what the situation was, but I'm just trying to cast my mind back to the first GDOC activation. It was more a familiarisation. So this was the Christmas deployment, we went in, we were shown around, it was obviously the first time there, other than the initial tour that we did of the base when we arrived. So it was the first businesslike involvement with GDOC. Went in, saw where everything was, saw who was going to be there, saw the rosters, what was required in terms of paperwork and procedure. But then beyond that, I can't recall - - -

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AIR COMMODORE GRADY: I'm sure you can't recall the detail, but in summary at amber, I think – assuming that the deployment is in accordance with the instructions, the RCB would have been placed on two hours standby, I understand, and then once you were deployed around the airfield, technically you should have been at red? Looking to the RAAF Ground Defendos here to confirm whether that is broadly true, and I'm looking to you to see whether that jolts any memories, given that you were there in the GDOC, whether you ever recall issuing a code red. I've waited a long time to say that.

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LIEUTENANT COLONEL CHARLESWORTH: I can't recall that. I mean, that would have been something that would stick in my mind, for sure.

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AIR COMMODORE GRADY: No, that's fine. All right, moving along, I have similar questions in relation to the breach in wire. The Brigadier's covered off on some angles of those, but I'm assuming that an investigation was completed. Did you ever see the outcome there? Well, I think we've established that no one was apprehended, but was there ever, you know, something in the report that indicated likely intentions, whether stuff had been stolen? Was there any report that arrived at some reasonable conclusion, to the best of your knowledge?

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LIEUTENANT COLONEL CHARLESWORTH: Not that I saw. The guys on the ground were interviewed subsequently, and that was part of the

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ongoing investigation. But I never saw a final report. I don't think it was ever established that anybody moved in or left the base through that breach, but obviously the fact that there was a breach was the major concern.

5 AIR COMMODORE GRADY: There were certainly a number of breaches over time and some of those were attributed to theft. I was just wondering whether you had seen a report along similar lines.

LIEUTENANT COLONEL CHARLESWORTH: No.

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AIR COMMODORE GRADY: You mentioned enhanced training for your medics. I don't profess to understand infantry or infantry tactics, but I'm led to believe that each of your platoons had a medic already?

15 LIEUTENANT COLONEL CHARLESWORTH: Yes.

AIR COMMODORE GRADY: What does enhanced training mean in that context for an infantry medic?

20 LIEUTENANT COLONEL CHARLESWORTH: Well, I think under normal circumstances back in Australia, I mean, you don't really pay that much attention to medical training, other than what you do in your basic training for first aid. What we were alerted to as part of the enhanced training was the likely possibility of people sustaining wounds and what
25 you needed to do to counter that.

Now, the medics had these mucilage sets that they used to go out and tarp people up with bloody broken bones sticking out and gory cuts and what have you all over the body, just to give some indication, in the absence of
30 anything real, as to what to expect. So soldiers knew that if there was a likelihood of people being wounded or injured severely, they knew what to expect and how to deal with it. So that's what we were basically addressing, and the medics did a very good job of that.

35 AIR COMMODORE GRADY: I guess I'm a bit surprised, I had assumed that a medic in an infantry platoon would already have had those elevated skills, but - - -

40 LIEUTENANT COLONEL CHARLESWORTH: Yes, yes, I'm sorry. I may have not made myself clear. The medics had those skills, the enhanced training was for the soldiers.

AIR COMMODORE GRADY: Right, okay. Sorry, my mistake then. I assumed or I thought that you'd talked about enhanced training for the
45 medics. That seemed to be the way it came off, but I'm happy to move on.

5 LIEUTENANT COLONEL CHARLESWORTH: I mean, the RMO took a great interest in what the medics were doing, but clearly they were well trained, they were capable of doing the job, and that was that. But I think the inference I was making was that the soldiers needed to be better prepared than they were.

10 AIR COMMODORE GRADY: Okay, I understand the context there, I'm happy to move on.

LIEUTENANT COLONEL CHARLESWORTH: Okay.

15 AIR COMMODORE GRADY: In relation to transits to and from the small arms range, we've heard about the posture you adopted there. Were there any serious incidents there during your detachment in the first instance to or from the range, along those lines?

20 LIEUTENANT COLONEL CHARLESWORTH: Other than – because we moved at speed between bounds, there was possibility of, when we're going through built up areas, hitting somebody, and in one case we hit a goat.

AIR COMMODORE GRADY: Moving on from your deployment, are you aware of any serious incidents on other deployments?

25 LIEUTENANT COLONEL CHARLESWORTH: No.

AIR COMMODORE GRADY: Specifically talking about that transit to and from the range.

30 LIEUTENANT COLONEL CHARLESWORTH: No.

AIR COMMODORE GRADY: In relation to your second tour, you made a comment there in your submission that there was no elevation of the threat level warranting activation of the GDOC.

35 LIEUTENANT COLONEL CHARLESWORTH: Not that I can recall, no. I don't believe we activated the GDOC at all during my time there.

40 AIR COMMODORE GRADY: All right. I think that'll do me for the moment. Thanks, Chair.

MR McCLUSKEY: Mr Chair, can I ask the colonel one question please?

45 THE CHAIR: Yes, sir.

5 MR McCLUSKEY: Colonel, it's Michael McCluskey, I was a digger in 11 Platoon 5 Section under command of Keith Fraser when you were over there from '75 to '76. My question to you is did D Company 6 RAR, either as a platoon or as a company, do any collective training with the Royal Malaysian Armed Forces whilst were over there?

LIEUTENANT COLONEL CHARLESWORTH: I don't believe so, no.

10 MR McCLUSKEY: The only training we did as far as I can remember is we went down by platoon down to PULADA.

15 LIEUTENANT COLONEL CHARLESWORTH: That's correct. That did not involve the Malaysian Army, other than to host us at the JWS. The training that we conducted down there was actually in Kota Tinggi Dry Training Area, which was further to the north from PULADA. And that was basically the platoons that were deployed, plus the enemy group that was made up from the company headquarters element.

20 MR McCLUSKEY: Thanks for your answer, sir. Good to see you again.

LIEUTENANT COLONEL CHARLESWORTH: Yes, thanks, mate.

25 AIR COMMODORE GRADY: Can I just ask whether that comment holds true for the second deployment? Did you do any exercise with the Malaysians on the second deployment in '83?

30 LIEUTENANT COLONEL CHARLESWORTH: Yes. I think the exercise was called SUMAN WARRIOR, it was with 8 Battalion, Royal Malay Regiment, and the area was in the Kuantan Metropolitan Area location.

AIR COMMODORE GRADY: Thanks.

MR KELLY: Air commodore.

35 AIR COMMODORE GRADY: Yes, Peter.

40 MR KELLY: There was an incident in my tour in Butterworth in 1975, where we went to the Gurun firing range, which is in a black area, as everyone's attested so far, and on our return we drove through what later we know now as a killing ground, and three trucks of Malay soldiers were behind us, we suspect around about 10 minutes. While we were making further progress towards Butterworth, armoured vehicles went past us at high speed, and we learned later that they had gone back to respond to an ambush where there were casualties. We must have driven straight through

it, and the next group were I guess the subject of the ambush. And that was – we were March to June 1975.

5 This is of course around the time that Vietnam fell and there was lots of activity. We activated two QRFs during that period. It was all very different, and a lot of these tours are different.

AIR COMMODORE GRADY: And that was by day?

10 MR KELLY: It was at daytime, yes.

THE CHAIR: Just, if I could ask Mr Kelly, when you were travelling through, I'm assuming you would have been readily identified as not Malaysian Armed Forces?

15 MR KELLY: The trucks looked very different. We were driving RAAF trucks, as opposed to the Malay Army trucks, they had wire mesh over them to prevent hand grenades going into them, whatever. So we would have been readily identifiable as different.

20 THE CHAIR: Yes, okay, that's fine. Thank you.

LIEUTENANT COLONEL MICKELBERG: Mr Chair, just a point about previous attacks. So I was deployment the company immediately before Phil Charlesworth's, so September to November '75. There was an attack at Sungai Petani only two weeks before we went to the ranges at Gurun, two Malays were killed. I've documented this in my submission, submission 67, and I recall very clearly and I've spoken to Tony Jensen about it recently, about asking him, "Do you still want us to go?" He said, "Yep." And I said, "Well, we're carrying 14 machine guns loaded, are you happy for us to go?" And he said, "Yeah, you've got your ROE, get on with it."

35 The other point that I wanted to clarify, just for the sake of the three of you, is where we talk about vehicles set up for counter-ambush, normally the trucks, the seats would be facing inwards, so the soldiers would be facing inwards, and there'd be sides on it, so they don't fall out. For counter-ambush, the sides are taken down, the seats are turned around so the soldiers are sitting back-to-back so they can face out towards the enemy. The tailgate's gone, so that if you had to stop quickly you can get off the truck and assault into them. And that's a drill that's taught.

40 THE CHAIR: Sure.

5 LIEUTENANT COLONEL MICKELBERG: And as Charlesworth has said in his evidence, everywhere we moved, we were set up for a counter-ambush. Why? Because the intelligence was made clear to us that the CTs had attacked Malaysian security forces, very successfully, and inflicted very heavy casualties on convoys.

THE CHAIR: Okay, understood.

10 LIEUTENANT COLONEL MICKELBERG: The only other point that I make about medics is that normally the allocation of medics is one at company level, none at platoon level, but for Butterworth we would have one at platoon level and another one at company level. Normally your medics, in Australia anyway, in my experience, their capacity is to remove ticks from people, maybe provide some very elementary first aid. But
15 certainly not dealing with gunshot casualties. All the soldiers were taught how to put a first field dressing on, and that's why they carried two.

THE CHAIR: Yes.

20 LIEUTENANT COLONEL MICKELBERG: As distinct normally they only carry one. And some of the photographs you'll see them carrying them on their webbing, and indeed in submission 66 from Russell Linwood, there are photographs showing the medical training that's being conducted at Butterworth using, as Charlesworth has described, simulated casualties
25 with fairly severe wounds.

THE CHAIR: Thank you. Lieutenant Colonel Charlesworth, thank you very much for the evidence that you've given, that is very helpful. Appreciate you making the time available and, as with Lieutenant Colonel
30 Michelson, appreciate the very measured way in which you've responded to the questions. So thank you very much. Feel free to hang up on us now if you wish. But you're welcome to observe the rest of the day if you want.

35 It's five to one, we might break for lunch. Given this is not happening at lightning speed, can we be back at 1.30? Okay. Thank you very much.

LUNCHEON ADJOURNMENT

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HEARING RESUMED

THE CHAIR: Right. Let's resume if we may. I think the next witness is Colonel Linwood. Colonel, I assume you're going to give some evidence

about the facts of your service and accordingly ask you to either to make an oath or swear or affirmation. Which is your preference.

5 COLONEL LINWOOD: An oath is fine.

<COLONEL RUSSELL LINWOOD, sworn

10 THE CHAIR: Colonel Mickelberg - Mr Fulcher you're taking the running.

MR FULCHER: Yes, I'm taking this one.

THE CHAIR: All right, all yours.

15 MR FULCHER: Could you start by just briefly giving us your background relevant to the issues here.

20 COLONEL LINWOOD: Certainly. Ladies and gentleman, I hope to represent the reality on the ground on the basis that I was in the Army for my entire eligible period of service, 17 through to mandatory retirement age of 65. In that time and relevant to what we're discussing today, I graduated from the Royal Military College at the end of '73. Spent a tour of duty which does influence some of the things I do. At the infantry centre, as the officer in charge of small arms wing, where I taught - led a team and taught small arms coaching, weapons specialities, sniping and anti-armour. I am a known specialist in those fields.

25 Rolling on to several years later, I was in the 1st Battalion Royal Australian Regiment as the Adjutant and had the ability to demonstrate experience in the pre-deployment, then deployment and post-deployment of Rifle Company Butterworth, three times. The reason for that, I was the Adjutant in 1980 and I assisted my commanding officer with all the work that personnel staff officers do to support the commander who deploys to his companies that are taken off him, based under the command of head quarters field force command the mounting authority and sent to perform their duties at Butterworth.

30 The third of course was me deploying as OC Rifle Company Butterworth, Christmas '81 and '82. I did that as a 28 year old. Years later, I served in headquarters post staff college in similar jobs to what many of you have done, including in the same areas where our colleagues from Defence had been. Specifically I was staff officer of chief of personnel some time now General Cosgrove was the image of the CGS. So I know my way around staff procedures and the value of the document evidence over opinion in matters like this. That's in a nutshell, my background. I represent, I hope,

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to everybody the custodian of the hard debater that has been collected over the years that pertains to this case.

5 MR FULCHER: So you were a company commander in Butterworth. What years were that?

10 COLONEL LINWOOD: December 1981 to February '82. Again, like our colleagues we heard this morning - in between those two and about half way through the common insurgency in Malaysia.

MR FULCHER: Could you take us through the types of briefings that you had both before your deployment, during your deployment.

15 COLONEL LINWOOD: Certainly. Fortunately I have been a custodian of all of the material that we all share and you've actually in fact all got. The mounting instruction that deployed us was 6 July 1979. That is one of the series of changing directives, not all RCB is deployed under the same instructions or head of power, if you like. They are all documented in submission 66 in the annexes. Now, so what. The mounting
20 instruction that deployed my company and you may choose to extrapolate this to every one of the 80 rifle companies that deployed to Butterworth during the period in question. The first of the key references was an Army one, called directive of the GOC field force command, who was to the OC Rifle Company Butterworth and this document control number I can
25 provide later. That specifically gave me my operational task which was to do a range of things at the base, as the company commander, with a proviso that certain things would not be done. I come back to that in a minute.

30 The second reference was an Air Force direction, which was from the OC RAAF Butterworth, the boss on the ground, to the OC Rifle Company Butterworth and it lists specifically the operational tasks - I won't go through them here, but I can give you the reference. And it says, "Your
35 company is only to deploy operationally outside such an area as my personal order or that of my deputy ground commander", which are the blokes that are going to be on in the next couple of speakers, "And you are under operational control". Operational control in those days meant I was under command of an Australian headquarters in Sydney but assigned to the OC of the RAAF base as under operational control. If he said, jump,
40 we said, how high. So that's what it means.

The briefings and the information that I, as a company commander, remembering I'd seen this happen for a company when 1RAR then support company 1RAR, while I was the adjutant to my CO. Thirteen months
45 later or fourteen months later, I deploy as a company commander from the

5 same unit, with a different CO. To do that, I followed the instructions which was, report to headquarters field force command and undergo a briefing by the SO1 intelligence in OPS branch of headquarters field force command. Now I think, we're all old enough for you to remember those terms. I was put in a locked room in big barracks and said, read this red file. Now as a Duntroon graduate adjutant, I had never seen a secret file in my life, because they just don't come down that unit level.

10 There I read a series of intelligence brief documents, none of which I can honestly say I recognise amongst the mass literature we have now. I can tell you this. It contained a whole range of information, what we call in sums in reps - some was Malayan, in English. Some were probably these JIL assessments. I can't remember. What I do remember clearly is it was sloppy. I was put into this room and told to read this and then a sign
15 document saying, you're under the Official Secrets Act, you are not to copy anything here. You are to accept this information as your operational pre-deployment knowledge of the enemy at this time.

20 Two weeks roll forward, I go forward per the drill of the day on an events party with CQ&S, company called Master Sergeant, to Butterworth and I receive a tour of the base from the incumbent RCB who is doing the exactly the same back. I go back to Townsville, bring my - the full body of the 132 men - they were all men, to Butterworth to deploy as you know in early December. So that is the documented briefings - briefings is the
25 wrong word. The mounting instruction with its two key references which were classified. I didn't see them until I got to Butterworth and then face to face briefing which was sit in the room and read this and tell us when you're finished. That was the information that I had.

30 The final comment is this. As the ex-Adjutant of the Battalion, I asked the brigade headquarters, "Do you blokes have the same material at task force which was then called (indistinct), third brigade headquarters. They said, "No, we don't. You guys are the next in the queue to go and carry out your duties at Butterworth." The brigade commander, Brigadier Neville
35 Smethurst had directed my CO that B Company 1RAR was part of the operational deployment force and I was the leader of that, had to drop two of my rifle interns and take the platoon of guns and a platoon of calvary to give them, "Operational experience defending the airbase". So, I took a composite company called B Company RAR.

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MR FULCHER: In the database we have your end of tour report.

COLONEL LINWOOD: Yep.

MR FULCHER: And in it, you say - you report that there were no real incidents.

COLONEL LINWOOD: Correct.

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MR FULCHER: Does that mean that you were expecting that there could be real incidents?

COLONEL LINWOOD: I'm happy to say that the enemy did not attack the base while we were there. I'm also happy to say that the men I had the privilege to lead had sufficient impact upon the enemy with our very obvious show of heavy weaponry and ammunition, consistent with the rules of engagement that we carried around and made them know that B Company 1RAR was in town. Bring it on if you want because this is what you're going to get. We had no contacts anywhere on the campus. We had no contacts on the multiple convoy stories you heard from my predecessor - previous two company commanders, because we carried out the correct drills and the correct way of looking after yourself. Doing all of the operational tasks that we were enlisted to do. We had no contact by the enemy. The GDOC was not activated because it didn't need to be.

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MR FULCHER: Why did you recommend that a sniper team be allocated to?

COLONEL LINWOOD: I knew that would come up. I did say before that I have some knowledge in weaponry. I have shot for Australia internationally, in sniping, machine gun and some other Army weapons. So I suggest I know a little bit about how weapons operate. The mere presence of snipers has been proven through history to have a deleterious effect of some proportion on the battlefield. If you think that there are snipers around you think twice about putting your head up. Now that may be an emotional rhetoric, but it is in fact documented in history. I'm a military historian amongst other things.

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More specifically having trained snipers, and I am a qualified one myself, I can tell you what they can do. The then weapon was the Parker-Hale with a six-power telescope. The air force had them as well, (indistinct) but not at Butterworth.

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The observer has a 20-power telescope. Now, you can do the math on what you can see, and how far you can see, and how clearly you can identify a potential target, should there be one necessary to engage.

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The paradox of most sniping is the best sniper shot is the one you don't fire because you scared the buggers off in the first place. But if you do

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have to see and shoot a sniper capability gives a—there’s a word for it, force multiplier effect.

5 Now, being a professional infantryman, and having people—and having worked wars and written some of the PAMs and influenced other parts of the Army’s behaviour, devastating effect since in Iraq, Afghanistan, and so on, with our sniping efforts there.

10 I can report to you that my End of Tour Report drew not only well done from the CO, but the Directorate of Infantry, who also gets to see some of this stuff—it doesn’t exist anymore, and the fact I wasn’t sacked for anything about suggesting that means that there was probably advice that may or may not have been taken.

15 My sole purpose in adding that was—that suggestion being a recommendation for improvement in the End of Tour Duty Report, because that’s what the Tour or Duty Report suggested—or we were asked to do. Look for opportunities to improve the deterrent effect of the combat capability of the QR—of the Rifle Company Butterworth, which
20 we all know was a minimum of a section at any one time.

25 But it could have been, and sometimes was, the entire company, the QRF, depending upon the threat level, as the GDOC fellas who speak next will tell you how they used to manage the defence of the base. We were their tool to do it.

Does that help?

30 MR FULCHER: Yes. Just finally, you’re in charge of the Review Group Database.

LIEUTENANT COLONEL LINWOOD: Yes.

35 MR FULCHER: Possibly could you say something about, as a historian, how you view the importance of that database.

LIEUTENANT COLONEL LINWOOD: Thank you. Yes.

40 Submission 066, gentleman, is my contribution. And it’s deliberately not arguing the case. It sorts to present to all parties. And all parties actually got it. When you’ve been able to assimilate and access it is a different issue, because that submission simply presents the primacy of the documented evidence that’s there.
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Things that exist, irrespective of who found it and where it found, is pretty hard to debate primary evidence. Of 19 stories, the primary evidence is the document that has been produced initially or a photograph.

5 Right, if a photograph shows something happening, or a document signed by Billy Bloggs back at date x, that this is your real engagement, that is ground truth at the time. These things have changed over time. And in submission 66, in order to give the assembled group here the objective ability to look at hard evidence, not the opinion about the hard evidence, 10 that should lead to a structured conclusion to this challenge that faces it all.

So I presented that information. And I invite you to—in a manner that brings into the researcher’s capability, finding what it is you’re looking 15 for to solve a point of contention.

Now we’re talking about shoot to kills and things like that. Should, after the hearing today, anyone want to know which documents says what thing about that, I have offered my services before. It happened to be on the 20 RCB Review Website, but I have also worked for Army History Unit. And I’ve been a staff officer with a general. So I’m on the side of objectivity and systematic research. I do hold high distinctions at doctorate level in research capability. So I’m possibly able to help you.

25 MR FULCHER: Thanks, Russell.

THE CHAIR: Thank you, Colonel Linwood. Can I just say, I think we all have a—something of a love-hate relationship with Submission 66.

30 MR FULCHER: As do we.

THE CHAIR: We love it for its content. We hate it for its size. And we hate it for the fact that its actually about three hours to download. But—

35 LIEUTENANT COLONEL LINWOOD: That’s why I keep it on a USB stick.

THE CHAIR: It’s a great resource—

40 LIEUTENANT COLONEL LINWOOD: Thank you.

THE CHAIR: Thank you for that.

45 Defence, do you have any questions of the Colonel arising from what he said?

BRIGADIER HOLMES: Thank you, Chair.

5 Colonel Linwood, can we just unpack the comment from Brigadier Smith-Hurst on the requirements with the composite company? And why that company was sent to RCB?

10 LIEUTENANT COLONEL LINWOOD: Yes. Brigadier Dighton was the first taskforce commander with the GUN3 Brigade. And I am certain it was Brigadier Smith-Hurst, the name is inconsequential, but assuming it was Smith-Hurst at the time. I remember clearly Colonel Caligari who was the father of the Lieutenant General Caligari, he was my CO at the time of him giving me the order that had come from his weekly meeting with the Brigade Commander.

15 Russell B Company 1RAR, which during the first year of the ADF actually had a heavy weapons platoon as well as raw strength with rifle company, that was the war strength rifle company. Russell, you've got to lose two weapon platoons and the heavy weapon platoon, that's going to form another base of my company. And in lieu you're going to get a cavalry, a three-quarter cavalry, and platoon from one field regimen.

20 You're going to have to work like billy goats to get them up to the standard of infantry because they are not trained infantry. We've going on an infantry task.

25 And the context that Colonel Caligari quoted Brigadier Smith-Hurst because Brigadiers don't talk to mere Majors in those sorts of circumstances, was that the whole idea of that was to give more of the ODF, which was the council-based brigade, still is I guess by a different name, more opportunity to get operational experience.

30 Naturally, I was happy as hell about that because I commanded B company for 12 months and we were right on the money. Had the ODF deployed, B company 1RAR, it was the point of 1RAR, followed by 2-4, guns, and all scaled attributes. So to be told you're going over to Butterworth to do this operational job with only one of your three platoons was fun.

40 And we spent about six weeks carrying out the syllabus in the mounting instruction down to a detail, what we had to train in there, all specifically aimed at doing the operational tasks that are listed in that instruction. That's what we trained to before went.

5 And a lot of people, including the Brigade Commander, would come out to the Air Force Base at Garbutt where we did most of our on the ground training in the real environment, you know, real control tower, and planes making noise that you can't bloody well hear over. We learnt to get as max real as most of the things my colleagues have said about, you know, the extra wound training and so on, was there.

10 I didn't fight, if you wished, using my—only today as an example. Just use—read the mounting instruction that deployed me once. Read—of course you can see that there are references in it—read my post-operation report once. And there you've got in a snap shot what the typical company commander did when you were 28, 29, 30 years of age, in charge of a rifle company at Butterworth, taken from your home battalion, on under command to headquarters field force command and sent over to be, you'll now as your told by the RAAF until we relieve you in place by another company that looks just like you.

20 BRIGADIER HOLMES: So, have you explained in your submission and your research the concept of operation of deployment force and why brigade was that? Have you explained that? So you've used that a number of times. I wonder if you can explain ODF and what meant at that time?

25 LIEUTENANT COLONEL LINWOOD: The operational deployment force was created in 1980. And it was the first time since Christ played football for Jerusalem, I guess, that a part of the Army had been earmarked to be the first to go.

30 1RAR was given the job of being the operational deployment force. And it was brought to war strength, men and weapons. Which meant I actually couldn't take a lot of my soldiers to Butterworth, because some of them were 18. You had be 19 to deploy to DP1. That was the case for 1980.

35 Second fourth battalion, across the road with three rifle companies and its scaled gum regiment, engineer regiment, and three-quarter cav, which was up there, the other ATS and DETS and logistic support army units, we were all called—third taskforce became renamed third brigade. And that was the Army's operation deployment force back in 80-81.

40 In 82, second force got the guernsey of being the point, ODF battalion, they were raised at full strength. So other units were robbed of manpower and weaponry, as necessary, so that the Army had a full-strength battalion with arms and services support to go to war as the first to go. That's the concept of the ODF.

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I marched down as battalion after three years' service, went to America to army (indistinct) to do something else.

5 That's all I can say about the ODF, Sir, because it was a command
construct that the Army used back in those days. And I happened to be
the Adjutant one year, watching my CO had two of his companies
deployed away, still on ADF duty by the way, but you're going
unaccompanied because you sent to—we've taken it off you and sent it to
10 Butterworth. And the second and third years I was a company
commander in 1RAR and then on then normal career progression postings
in (indistinct).

15 BRIGADIER HOLMES: Okay. So, it's my understanding that the ODF
was a part of prioritising where Army focused its resources in the time of
(indistinct) peace, when we weren't putting people anywhere and we
needed to have a focus of effort at the Townsville Brigade was that?

20 LIEUTENANT COLONEL LINWOOD: It could well be. I did not make
up the roster from Headquarters field force commander deployed
(indistinct) company Butterworth.

25 What I can show you, and it's on the infamous 66, is my researcher
statements, all—every tour of duty by every unit to Butterworth since day
one. And you can figure out and get some number cruncher to figure out
was there a relationship in the rotational numbers of battalions. Because
we sent battalion, Royal Australian Regiment companies from day one,
happened to be the in-country ones, we all know about that, until replaced
in September 73 by the heavy fourth platoon if you like, big one sent
direct from Australia.

30 They were all RAR battalions until East Timor, when the Army had a new
someone to go. And, oh my God, we sent in the second-eleven in the post
war period to go up to Butterworth in the purely training time after war,
with the exception of 107 field gun battery, which was the 28
35 commonwealth brigades artillery support in country. They did a tour of
duty, as you know, in Rifle Company Butterworth acting as infantry.

40 Several of the companies were—not just mine, were composite. And
some of them had air defence guard platoons. Under command of infantry
majors, company commanders. Embedded, if you like, in RAR's. But the
tour of duty date and the base is on memory stick. You can see a lot.

45 BRIGADIER HOLMES: Colonel, and can you tell us how difficult it was
to maintain DP1 status from category?

5 LIEUTENANT COLONEL LINWOOD: Quite easy for the ADF
battalion, because every day, every week, you were doing something that
the CO would lurch down and check out your machine guns or check our
your—all his normal command methods of ensuring that the battalion was
2DP1.

10 So, by the time we deployed to Butterworth, guess what? The infantry
part of B Company 1RAR that were earmarked to go to Butterworth, we
were all the line ready to go, no problem. It was a case of pack your bags
and go. We got 24 hours' notice to move.

15 The artillery and armoured platoons, and the military police, the medics,
and the couple of people who came into the company—big company, the
RCB company, 132 strong per the mounting instructions, they all had to
be brought up. It took a lot of extra good-ship effort. Cavalry guys would
speak to my cavalry mates, he used to ride it around, not walk. Their
fitness levels were awful.

20 We're going off on a side-track there. Most of the people who got posted
in for the tour of duty at Butterworth, came from the brigade. Not all, but
most of them. Therefore most of those—they'd be privates and lance
corporals because anything higher than that were already the appointed
sergeants and lieutenants.

25 Most people were pretty good people, and status already. It was not a big
deal. We were able to deal with quite effects.

BRIGADIER HOLMES: Thank you.

30 LIEUTENANT COLONEL LINWOOD: Yes, Sir. Thank you.

MR ROBARDS: Chair if I can?

35 THE CHAIR: Yes, of course.

MR ROBARDS: Just one for you, Colonel Linwood. Thanks. I'm
particularly interested in the composite company. And you mentioned
about giving experience to others. What was the value—what benefit did
those others, the in-infantry elements that you took there, what benefit did
40 they get from that experience?

45 LIEUTENANT COLONEL LINWOOD: Well not being one of them but
being a commander whose job was to aide—deny penetration by the
enemy to the base, which is the whole reason we were there. The second
one was to bring them all home alive if possible.

I had two non-fatal, non-battle cas', who were soldiers injured in that process, and the people who got killed in Butterworth and all that stuff my research, but that's not what you asked. The benefit to the soldiers of all ranks that is, lieutenants, two second lieutenants, two sergeants and a bunch of corporals and lance corporals and privates and gunners from the two composite platoons. They would have had to receive an enormously improved understanding of how the infantry really works being an infantryman. Because nothing is tougher in the bloody world than being an infantryman on war service. You've got to do it. You've got to do it hard. You've got to nail where everything right on the spot.

To their great credit now recently retired Colonel Stanhope was one of them. You may know that gentleman. He rose to be full Colonel in the army. Not bad for a second lieutenant artilleryman accompany commander of the infantry over in Butterworth. The armoured corps gentleman didn't go through his career, but his platoon sergeant retired recently to the rank of lieutenant colonel, which might suggest that some of the experience that they got as being young combatant soldiers doing it the hard way like the infantry do at Butterworth, might have made a difference in their understanding of their career and those professional soldiers to the point that they progressed further than many people might in their career.

THE CHAIR: Nothing further? Do you have anything?

AIR COMMODORE GRADY: Yes I do. You had a fairly short tour, I think. Is that sound right? 71 days in country, partly by - - -

COLONEL LINWOOD: You've done the maths - for the record 9 December 1981 to 17 February 1982.

AIR COMMODORE GRADY: And that shortness was partly due to the delay you suffered getting transport up to Butterworth. Does that sound about right?

COLONEL LINWOOD: I don't know. I'm not across the logistics. I went up there twice, remember, for recon. Waste of time. And then back. They're the dates I actually landed on and took off.

AIR COMMODORE GRADY: We've already covered part of this first question. It's to do within your tenure. No real incidents occurred and no operational tasking was issued by as in Butterworth.

COLONEL LINWOOD: Let me correct you. The operational tasking occurs in the directive in the reference B to now instructions.

5 AIR COMMODORE GRADY: That's a direct quote from your end of tour report.

COLONEL LINWOOD: Yep.

10 AIR COMMODORE GRADY: No real incidents occurred and no operational tasking was issued by as to Butterworth.

COLONEL LINWOOD: Okay. In that context, no the enemy did not - there were no incidents. We did our QRF 24 hours a day but there was nobody to go find. So they were all drill callouts.

15 AIR COMMODORE GRADY: Just as an observation, do you accept that of all of the end of tour reports that we have available, which is---

COLONEL LINWOOD: Yes.

20 AIR COMMODORE GRADY: Not all of them, but they either a universal report that no incidents occurred. No real incidents occurred. Or are mute on the subject. Is that a valid observation?

25 COLONEL LINWOOD: If we've read the same ones, yes I do agree with that. And that's good because our job was to deter the enemy and we could do that.

30 AIR COMMODORE GRADY: Happy with that. Just to pick up on the point you made about snipers. I'm intrigued as to how snipers would have complied with the ROE of the day.

COLONEL LINWOOD: Very easily.

35 AIR COMMODORE GRADY: Can you explain that.

COLONEL LINWOOD: Yes, by all means. Snipers are under command of whoever's controlling their fire. They're in radio contact with whoever it is. Now, we have never - I did not have snipers there, but I used to teach how snipers use to be used. So I know how they're used and employed. Subsequent operational deployment of snipers and around Afghanistan and even Somalia where non-human targets were engaged, suggest that they're able to deliver if they actually ever shoot highly discriminatory fire. Because it's not the delivery of fire that we're readily to hone in on here. It's the ability to be known to even be there. It's the

45

5 ability to observe, report and help with the overall surveillance. Because when someone's got those powered optics and are trained in specific observation analysis detection techniques and reporting and field sketching and photography, it adds disproportionately to the intelligence effort. That can be corroborated independently.

AIR COMMODORE GRADY: So you're suggesting that the value of the sniper was their ability to observe and report as opposed to shoot.

10 COLONEL LINWOOD: If they had to shoot, they may have to have shot. But I didn't have any there and future commanders who are now taught and back then were being taught that snipers were a new arm, if you like or portion - a resurrected skill, not a new in the Army, was a possibility and it was a suggestion that was made for possible use. Whether that ever
15 happened or not, I don't know. Because like you there's a mysterious thing we can't figure out; what happened to all the Army records about Butterworth? If you haven't already picked it up, 90% of the data that we all ship out here is from RAAF records. From 28 brigade records and civilian government - Federal government department records. There is a
20 dearth of missing information from the headquarters that deployed us from '74, '75, I think is when headquarters field force command took over through to whenever they became something else.

25 Where did all those records and with them, the - we got to get the 11th post-op reports between us. I had two. Mine and one other until the Tribunal research support whoever you got, found the ones that were released in the three months. I went, you beauty, here's some more. Where's all the others?

30 AIR COMMODORE GRADY: Staying on your end of tour report. A para 12, I'm interested in understanding what you meant when para 12 which is referring to the close liaison required to reduce the possibility of green on blue engagements. You suggested that that could not be guaranteed in a period of threat. Can I reasonably conclude that in your
35 mind, there was no threat.

COLONEL LINWOOD: No there was always a threat.

40 AIR COMMODORE GRADY: What did you mean when you said, this could not be guaranteed in a period of threat. I mean, you've just gone through the process of guaranteeing it. Does that not imply that there was no threat?

45 COLONEL LINWOOD: No, I'm not following your line of argument. What I'm trying to point out there, is that we - the Australian Life

Company Butterworth had everything to do with our RAAF taskmasters who ran the GDOC, which is the gentleman behind me. We had virtually no contact with our Malaysian counterparts who guarded the perimeter. Very simply, the Malaysians guarded the perimeter. And if the enemy -
5 whoever the enemy is, got in through that, that's when the QRF would react and engage per all of these tasks. The major weakness that I have reported and hopefully that's what I'm trying to get through to you here now, is a major weakness in the system was. The Malays are armed with
10 automatic weapons and revolvers - revolvers not pistols. That means they're in the action condition all the time, guarding the bloody perimeter, and here's us, the chance of a green on blue was constant.

AIR COMMODORE GRADY: The logic behind that question was that, we're basically saying that there appears to be a risk of green on blue and
15 that to counteract that risk you have engaged fairly closely, liaised with the Royal Malaysian Air Force to counter that. But that that outcome could not be guaranteed in a period of threat. It very strongly seems to imply that in a period of threat, that process couldn't be undertaken. That's the logic. In any case, you also mention - you touched on this to the
20 moment, that the security forces there - the RMAF security forces were, "Usually at action or instant".

COLONEL LINWOOD: Yes.

25 AIR COMMODORE GRADY: How did you become aware that that was the case.

COLONEL LINWOOD: Because I had some knowledge in weapons. And in the 66 you can see a photo of the power point slide, one of the
30 front guards with a revolver on his hip. A revolver has a revolving chamber. No safety catch on those revolvers as opposed to a service pistol, which has a magazine that goes up the handle. Okay. A revolver, by definition when you can see the reactions, is in the action condition. When soldiers routinely reported seeing the Malay - the (indistinct), which
35 is their colloquial name, walking around. Even going home to their married quarters and there's a photo, I think it's in the slide show, of these guys with a M16 which is their primary weapon. Some had SMGs. Some had other weapons. But no assault semi-automatic weapons like the SLRs. These folks were not a fraction as competent as the Australian
40 soldiers. Now that comes up fairly regularly in other people's reports.

AIR COMMODORE GRADY: Okay. You dedicated a fair bit of space in your end of tour report to the risk - this green on blue risk.

45 COLONEL LINWOOD: Yep.

5 AIR COMMODORE GRADY: Is it a fair statement that your report implies that the highest risk space by your detachment there was ground blue. Particularly when read in light of the absence of real incidents and no other operational tasking. What was that the principal focus?

COLONEL LINWOOD: No it wasn't.

10 AIR COMMODORE GRADY: The principal risk that you were addressing.

15 COLONEL LINWOOD: No it wasn't. It was just one we had to be very careful about when we're doing the drills. Because in my tour of duty, it may have varied with others, a section was on duty - 24 hours a day. You go, oh bugger I'm on again. And twice during the day and at least twice during the night, a callout was made by the platoon commander who anywhere on the 90-odd vital points which at my tour of duty was a big map behind my office. The soldiers behind there never knew what was real or wasn't. When they deployed they went knowing that, hey this might be the real thing. They never knew. But the only one who did was the platoon commander was calling it out. And or the platoon sergeant was. Sometimes the Air Force ground officers would have been with (indistinct).

25 AIR COMMODORE GRADY: You mentioned that the RMAF employed different ROE. What was different about it?

COLONEL LINWOOD: (Indistinct words).

30 AIR COMMODORE GRADY: So not the ROE itself, but the degrees of--

35 COLONEL LINWOOD: I did not know, I can't speak to that. I don't know which operational order was still in power in 1981 when I was there. But the famous op order 1 that one of '71 which is worth a close reread, is very explicit in that it addresses the RMAF and RAAF and Australian Rifle Company, equally, in the distribution list and the division of responsibilities et cetera, et cetera. And it says that these are the rules of engagement. I think it's annexe G. Worth a look through there. 40 Because that's the shared defence initiative outcome in operation order 1 of 71. It's in there. The rules of engagement conned everybody. They are, as everyone's heard, couching the words on sentry duty. But still extrapolates to worse case, oh my god we've got a big gunfight on. Go to fight them. Counterattack if you have to.

45

5 The big problem, this is what I was saying - how do you do that in an
environment like that and still try to obey the spirit of the rules of
engagement. You can only decide to do that on the bloody ground when it
happens. And (indistinct) another close read through, not only the one
that governed by tour of duty but all of the found rules of engagement are
10 tabled in the dreaded 66 at annexe G, I think it is. I implore you to read
them, because you will see there is some variation. But what the key point
is, is this. The company commander at the time and the GDOC who
directed their operations at the time, were accountable to have those
15 carried out. On the base, off the base and we did our best to do that. I
won't get into the shoot to learned argument. We'd be here all day.

AIR COMMODORE GRADY: All right. I'll leave the computers. You
mentioned that the RMAF employed different ROE but what I thought I
15 heard then was that you were saying they would use common ROE.

COLONEL LINWOOD: That document says we're supposed to have the
same one and let's have a reread of it and make sure I'm right. I observed
20 them in the weapons when the action - what's called (indistinct). I saw
them with revolvers.

AIR COMMODORE GRADY: I contend that ROE is different to the
degree of readiness, but in any case, but what I'm taking out of it, I'm
25 happy to drop lock on it, is that for all intents and purposes the RMAF
employed the same. A common rule of engagement. The that was
enshrined---

COLONEL LINWOOD: Yeah, they were sentries.

30 AIR COMMODORE GRADY: Right. And you accept that the Army was
subject to, notwithstanding the fact that op order 1 of 71 was written
around sentries and guards that the Army was required, obligated to
comply with.

35 COLONEL LINWOOD: Yep. Sure. And we did have (indistinct) to do
it. Happily we didn't have to test it.

AIR COMMODORE GRADY: Your end of tour report seems to have an
40 exceptionally strong focus on training, education, sport and welfare.

COLONEL LINWOOD: Mm-hmm.

45 AIR COMMODORE GRADY: You managed to compete in eight
different spots; to build an air gun range; to conduct squadron visits and to
fly on different aircraft types. Or at least some people did.

COLONEL LINWOOD: Yep.

5 AIR COMMODORE GRADY: You mention the previous issues of
boredom and weariness were not evident because of some of the training
management practices that you'd invoked. Question is, do you accept that
that report noting the absence of the threat that you stated upfront and this
focus on other stuff, seems to be inconsistent now with the claims for
warlike service?

10 COLONEL LINWOOD: I disagree with you both fundamentally on that
and hence the wry grin. That reflects that my penchant for training and
education. I hold six degrees. One of which is staff college, if you call
staff college graduation six degrees. So what. They're mainly in
15 education and training and I have a military career record, those who
know it, as being a specialist. All infantry men learned to carry out
infantry jobs. We all have a secondary or tertiary speciality. Mine is
education and training. I'm the author of manual land warfare series 1 be
back when those people here were not yet doing their military training. I
20 held several instructional postings in the military. The military sent me to
America to do the master of instructional systems to come back and drive
the Army's training doctrine. I then got selected and appointed as the
chief instructor at one recruit training battalion albeit after I went to
Butterworth.

25 All that slant in my tour of duty report reflects, I would suggest, is not that
this was want for training. Of course we trained there. We trained to do
the jobs on the base that we were required to do. We did no other training.
No other training. Every element of training was either how to be better at
30 doing this, keeping our weapons zeroed, including going down to
PALUDA with the heavy weapons just like everybody else did. No, the
tour of duty report with its flavour that you correctly registered to be about
training reflects my DNA, my persona as a professional infantry officer of
several skillsets.

35 AIR COMMODORE GRADY: Moving on to your submission—this is
the elephant in the room, of course—let me quote this. You say:

40 *Similarly, it is triply forbidden practice in peacetime training for
a body of troops to be carrying both live and blank ammunition.*

COLONEL LINWOOD: Yes.

45 AIR COMMODORE GRADY: Yet this was specifically authorised in
Malaysia?

COLONEL LINWOOD: Yes.

AIR COMMODORE GRADY: Do you stand by that?

5

COLONEL LINWOOD: That was the case, however I did not practice it. If you go to look at annex F to the commanding instruction you will find the ammunition scale for Butterworth. It includes blank ammunition. What did we do? My company—we locked the blank ammunition away and never touched it, so there was no chance of a mix up between blanks and live ammunition. And why did we do that? Because we were not there to train in contact drills and counter ambush. We were there to do it for real, and all of the soldiers, including me, carried weapons virtually all the time. The only time we didn't was when we were on leave, which was exactly the same as happened in Vietnam with Vung Tau R&R and things like that. Every time we went on and around the base, which is on your normal duty hours, you were carrying your weapon, whatever your personal weapon was.

10

15

20

When we went off as platoons of never more—the company never went off on its own at all, because they had to maintain minimum on the base. Every time people went, they were carrying their weapons. We had no chance of mixing blank and ball ammunition. That is a disaster in the making, even though it was allowed to happen. Others may have done it because they may have gone and exercised with Malays. We did not. So, I eliminated the chance of any soldier getting injured or being unable to go into action, should it be needed, by heaving real weapons, real ammunition, when they were on QRF or when they were at the range, or on the way to and from it.

25

30

AIR COMMODORE GRADY: So, just to clarify, then, are you comfortable that the standard configuration for the QRF, who was being called out on a drill, is that the live ammunition is carried in a taped magazine somewhere else, and that the magazine fitted to the weapon is empty?

35

COLONEL LINWOOD: In my time, the taped magazines only applied when you were off campus going in these convoys—trips—or off base carrying weapons anywhere. The QRF in my company did not carry red tape magazines. They were the real McCoy, and the minimum was a section, and the blokes behind me—the (indistinct) can agree with this, they would have had their loaded magazines in their basic packs, usually a DP1 load with 60 rounds, usually, depending on the standing orders of the day, and the weapon with them. That's the QRF.

40

45

The rest of the platoon, from which that QRF came, were in the lines also on about 20- or 30-minutes' notice to get their weapons out of the Armscote, in which was the big office safe—office safe—building. The soldier lived in them. We brought meals to him. There was a person
5 inside there 24 hours a day to issue the weapons and the ammunition with them. The red magazine thing for my company deployment was only when we went off base, and that was to minimise the chance of a problem happening. That includes the machine guns.

10 AIR COMMODORE GRADY: These magazines that weren't taped—were they in the weapon or in the webbing?

COLONEL LINWOOD: No, they were in the webbing until you got called out, and when you went out on the QRF, again, examining my
15 company's mounting instruction—the others may have been different, but I'm speaking for me, and I've got the documents here that we've all got. The rules of engagement in here are silent on the degree of weapon readiness, which is the term used. Load, action, instant, unload.

20 THE CHAIR: When they were on QRF in your deployment—

COLONEL LINWOOD: Yes.

THE CHAIR: —the magazine was not taped. Was it in the weapon?
25

COLONEL LINWOOD: No. Not until they deployed out onto the truck or foot or whatever, and if ordered to go into load, that's what they would do. You're getting on, getting off—

30 THE CHAIR: Getting on the truck didn't trigger it?

COLONEL LINWOOD: No.

THE CHAIR: There had to be a specific order to load?
35

COLONEL LINWOOD: Yes.

THE CHAIR: Right.

40 COLONEL LINWOOD: Which was to maximise the adherence to the rules of the engagement.

AIR COMMODORE GRADY: I get the impression that you were the author of a lot of submission 65B, which was the RCB review group
45 response to questions tabled by the Tribunal?

COLONEL LINWOOD: Could be. I pulled my fair share.

5 AIR COMMODORE GRADY: There's just a lot of reference to your own work, so I formed the conclusion it came from you.

COLONEL LINWOOD: That's where it must have come from, yes.

10 AIR COMMODORE GRADY: In any case, let me ask you this: I've wheeled it out before, but question 827: what was the mandated degree of weapon readiness for RCB personnel while on duty? And to get to the crux of the matter, the response says, "QRS standing patrols, sentries and ambush controls were in the action condition."

15 COLONEL LINWOOD: Well, I must have gotten that—

THE CHAIR: Is it true?

MR FULCHER: I actually wrote 65B. I wrote it.

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COLONEL LINWOOD: He's an ex-soldier.

25 MR FULCHER: And I can say for my deployment, the Quick Reaction Force went to the action condition when they were called out, before they got on the truck; and when we were on sentries—like in my personal submission, I was a sentry on a C130—we were in the action condition. It's 21 years. It would have varied over the years, depending on what the company commander wanted.

30 AIR COMMODORE GRADY: So, just to clarify, then, you were at action with a weapon containing live rounds?

MR FULCHER: Yes.

35 AIR COMMODORE GRADY: On a QRF callout?

MR FULCHER: Yes.

40 AIR COMMODORE GRADY: And by callout, I'm talking a drill. A nightly drill.

MR FULCHER: Yes, we'd mount trucks, and before we got on trucks put it into action.

AIR COMMODORE GRADY: What do you say, then, to the rifle company unit standing orders that required the state of readiness for QRF to be unloaded at all times; not to be loaded unless it was a real situation as ordered by the QRF commander, and only once at the KP?

5

MR FULCHER: I didn't write those.

AIR COMMODORE GRADY: I'm not asking if you wrote them. I'm asking if you complied with them.

10

MR FULCHER: All I can say is, well, you know, there are things that are written and there are things that are done, and for us, the thing that was done was state of action.

15

COLONEL LINWOOD: May I also offer this guidance—maybe not the right word—please read through every available ROE that is gathered in one of those annexes to submission 66. They are not the same. In over 20 years we deployed 80 companies, so things have changed—

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AIR COMMODORE GRADY: I get that, but we're discussing degrees of weapon readiness—

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COLONEL LINWOOD: —and you can't extrapolate on one incident or one document something that fits everybody, because we all had to work to the evidence of the day that we had to deploy.

30

THE CHAIR: Look, we are just trying to understand, and what's becoming apparent is that were differences between deployments, and there might be differences between ROE and there might be differences between compliance with ROE.

35

MR KELLY: Certainly, Chair, in my experience we had two QRFs. One was on foot only. It was at the departure lounge, and it was protecting the flight line. We were on action condition on leaving the departure lounge because we were going to be on foot for the entire patrol around the flight lines. The guys who led the QRF from the guardroom who were going by truck were in the action condition getting onto the truck. That was our experience in 1975.

40

THE CHAIR: Thank you.

MR FULCHER: I think this is a prescient point that we make in one of our submissions; is that you can't overly rely on what is written down. You've got to find out what happened on the ground, and what happened

on the ground is different to what was written in even the rules of engagement than the (indistinct).

5 AIR COMMODORE GRADY: Things that are written down are generally orders and instructions.

MR KELLY: They are, but it doesn't necessarily mean that they're complied with by everyone all of the time. No, some company commanders, in my experience, will comply with everything that's in writing. Others won't. Some commanding officers that I've worked with are happy to be a bit more flexible than others, and I'm sure that's probably been your experience as well; that some senior officers will be more flexible than others, and the same applied in Butterworth.

15 I mean, the fact is that some of the deployments did involve composite makeups. A lot of them did. The question that was alluded to by defence about what benefit did the non-infantry people get out of it? Well, the answer is pretty simple: they needed to know how to defend themselves, just as, say, the artillery people needed to defend themselves at Fire Support Base Coral, which I know you know something about, because you've heard a matter in relation to that.

20 I mean, the fact is that every deployment was different, and the reason for that is because the company commanders would often set the priorities themselves for what they were seeking their company to get out of the deployment, as well as, obviously, their primary task defending the base.

MR FULCHER: I think it's fair to say - - -

30 THE CHAIR: We understand this, and I'd ask for your understanding that we're trying to come to - - -

MR FULCHER: No, I understand.

35 THE CHAIR: - - -20 years that happened a long time ago, so it's not all immediately apparent.

MR FULCHER: No, I agree.

40 MR KELLY: Chair, it's fair to say, also, that in a war situation, commanders on the ground are given a fair bit of latitude, and we're talking about the interpretation by the various company commanders as to the climate that they were in at the time—and we've said this many times, and I'm sure you understand—that not every tour was the same from the point of view of the hostility of the threat right through to the

implementation of the directions. So, it's not to escape or excuse anyone's behaviour, but it's just the reality.

THE CHAIR: Yes. It's the facts that we're trying to get to.

5

AIR COMMODORE GRADY: While we're talking about compliance with general orders, et cetera, and now that, I think, Mr Fulcher, we've established that you may be the author of this. This was a question I was going to put to Colonel Linwood, but in the same submission, 65B, you were talking about the ROEs for Airbase Butterworth sentries and patrols, or what you state is that:

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The ROE for Butterworth sentries and patrols were for the initial response, as is the case for all ROEs.

15

Is that true? Do you really mean that ROEs only applied to initial response?

MR FULCHER: Yes, because if you have the initial—the ROEs may say you have to give this warning before you can shoot; you can shoot if somebody's shooting at you. Once the shooting starts, the—

20

AIR COMMODORE GRADY: All right. So, do you differentiate between the orders for opening fire and ROE in making that statement?

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MR FULCHER: I've never heard of orders for opening fire before this, so I'm not sure of the difference.

AIR COMMODORE GRADY: Before today? You hadn't—

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MR FULCHER: Not today, no, but before starting at—well, probably a few years ago. I'm not quite sure of the difference between rules of engagement, orders for opening fire. I've only had rules of engagement in my time.

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AIR COMMODORE GRADY: In your defence, I think what you're saying is probably true about the orders for opening fire, in the sense that that once somebody starts firing, then the orders for opening fire tending to be overtaken by events, but ROE are more standing, enduring statements of requirement.

40

MR FULCHER: But even then, I mean, they still just give you a direction of what to do when you have a contact, basically. If you like, they're a plan of action for a contact, and as every infantryman again can say—or

every officer here can say—and I’m not an officer. Never was. Your best laid plans do not survive first contact with the enemy, so—

AIR COMMODORE GRADY: ROE, though—

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MR FULCHER: —rules of engagement are planned for first contact with the enemy.

COLONEL LINWOOD: And that holds true for plans. They don’t hold true for ROE. Once you’re directed by commanders, they’re non-negotiable.

AIR COMMODORE GRADY: In any case—

15 THE CHAIR: Just before, I just want to make sure that I understand this, because I don’t have a military background. I think from what I hear from what you’re saying is you’re not saying once you’ve had the initial contact and you’ve acted in compliance with the ROE, thereafter it’s open slather, do what you like. So, if the ROE confined you to combating an intrusion
20 on base, you’re not saying once you’ve done that, you can go off base and do whatever you like.

MR FULCHER: No.

25 THE CHAIR: It’s not open slather.

COLONEL LINWOOD: It’s confined to - - -

30 MR FULCHER: No, it’s not open slather. What I’m saying is even ROEs—they’re a graduated use of force. It’s up to the people on the ground to judge when that force needs to escalate, and it can escalate to, like—it might be, for instance, shoot to wound, but you might decide, “Well, that’s not really an option, so I’m going to kill him,” or in the counter penetration and counterattack role of RCB, and that’s what we
35 practiced with the callouts—with the callouts to the key points. And we never used the rules of engagement then. It was never in practice of the rules of engagement. It was just a straight, “Get off the truck and go into fire and movement.” There was never any practicing of the challenge, is what I’m saying.

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AIR COMMODORE GRADY: What was the mechanism employed within the RCB to ensure that all folk who were armed and potentially in a position to employ lethal force were aware of any embedded technicalities or pitfalls with the ROE? Where does it say that?

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LIEUTENANT COLONEL MICKELBERG: They were—before we deployed from Australia, at least for my deployment, we undertook—we were briefed on the orders for opening fire, which is what we called them. And there is a difference and I’ll come to that in a second.

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AIR COMMODORE GRADY: We’re going to unpack this in the ROE discussion, I think, rather than the—

LIEUTENANT COLONEL MICKELBERG: Yes, and then we would conduct “wargames”, for want of a better term, with our NCOs and soldiers—incidents—and basically the idea was to tease out of them their view of what they would do when—particularly from the junior NCOs, who ultimately are the ones who arbitrate—do we go from load to action to instant to fire? Then when we got to Butterworth, we, at least, did the same thing again, all the time, the idea being to reinforce it, even though we never got to shoot anyone, unfortunately.

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COLONEL LINWOOD: Most soldiers also—not all, but most soldiers carried a job aid card, which had the critical phrases and the order in which you were to do things. Again, the private soldiers; the corporals; the sergeants—they would understand in detail what they look like and there are evident examples of those in the database. I’m very happy to - -

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-

AIR COMMODORE GRADY: I’ve seen that one, we’ve got no issues.

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COLONEL LINWOOD: —that should answer your question because it’s a job aid to try to get round the problem. It’s (indistinct) to then give it a job aid - - -

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LIEUTENANT COLONEL MICKELBERG: Just by amplification, Air Commodore, in relation to the question about ROE and OFOF, Op Slipper, I have them here in front of me.

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AIR COMMODORE GRADY: No, I’m contesting the fact that they exist. You know, in the discussion we have I’m going to seek to draw out the differences between them and to look at what elements of the ROE, as it’s termed in the USO, say, in December 78—which elements of those are RM OFOF and which or them are ROE?

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LIEUTENANT COLONEL MICKELBERG: I accept that they’re a standing ROE, and ultimately they provide the basis for ROE to be determined for operations, and I guess defence’s expert will talk about this, as will probably Professor Stevens, but ultimately at a tactical level—and that’s important here, because that’s the level talking about with RCB

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5 is the tactical level where the war fighters are OFOF. Orders for opening fire. And yes, in the shared plan it was articulated in ROE, and I think the base commander in his plan talks about engagement by fire in the annex, and then it cascades down into the circumstances when you can engage by using fire, including everything from halt, hands up, who goes, et cetera, through to - - -

10 AIR COMMODORE GRADY: We'll have that discussion when we unpack ROE in a bit more detail. I've just got the one last question for you, Russell. There's been a bit of discussion around DP1 as it related to the RCB, but does army in those days, or even today, use DP1 or its equivalent as a determinant for other things, like a deployment to a major international exercise? It gets to the heart of deployability, rather than necessarily going to war.

15 COLONEL LINWOOD: Yes. DP1 in my day meant "draft priority 1", and that meant you had to have a whole set of personnel and equipment circumstances which enabled you to deploy to an operational environment. It did not have any impact whatsoever on you going on
20 exercises or training around Australia.

25 LIEUTENANT COLONEL MICKELBERG: Mr Chair, I actually have from March 79 a DP1 checklist from one of the battalions, and I'm happy to provide that, which goes through what Russell has just said. The personnel checklist, in terms of age; all manner of things; (indistinct) et cetera, et cetera, cetera; equipment that they were supposed to be provided. And we would actually have to do these checks every few months when we were in deployments, and then before we actually deployed, we'd have to do this to satisfy the commanding officer that we
30 met DP1.

THE CHAIR: I'd be keen to see that document. Thank you.

35 COLONEL LINWOOD: (indistinct) blah blah blah blah blah. You do not go to war unless you're DP1. Game over. As I said before, I had to stand down a lot of very disappointed junior roles because they were not 19. They were not allowed to go. You don't go to war because they weren't 19. That was one of the standard criteria of draft priority 1.

40 AIR COMMODORE GRADY: For an operational environment?

COLONEL LINWOOD: Yes, certainly.

45 THE CHAIR: Has that concept changed over time? Is DP1 different today?

BRIGADIER HOLMES: So, we know it as deployment preparation stage 1, so I haven't heard draft priority 1 for some time.

5 COLONEL LINWOOD: It's dinosaur time.

BRIGADIER HOLMES: I hadn't heard that for some time. We don't have a brigade element of that readiness, and we don't operate in that way in terms of the way the army would deploy. The readiness preparation is called something else, but the roots of it and the reasons why we prepare and we go through the checklist of preparation is very, very similar.

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AIR COMMODORE GRADY: The last question I've got is in relation to some comments you made in your submission labelled or titled Expectation of Casualties. There are quite a few. I won't quiz you on all of these, but basically, you suggest that the expectation of casualties is supported by evidence in a range of actions that clearly indicate the expectation of casualties.

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My question is that is there a very clear, unequivocal link in those documents that point to a conclusion that someone has arrived, that there will be, that there is an expectation of casualties; or are those linkages a little more unclear than that? Is this supposition on someone's behalf, or is there something in the document that clearly states that on the basis of some analysis or operations at Butterworth there is an expectation of casualties?

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COLONEL LINWOOD: Yes, is the short answer, and tabled in one of our annexes called Expectation of Casualties is the full range—not the full range. My summary—my introductory sentence was (indistinct) here is a representative range of the most likely documents that pertain to the expectation of casualties. That's in the literature. Black and white, over a period of time, and they are chronologically listed. So, yes, there is a connection, because I would not have summarised that aggregated information in the manner that I did if I had not reached the subjective opinion in my own professional analytical capability that there was an expectation for casualties.

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Of course, there is an expectation of casualties, even training at home with live weapons, particularly explosive ordinance. I won't go into the detail of that. Whenever weapons are being used, and particularly in a warlike environment, or an operation—whatever you want to call it—there will be an expectation of casualties. The point I'm making here—

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AIR COMMODORE GRADY: Can I just stop you there, though. In your mind, do you differentiate between the expectation of non-battle casualties and battle casualties, or is everything lumped in together?

5 COLONEL LINWOOD: Both are always possible. Both are always possible. We both know or we all should know that battle casualties are caused by engagement with an enemy. Non-battle casualties can and do occur at any time - - -

10 AIR COMMODORE GRADY: Do you see that there's a difference between the possibility of a casualty and the expectation of a casualty?

COLONEL LINWOOD: Yes.

15 AIR COMMODORE GRADY: Is there something in your mind that attaches a higher likelihood of an outcome to "expectation" than it does to "possibility"?

20 COLONEL LINWOOD: Yes, of course, because those two—I think they're adjectives that you used—don't mean the same thing. Of course, there's a difference.

AIR COMMODORE GRADY: I just want to sort of focus in on this language about the expectation of casualties, which I think for most people would have a highly likely or certain degree of probability associated with it. Is that the way your annex H captures documents that show similar probabilities of that outcome? Are there documents there that say "we will", or "almost certainly likely to get casualties"? And I mean battle casualties.

30 COLONEL LINWOOD: I cannot recall reading "almost certainly likely", but again, I invite our individual analysis of the hardcore evidence that's there to see what you come up with. As a commander of 131 other young men—I was 28—it's a daily responsibility to keep them in the safest possible condition, knowing full bloody well as infantry our role was to close-weapon kill the enemy. Their role is the same. So, the chances of there being casualties, should there be a fight, is possible. At the least, possible. And the literature which is presented that deals with that particular subject is worthy of a review. I'm sorry to the poor man reading, to form a "what is the best fit?" opinion. Did I see a high likelihood of casualties? No. But did I prepare for it? Yes.

45 LIEUTENANT COLONEL MICKELBERG: Mr Chair, just on this question of expectation of casualties, and I know we are going to address it probably tomorrow, expectation—a strong belief that something will

5 happen or be the case. Likelihood is a question of probability. You'll probably recall you asked us and defence to provide a contemporary assessment of the expectation of casualties. Our response was, at that time, that is, up until 1997, defence did not go down that path. It was only as a result of the Black Hawk accident that defence started to use the risk management standard to assess the likelihood of casualties.

10 Prior to that, it was a subjective judgment by commanders as part of their planning when they put together their orders as to “what measures do I need to have in place to treat and evacuate casualties?” They didn't say, “Well, it's likely you put have one, ten, five or 50.” They would just say, “Well, we need some measures in place.” Why? Because if you're going to ask soldiers to stick their head above the top of the parapet, they need to know that someone's going to care for them after they get wounded, and that's exactly the approach; that we actually did an assessment and we used current defence doctrine to do that assessment, and we used contemporary intelligence on the threat to inform that judgment—and I know you have seen the report, because we sent it in—and we can address that tomorrow in more depth.

20 THE CHAIR: We will get to it, but let me just say expectation is a key issue. The 93 cabinet definitions draw a distinction between expectation and possibility, so there's a graduated scale.

25 LIEUTENANT COLONEL MICKELBERG: Are we addressing the 1993 cabinet definitions or the 2018—

30 THE CHAIR: We'll come to that too, but let me just say that if 93 cabinet definitions are going to be applied, there is a graduated scale, and it just cannot be right in that context to say, “I'm a soldier. I expect a casualty. I expect to be a casualty.” It's a possibility. Right.

35 If you look at the 2018 definitions—and I think they have got a sorry lack in this regard—they have three definitions, and they go “expectation”, “no expectation”, “no expectation”. You lose the concept of a graduation. But it seems to me that there has got to be some concept of graduation. We can't just say, “I'm a soldier. I expect to be shot.” It's a possibility depending on the circumstances in which I'm put. That will be linked to the risk of hostile action in those circumstances.

40 LIEUTENANT COLONEL MICKELBERG: The reality is then that our soldiers were taught when you go into an attack, if the man next to you gets hit, you don't stop and save him or try to tend to him. You keep going on with the operation. Someone will deal with it later. And your numbers have to be on the round or that's your bad luck.

THE CHAIR: Yes, and that's perfectly understandable and understood.

LIEUTENANT COLONEL MICKELBERG: It's a bit different now.

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THE CHAIR: It's understood, but it doesn't necessarily equate to expectation at that high level.

LIEUTENANT COLONEL MICKELBERG: I'd be happy to (indistinct)

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THE CHAIR: I know, and we're grateful to you for it.

MR FULCHER: I don't think you're going to find anywhere—possibly even today, but I don't know—a defence document or assessment that says, "We expect casualties." That expectation arises, as you've said, from the analysis of the threat assessment, which we have done according to the current doctrine, as you requested of defence.

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THE CHAIR: Yes. Mr Marsh.

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MR MARSH: Yes. I think, Mr Chair, one thing we need to keep in mind, and this is how I see it: we are sitting here in 2023. I stepped off of Qantas 707 in 1971 at Airbase Butterworth. No-one had thought of the terms of "warlike" and "warlike service" in terms of the framework that came about in 1993. So, we are really using the 1993 framework that we have to apply then, and as I understand what Mohr and Clarke said, and as I understand some of the stuff which was provided by defence in the last month or so where it says that these do not in any way change the incurred danger requirement for, you know—yes. Let me start again.

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So, basically, what the "warlike" and warlike definition—they're asking for an objective assessment of fact before deployment. Looking back, if we apply that criteria to the 1970s, we have to somehow get out of our mind all that we know that has happened since. We have to go back to what did those people know at the time on the ground, and that is spelt out in things like the JIO assessments; the ANZUK assessment that you referred to. And I was trying to find the document here, but there is one thing there where they say that there's definitely a risk of small-scale incursion designed to damage property and injure personnel. Now, that was a definite risk.

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My question would be if that definite risk had eventuated—because you can look at the documents. They say it's the risk that's important, not whether or not the attack occurred. An attack that did not occur does not mean that the risk was not there. So, when you have the security

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assessment said there is definitely a threat that this could happen or that the RMAF has advised potential rocket attacks on Butterworth in the next 30 days or something, if those attacks had eventuated, who could turn around after that and say, “Oh, crap. We never expected that to happen”?

5

Those assessments, I suspect, give us the answer. There was an expectation an attack could occur that was a definite threat, and that itself carried the expectation of casualties could occur.

10 THE CHAIR: There’s a bit of water to go under this bridge. Let’s move on, but, you know, your statement there that the recognition of a definite risk means there’s an expectation of that happening—I just don’t think that’s right. There’s a risk. It’s a possibility. You can rate that possibility as to likelihood, and the casualties are a function of whether it happens and how it happens. It’s complicated, but it’s in the definitions and we’ve got to struggle with it.

20 LIEUTENANT COLONEL MICKELBERG: Mr Chair, I don’t know whether it’s part of your purview as part of this inquiry, but it seems to me that the current approach that is used by the Department of Defence in Australia is at best subjective, and perhaps, if you think it’s relevant, you ought to reconsider recommending that it be reviewed. The Kiwi approach—as you’ve probably seen in their report—is risk-based, and in my view, more objective, potentially, and defence doctrine currently provides for the use of an international risk management standard, which the Kiwis use and which we now use. And it sort of begs the question: why the hell wouldn’t we be using it?

30 THE CHAIR: Let me just respond to that, and I do want to move on. We are keeping some other gentlemen waiting and they’ve been sitting here a long time. Under the Act, we are given a direction to conduct an inquiry in accordance with terms of reference, and our terms of reference focus on Butterworth, but the act does allow us to make any other recommendation that we consider appropriate coming out of it, and we will certainly give consideration to whether there are any other recommendations we should make.

40 MR KELLY: Chair, at the risk of being contentious, I’ll be very brief. I seem to believe in my memory—and I can send this to the Tribunal after these hearings—I seem to remember reading in a review on Ubon that decided that their service was to be reclassified from non-warlike to warlike; a statement something like, “Well, of course there was a risk of casualties. They were put on a war footing.” Almost that tone to the words, which I was surprised when I read it because of the choice of words. I’ll happily send it to you when I can probably get back to Sydney

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and find it, but it's quite interesting, the choice of words and also the fact that it was enough that the troops were on war footing. Remember, also, that Ubon didn't work on weekends, and all sorts of other things that contributed to their war service, of course.

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THE CHAIR: Yes. Now, has anybody got anything more that they want to put to Colonel Linwood?

COLONEL LINWOOD: (indistinct)

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THE CHAIR: Okay. I'll change—

BRIGADIER HOLMES: Chair, I will just seek one or two clarifications, if I could.

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THE CHAIR: Sure.

BRIGADIER HOLMES: Why didn't you tell the QRF whether it was a drill or not?

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COLONEL LINWOOD: So that soldiers would never know if it was real or not.

BRIGADIER HOLMES: To--

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COLONEL LINWOOD: That wasn't my decision, but the way that we all did.

BRIGADIER HOLMES: To increase their urgency or to keep them on their toes or—

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COLONEL LINWOOD: No, to keep it a maximum total worst-case possibility, because they could have gone straight into action. In fact, halfway through a drill it might become real.

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BRIGADIER HOLMES: You made the comment with an expletive earlier, "QRF again. Sigh. Comment," and I wonder if the soldiers, having been there for 71 days doing four QRF callouts each roster would have thought there was nothing there anyway, off we go. How did you maintain the urgency for that by not telling them it was a drill?

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COLONEL LINWOOD: I'm not quite sure what you're after there. Maybe--

BRIGADIER HOLMES: I'm not after anything. My question is after 71 days--

5 COLONEL LINWOOD: Yes, it's bloody boring. It's difficult. It's hard. I know. I went out on a few of the QRF deployments myself to experience what it's like. Maybe ask soldiers who actually did it how they dealt with it.

10 Maybe I can answer your question back on one of your comments about my report. The reason I set up a live firing range in the QRF lines 24 hours a day operatable with .177 ammunition with pistol grips fitted to them by the unit armourers was to give them an entertaining alternative— something to bloody well do with all sorts of incentives to keep them from getting bored, and keeping the sharp edge on shooting because you don't need to know that B Company 1RAR had nearly everybody has crossed 15 rifles by the time they came home from the tour of duty, because there was something the soldiers competed with each other to maintain their— “Oh, what am I going to do? Is the next callout going to be a real one or not? I don't know.”

20 There were no real events there for us to react to, but we still had to follow the drill, which was two by day, two by night, just in case. Does that answer the question?

25 BRIGADIER HOLMES: Yes. Thank you. I have no doubt you did some fantastic training. You made mention the Malaysians were around the perimeter and patrolling around the perimeter in the—

30 COLONEL LINWOOD: No, I didn't. No. They didn't patrol. I saw them walking off-duty. They manned the static points. In my time, in my observations, they were up the control tower—sorry, they were up in the observation towers with searchlights and weapons. They were on the front gate; the only gate that I ever went in and out of. And I did not see them patrolling around.

35 I saw the RAAF, police and dog handlers patrolling around, and the QRF itself regularly was moving around by foot. Try walking around an airfield. It's not a lot of fun. It's a long way from one end to the other. I did not see the Malays patrolling.

40 BRIGADIER HOLMES: I was just clarifying, because in one of the standing orders it indicates the Sixth Battalion was responsible for external patrolling, not RAR; Malaysian armed forces.

45 COLONEL LINWOOD: 6MIB, you mean?

BRIGADIER HOLMES: Yes, thank you.

5 COLONEL LINWOOD: The Malaysians were responsible for the area
defence outside the wire. I would also point out for the tacticians amongst
us they didn't have any indirect fire within range, so had the enemy
appeared anywhere around the outside of the perimeter, the Malaysian
force—the headquarters of the local brigade, I think, was 30 miles away.
10 No arterial or mortars shoot that bloody far, so that's just a little
interesting observation.

15 But yes, the division of responsibility was—and if you look at the photos,
there were two perimeter fences when I was there. They added the second
one when they built the revetments and all that stuff to enhance the fence
of the perimeter—the wire, if you like.

20 Outside the wire, Malay problem. Inside the wire, RAAF commander
problem, and he had as his assets a line of Malaysian sentries who were
manning the machine gun observation points and the gates of ingress
egress. Inside the wire, inside the inner wire, with the ring roads and
everything else, the RAF patrolled with their dogs and their vehicle
things, and these guys patrolled, in my case, blokes by foot.

25 The only time they used the truck, the QRF truck, was to move quick from
here to somewhere 1.2 miles away, or from here to somewhere else or
over to the (indistinct) no way in the world can the fastest infantryman run
with bloody loaded ammunition and his basic weapon and get fighting fit
down to a bomb dump or aerial mast, the IADS.

30 THE CHAIR: Thank you for your clarification.

35 DR ROBARDS: Chair, can I just ask one more. When you're talking
about—you've obviously done a lot, Colonel, and would in terms of terms
of training your solders; building the skills of those people over time.
How would those skills, like—did they increase over the time of that
deployment there? Did they—

40 COLONEL LINWOOD: Yes. Yes, we went ready, and we came home
readier. No question about it. Again, asking the company command is
the last thing you need to be doing about that. We'll all tell you yes, we
did a great job. Ask the soldiers.

45 THE CHAIR: Now, there's a gentleman up the back that had his turned
up. Sir?

UNIDENTIFIED SPEAKER: If I could just clarify the mention of six, that was the Sixth Malaysian Infantry Brigade, sir, and there is documentary evidence in a conversation between defence attaché and command of Sixth Malaysian Infantry Brigade—whose headquarters were at Surat Thani—that he did not have the capacity to guarantee the security of Airbase Butterworth due to the deployment of his battalions on operation activities.

THE CHAIR: Thank you, sir.

COLONEL LINWOOD: In fact, that was the reason why RSB was—one of the reasons why RCB was actually deployed there in the first place, because of concerns expressed by the base commander that the Malaysians did not have sufficient capability to assure the security of the base, given that they owned the base; we were just a tenant, albeit a cotenant.

THE CHAIR: All right.

MR KELLY: Chair, the reason why it's easier to maintain the professionalism of the soldiers on callout is because there was so much going on. Certainly in my experience, so much going on not very far away from us where incidents were happening; where Malay troops were being ambushed and killed; where booby traps were being set off; that we didn't know if the next one was the real thing or not, and so you had to be absolutely on your game.

THE CHAIR: And as I understand it, there were Malaysian military operations in and out of the base.

MR KELLY: Yes, absolutely.

THE CHAIR: Offensive and medical evacuation.

COLONEL LINWOOD: Yes, if I can answer that, both fighter bombers taking off. One of the worst things you want to do is spend a period of time on an operational airbase. I don't envy the RAAF at all. And in the case of the ground troops, the Malaysian lines were just next door to us. We could see them a couple of hundred yards away, and the Malaysians were regularly deploying helicopter-mounted troops out to operations and bringing back dead and wounded. And that's documented many times.

MR KELLY: I actually encountered the Malay service policeman with his semiautomatic weapon patrolling the aircraft flight lines. Neither of us knew the other was going to be there.

COLONEL LINWOOD: And you can't discard the fact that Butterworth was where they brought their casualties to, and, you know, a number of RCBs witnessed their unloading of the helicopters.

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THE CHAIR: Yes, I understand that. Colonel, I do want to thank you for your presence today, for the contribution you've made, but also for being the custodian of the records, and I am sure that is no easy task, but it is appreciated by us, so thank you. Now, we've made an arrangement with Professor Stephens to link in in that 3 o'clock, and it's about two minutes to so there is no point in moving on to Group Captain Coopes and Wing Commander Penney at this stage, I'm sorry, gentlemen, but Professor Stephens has limited time available, so we need to take advantage of him.

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15 So can we establish that link?

COLONEL LINWOOD: Thank you.

THE CHAIR: Thank you.

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UNIDENTIFIED SPEAKER: It's on the call now, Chair.

THE CHAIR: Excellent. So he's not on video?

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UNIDENTIFIED SPEAKER: Still getting sent to you.

THE CHAIR: Okay, yes. Professor Stephens, can you hear me?

PROFESSOR STEPHENS: Yes, I can.

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THE CHAIR: Hi, thank you. My name's Stephen Skehill, I'm the Chair of the Tribunal. With me are Rear Admiral Allan du Toit and Air Commodore Anthony Grady, and it's the three of us that constitute the Tribunal for the purposes of this hearing. Thank you for making yourself available.

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We have had the benefit of reading a letter that you provided to Mr Ray Fulcher of the Rifle Company Butterworth Review Group, and we're keen to explore some of the issues that you canvass in that with you. I should tell you that you're on screen in a conference room in Brisbane, you may well be able to see that there's quite a number of other people in the room, representatives from the Department of Defence, representatives from organisations that represent veterans of Rifle Company Butterworth and there are a number of Rifle Company Butterworth veterans in the room,

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along with officers of the Department of Defence and of the Tribunal Secretariat.

PROFESSOR STEPHENS: Thanks.

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THE CHAIR: So you have an audience. The question of the proper categorisation of service on Rifle Company Butterworth is essentially the issue for the Tribunal and whether or not that service was warlike. You've said in your letter that a determination that the RCB deployment was conducted on a warlike basis is very supportable, and we're keen to understand the basis on which you say that. Can I ask first, how you have gained whatever knowledge you have of the circumstances of service on Rifle Company Butterworth?

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PROFESSOR STEPHENS: Thank you, thank you. I have been in contact with Graeme Mickelberg and Ray Fulcher, who reached out to me about six months ago and asked me questions specifically relating to rules of engagement, and I was able to provide my view on that. They provided me with some materials they asked me to have a look at, and I did look at those materials and I provided my opinion based on that letter that you have before you. So I wasn't paid, I wasn't given any benefit, I was simply asked my view, in my professorial capacity, and on that basis I provided that opinion.

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THE CHAIR: So it's based on what they told you, and I'm not casting any aspersions about that, rather than on any direct personal knowledge or any comprehensive study of relevant army files or anything like that?

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PROFESSOR STEPHENS: That's true, except what I was – I was provided with quite a number of materials, but you are correct, I didn't go much beyond those materials in providing my report. But my report was – the question that was asked of me was the correlation of rules of engagement and the characterisation of the conflict. And in that regard, I had, I felt, what I needed to provide my view on that.

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THE CHAIR: As I understand you, you say that rules of engagement aren't necessarily a determinant of the nature of service, they may reflect it, but they don't determine it?

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PROFESSOR STEPHENS: Yes, that's correct. My view is that rules of engagement under Australian Defence Force doctrine comprise numerous inputs. Those inputs are the law, of course, operations, policy, diplomacy, and then a determination is made with a mix of those factors as to the rules of engagement that are finally issued, promulgated, and they are a specific – because of that mix of inputs, they may reflect restraint on behalf of the

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Australian Government, irrespective of the legal characterisation of the conflict or the operation that ADF members are deploying on.

5 THE CHAIR: Yes. Now, I hope I don't overly simplify what you've said, I'm sure you'll tell me if I do, but as I read it, you're saying there's sort of three things that push you towards a warlike classification. One is the state of conflict in Malaysia at the time, second the state of weapons readiness on RCB service, and thirdly the application of military discipline that applied to warlike service. Do I do you a disservice in summarising it in that way?
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PROFESSOR STEPHENS: No, no, that is correct. That is correct. And then I guess the negative, that rules of engagement can only ever be a rough guide, that you can be in warlike service and your rules of engagement may not reflect that you are in a non-international armed conflict or an international armed conflict, based on policy decisions made by our government.
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THE CHAIR: Yes. And I guess, equally, you could be in non-warlike operations and be given warlike rules of engagement.
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PROFESSOR STEPHENS: Well, yes, that would be problematic, if you – but yes, it's unlikely. It's more likely the situation as we find it here, that you may well be in what I'm calling a NIAC, a non-international armed conflict, surrounding you, but that your government, our government, has decided to restrain the capacity for us to respond to the fullness that the law would allow.
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THE CHAIR: Now, the conflict in Malaysia at the time was between the Malaysian Government and communist terrorists, insurgents.
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PROFESSOR STEPHENS: Yes, that is correct.

THE CHAIR: So Australia was not a party to that conflict.
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PROFESSOR STEPHENS: No.

THE CHAIR: Australia did not participate in it, did not seek to proactively intervene in it. The Australian position was, at best, reactive. If the communist insurgents attacked the base, then Rifle Company Butterworth could act under their ROE to defend the base, the Australian assets and the Australian personnel.
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PROFESSOR STEPHENS: Yes.
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THE CHAIR: So in that sense, it's correct isn't it that we weren't a party to warlike activity. There may have been warlike activity between the insurgents and the Malaysian Government, but we were not a party to that.

5 PROF STEPHENS: Yes, my research, limited to providing the letter that I did, establishes at least to my – to the extent of my research that we weren't – we, Australia, were not engaged in conjunction with the government of Malaysia and fighting a non-international armed conflict directly. But that doesn't mean that we can't have felt the effects of that conflict upon us, in
10 the case of Butterworth. It was entirely possible that we – that the conflict could find us, despite the fact that we weren't looking for it.

THE CHAIR: Yes. And there's been a lot of discussion in the hearing today and in submissions about the possibility, likelihood of an attack on
15 the base, but absent an attack, under the rules of engagement, we were passive, as I understand it. That there is a question whether that defensive, passive stance, in a collateral action in combat to which you're not a party, is appropriately classified as warlike. Do you have a comment on that?

20 PROFESSOR STEPHENS: Yes, I think that that is a fair enough question, and it turns on, in my view, factors regarding the threat that you are facing. We have been, in subsequent operations, and I look at East Timor in particular, INTERFET and UNTAET, we have been given rules of engagement that were defensive only. We weren't in a non-international
25 armed conflict, and yet, we were – those operations were declared warlike. So my view is that, by analogy, you can make a claim, a supportable claim that a similar determination might apply here for the RCB.

THE CHAIR: Okay. So it's supportable by reference to what's been done
30 in other situations?

PROFESSOR STEPHENS: Yes.

THE CHAIR: It's not necessarily, according to you, I think, anything
35 inherent in this deployment, it's sort of the comity of treatment of others.

PROFESSOR STEPHENS: Well, the answer is yes, but I would be careful. What I'm saying is that you – and I'm speaking with a background in the law, which is my speciality – and that is that the determination of whether
40 or not this was warlike or non-warlike, in my view, needs to be made on criteria regarding the nature of the threat and the posture that we were in.

Clearly, if this was an international armed conflict or a non-international armed conflict where Australia was a direct party, I don't imagine that this
45 hearing would be occurring. It would be very straightforward. But it may

5 be the case, as has been a frequent feature of Australian military deployments, that we might have very restrictive rules of engagement, self-defensive rules of engagement, where we defend ourselves, we defend others, we defend Australian property, in a threat environment that nonetheless, whilst not an international or non-international armed conflict where we are directly participating, where we may be called upon to respond.

10 In that regard, the United Nations, amongst others, have recognised that you can start off acting in self-defence, but as a matter of law, that can cascade into actual armed conflict, and the law of armed conflict would apply. There would be nothing in the rules of engagement that would stop that subsequent characterisation, based on the threat that you're particularly facing.

15 THE CHAIR: But if we look at the rules of engagement that were in force, they seem to be confined to an attack and don't extend to what might happen in a cascading situation. Except that, you know, things might go very pear-shaped and we might need to issue more rules of engagement because we're going to a proactive intervention. But while it is a reactive defensive posture, that is I think different to what you're talking about in terms of cascading and getting worse.

20 PROFESSOR STEPHENS: I would agree with you, but I would just make the point, as a matter of law, that you can – and the United Nations rules of engagement make this point, or a 1999 bulletin that clarifies this point. You can be given self-defensive rules of engagement, you can have those, but as a matter of law, you can go beyond those if the threat level that you're facing satisfies that characterisation as a non-international or an international armed conflict. So it is possible as a matter of law for that to occur, I think is the point I'm making.

25 THE CHAIR: There may be a difference though mightn't there between what international law would allow a nation to do and what that nation allows its soldiers to do under its command.

30 PROFESSOR STEPHENS: Absolutely. Absolutely, yes, I agree.

35 THE CHAIR: Yes, okay. On the question of military discipline, I'm not sure whether you're aware of it, but it appears that, at the relevant time, all service outside Australia was deemed to be war service so that the less – or the more convenient disciplinary processes could apply. Were you aware of that?

PROFESSOR STEPHENS: I was aware that the – I was given I think it was a joint order that made it – that established, and asked my opinion on this, to ask – that established that this was actually warlike for the purposes of discipline. So yes, I understand that mechanism.

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THE CHAIR: Yes. I mean, the government I think it was in an explanatory memorandum said the expression of war service is something of a misnomer, because for this purpose it not only included service in time of war, but also active service and all service outside Australia in time of peace.

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So that seems to say that while for discipline purposes RCB members were subject to war service discipline provisions, it doesn't necessarily mean their service should be categorised or classified as warlike.

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PROFESSOR STEPHENS: So not automatically perhaps, but certain offences – and I must confess, I haven't looked in the details of the Army Act as it applied at the time, and I think it was the British Army Act that was activated by section 54, I think it was, that I'm looking at. But normally when you are – we now, under the Defence Force Discipline Act, when you are on active service, certain offences are possible to commit only when on active service, which is normally associated with warlike service.

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So the offence of desertion, for example, can only apply under our current Defence Force Discipline Act where you are on active service, and active service is where you are deployed on behalf of Australia on an operation. So I agree with you, it's not definitive, but it adds to the picture that this was a legal mechanism by which you – that is suited to a warlike service.

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THE CHAIR: On the question of weapons readiness, we've heard a deal today and there's a lot in submissions to us, and it seems, and this is perhaps not surprising with something like 80 companies over the 20 years, there were differences in practices over time and between companies.

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But there were, at least at times, people on RCB service who had live ammunition, but it was not in the weapon, it was taped and couldn't be put in the weapon without a specific order. And others have told us that on their deployment, on certain of their duties, they had the ammunition un-taped and in the weapon. So there seems to be a variety of practice.

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But again, that state of weapons readiness might give some (indistinct) or suggestion of warlike, but do you think it's determinative?

PROFESSOR STEPHENS: No. I don't think in and of itself it is determinative, but I think it's part of the factors that enable you to come to

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5 that determination. I would offer or make the point that I deployed with INTERFET in 1999, and we had rounds chambered in the weapon, and then in UNTAET, subsequently, we did not. And in both cases our rules of engagement were similar to what I'm reading for – in this application to this operation, and it was declared warlike in both those circumstances.

10 So I would agree with you, it's not determinative, but it goes towards the composite picture that in other instances have allowed the government to make that determination of warlike, and I think that would be open to you on the basis of analogy.

15 THE CHAIR: Yes. I've got one last question, then my colleagues may have questions, and then I'm sure the veterans and Defence may like to talk to you, if you've got the time.

PROFESSOR STEPHENS: Sure.

20 THE CHAIR: Are you aware of definitions of warlike and non-warlike that were approved by the Cabinet in 1993?

PROFESSOR STEPHENS: In 1993? No, I do not. No, I'm sorry.

25 THE CHAIR: Are you aware of definitions of warlike, non-warlike and peacetime that were approved by the Minister for Defence in 2018?

PROFESSOR STEPHENS: No, I do not.

30 THE CHAIR: So it's important that I say to you that at least the '93 definitions provide a context within which we have to consider whether or not RCB service was warlike or non-warlike. They refer to ROE, but ROEs not under those the sole determinant.

Air Commodore Grady, you have some questions?

35 AIR COMMODORE GRADY: Yes. Good afternoon, Professor. I'll just pick up on the comments or the area we were talking about, the degree of weapon readiness, and I'm just wondering whether in forming your view that warlike service was a supportable outcome and that given it relied, in part at least, on an assessment of that degree of weapon readiness, whether
40 you were informed that the RCB being at action was routine or whether you were advised that it was very much by exception.

PROFESSOR STEPHENS: I did not have that discussion, I wasn't – no, I didn't have that extensive discussion, no.

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AIR COMMODORE GRADY: In forming your view though that it was supportable, in your own mind did you assume that it was routine?

5 PROFESSOR STEPHENS: I used analogy. So I looked at – I relied on my own experience in 1999 in Timor, where for a period of I think about a month we had rounds in the chamber, may have been even less than that, and that was enough for it to be determined to be warlike, I’m assuming, under the 1993 definitions. But I must confess, I have not read those definitions.

10 AIR COMMODORE GRADY: No, okay. Let me go back to the beginning. There’s been a bit of discussion more broadly about rules of engagement and orders for opening fire. And to support this next part of the discussion, I’m wondering whether you had a chance to peruse some of the rules of engagement, or some of the documentation that was made available to the RCB?

PROFESSOR STEPHENS: I have had a look at some of that, yes.

20 AIR COMMODORE GRADY: Do you recall the source documents there? Would one of them, for example, have been Unit Standing Orders in 1978?

25 PROFESSOR STEPHENS: I’ve been given a lot of fragments of information, and I can’t say specifically what I read, but I can recall the gist of what I was reading.

30 AIR COMMODORE GRADY: We’ll come to that in a moment. I just want to start at the beginning. Is it true to say that modern ROE has developed, or even matured significantly from the ‘70s to what it is now?

PROFESSOR STEPHENS: Yes, yes. I absolutely would agree with that.

35 AIR COMMODORE GRADY: And that, in a way, looking back into the ‘70s, that the ROE or stuff that is described as ROE, it almost seems to jar against the way we think of ROE today?

PROFESSOR STEPHENS: It does seem to be more like standard operating procedures as opposed to how we understand ROE today, yes.

40 AIR COMMODORE GRADY: Is it true to say that one of the key differences – or sorry. If I can just characterise current ROE and the process by which it is approved, is it true to say that there are two, over and above the areas that you’ve already indicated, that being law and policy and stuff like that – but by and large current ROE are an expression of government intent, which are typically captured in the national policy indicators?

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PROFESSOR STEPHENS: Yes.

5 AIR COMMODORE GRADY: Where the major descriptor of those policy indicators is related to whether those rules of engagement relate in de-escalation, maintenance of the status quo, or are seen as escalatory. Is that a true statement?

10 PROFESSOR STEPHENS: Yes. Yes.

AIR COMMODORE GRADY: And then on top of that, once government has articulated its policy vector, that the ROE then that are issued by, in today's case, the CDF are an expression of command intent?

15 PROFESSOR STEPHENS: Yes, as often as amplified. As amplified with command intent, yes.

20 AIR COMMODORE GRADY: So that's the way it works today. In the '70s, do you have any confidence that government policy was enshrined in the ROE that they embodied? And I say that because it seems to be commonly held to be true that the ROE was issued by OC of Butterworth, i.e. at a relatively tactical level.

25 PROFESSOR STEPHENS: I would – so I don't know the process as it existed in the 1970s. But I would agree that it doesn't have the robustness and the institution or the horsepower that it does today. But I would make this observation, when I look at the rules of engagement that applied in Butterworth in the 1970s, and I look at the rules of engagement that we certainly applied in INTERFET and UNTAET, I see a very stark similarity. 30 And not only a similarity, but I see the use of the very same words between the two sets of ROE. The "Attu tembak" Bahasa statement that I saw in the Malaysian ROE were replicated certainly in UNTAET ROE, I can say, as a matter of personal experience, so I see a similarity between the two.

35 AIR COMMODORE GRADY: So given that we can't sort of identify any direct linkage between the ROE and government policy in the '70s, would you agree that the ROE that were issued then are at least, at the very least, an expression of command intent?

40 PROFESSOR STEPHENS: Yes, at the very least, yes.

AIR COMMODORE GRADY: All right. Are you able to offer a view as to what you see are the key differences between the orders for opening fire and ROE are? In your view, is there a relationship between them?

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5 PROFESSOR STEPHENS: So as a practical measure, I've always understood orders for opening fire to be a distillation of more strategic ROE into manageable directions for the soldier, sailor or air aviator that is applying them on the ground, the sea or the air. So it's a – often orders for opening fire are a distillation of broader strategic goals and requirements contained in rules of engagement.

10 AIR COMMODORE GRADY: All right. So I've got my non-legal hat on. So I just want to read back to you in lay language what I think I hear, and that is that there is a relationship between orders for opening fire and ROE in the sense that they should be related and are an amplification of command intent that's imbedded in the ROE. Does that sound reasonable?

15 PROFESSOR STEPHENS: That is a reasonable proposition.

20 AIR COMMODORE GRADY: Is it also reasonable that one of the key differences between the orders for opening fire and ROE is the enduring nature of ROE, in the sense that one should never get to the stage where ROE and suddenly no longer applicable. ROE provides a pithy statement of command intent which is, to the greatest extent possible, non-negotiable.

25 PROFESSOR STEPHENS: Yes. Yes. I would agree. Although I would just make the comment that if you are – as I made – the point I made earlier – you may well be acting in self-defence but that can actually be escalated into - as a matter of legal characterisation, that can be transformed into an armed conflict. Whether you like it or not, the enemy has a vote in this, and you are not acting inconsistent with the law should you yourself respond in kind. But that – just put that to one side as a - - -

30 AIR COMMODORE GRADY: Yes.

PROFESSOR STEPHENS: - - - (indistinct).

35 AIR COMMODORE GRADY: We're going to come back to that.

PROFESSOR STEPHENS: Okay.

40 AIR COMMODORE GRADY: I just think – in the broadest sense of the evolution of ROE, I think, you know, there's been some significant changes, and one of those key changes between the 70's and now is to do with the authorisation for the application of lethal force in the protection of property. I think when I first joined the RAAF we were routinely authorised to employ lethal force in the protection of property. But is it true to say that at some time since, in relatively recent times, the view is now that lethal

voice is not to be applied in the protection of property unless that property is absolutely essential to the survival of the force.

PROFESSOR STEPHENS: So - - -

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AIR COMMODORE GRADY: Is that a reasonable interpretation?

PROFESSOR STEPHENS: Yes, yes. Sir, that's a very good – so that was a point that – yes, that has been in debate for decades now. In the late 90s, early 2000s I can say that the ADF came to a – I think an accepted view that the protection of property in short of actual armed conflict was not permitted through the use of lethal force unless there was a corresponding threat to life in saving that property. Yes.

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AIR COMMODORE GRADY: Mm.

PROFESSOR STEPHENS: Yes.

AIR COMMODORE GRADY: Okay. But harking back now to the ROE of the 70s, the context is that it would have been possible to draft rules of engagement that authorised lethal force for the application – or for the protection of property, and potentially for the protection of others, i.e., non-members of the force. People who are not members of the force. Is that correct?

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PROFESSOR STEPHENS: So the answer to that question is “yes” but that – but I would just, if I may, add that those features occur now. I mean, you are authorised to defend people who are not part of the force routinely in any deployment. That is – that's a possibility that exists. But you are right about the issue of property. Up until the 90s there was a debate internally, and I can say that from personal experience, about how far we could use lethal force to protect property in and of itself. And that's a national – that's largely a national view, based on our national law, in our case the Commonwealth Crimes Act, that does not give you a lawful defence to use lethal force to protect property in and of itself, short of armed conflict. Yes.

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AIR COMMODORE GRADY: What I'm fishing for here is, I think the legal view in relation to self-defence is that ADF personnel routinely are able to resort to the use of lethal force for either – what used to be called “individual or collective self-defence” but that, when you were defending somebody else not in uniform, in this case, say, an RAAF family, that you would generally rely on a separate ROE provision. Is that true?

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PROFESSOR STEPHENS: Yes. So the answer is “yes” but the question is, “Do ADF members have an automatic right to protect themselves and to

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protect others that are faced with the application of lethal force?” The answer is “yes, as a matter of law”. That is certainly possible, and it is often reflected specifically as a rule in the rules of engagement.

5 AIR COMMODORE GRADY: Yes. And in the modern context we would find that differentiation by looking at the groups of ROE. You know, if I was to look at something like the San Remo handbook for example, I’d find that group 11 refers to self-defence and the ROE provisions around that, and group 12 is specifically written around the protection of
10 other-than-members of the force.

PROFESSOR STEPHENS: Yes, that’s the way that the drafters of the San Remo manual module chose to approach it, but I would make the comment that we internally in Defence in the 1990s – and I was part of that debate –
15 argued internally whether or not we even needed a rule that said we had to protect ourselves and others who are facing threats of – to their life, or whether you needed a rule or not. Some took the view that that was just an automatic right you had under the law, and others said, no, we needed a specific rule. But I can say I’ve never seen rules of engagement, where the
20 ADF was involved, where we weren’t authorised in self-defence to protect others who were facing a lethal threat.

AIR COMMODORE GRADY: Okay. Getting back to the version of the rules of engagement that you have reviewed, the RCB rules of engagement, did you see, as part of that, reference about a “requirement” – inverted
25 commas – to shoot to wound?

PROFESSOR STEPHENS: Yes, I did.

30 AIR COMMODORE GRADY: The version of – I’m hoping that the version you looked at had four or five paragraphs where the first number of paragraphs were specifically labelled, “Orders for opening fire”, and were fairly consistent, I think, with the way you’ve described orders for opening
35 fire in the sense that they documented the warnings that were required to be given and any other actions that were required. But towards the end of that section it actually refers to text that basically says, “Above all else, and at all times you are to conduct (a) and (b)” where (b) of those was, you know, a requirement to shoot to wound. Not to kill. So the key question for me is, do you see that directive – and I think we could probably agree it’s a
40 directive – is that an order for opening fire or does it hark directly to what we would, in today’s parlance, call rule of engagement, in the sense that it is a standing requirement.

PROFESSOR STEPHENS: Yes, yes, I understand the question. I – I mean, it looks like an order for opening fire. I mean we don’t – of course – I make
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the point – I’m sure this point has been made: we don’t have a rule that says “shoot to wound” anymore because that is impossible. I’m told the army usually have a very strong view about that. But that is not a possibility to be able to do that. But the – so the short answer to your question is yes, it looks more like orders for opening fire than it does what you would imagine you would see in rules of engagement.

But I can also say that rules of engagement have become – can become very complex in their own right, with statements of permissions, and restrictions, and exceptions that also tend to look like orders for opening fire, and there’s not – it’s a doctrinal matter I think for us, what we choose to describe as rules of engagement and what we choose to describe as orders for opening fire. My working sort of definition has always been you distil it down to the most simplest form for soldiers, sailors, et cetera, to apply orders for opening fire.

AIR COMMODORE GRADY: In relation to the “shoot to wound” I think we can all accept it’s highly irregular, and whether it’s executable or not is almost beyond the scope of what we’re talking about. I guess what I’m getting at is, if we agree that those rules of engagement are an expression of command intent, can we agree that the commander seemed quite clear that he didn’t want the force to kill people?

PROFESSOR STEPHENS: Ah.

AIR COMMODORE GRADY: To the greatest extent possible. Whether that is executable is another matter. But certainly, in terms of intent, would you agree that that was the command intent?

PROFESSOR STEPHEN: I would make the observation that the commander, like all commanders, was requiring that ADF members used the least amount of force to achieve the aim that they need to achieve. That would be my reading of it, and that’s consistent with our doctrine. Short of actual outright armed conflict, you use – and even in armed conflict – you use the minimum necessary force to achieve the military aim.

AIR COMMODORE GRADY: Yes. That’s enshrined in, you know, the law of proportionality, right.

PROFESSOR STEPHENS: The military necessity more generally, yes.

AIR COMMODORE GRADY: Yes. Let me just scroll through my notes here. There seem to be a large number of caveats, you know, that get to expressions within the rules of engagement about that minimum necessary force. The minimum number of rounds, limitations being able to fire

beyond the airfield perimeter, and so on. So if you were put on the spot and ask to describe the tenor of those ROE as they related to the national policy indicators, i.e., the descriptor of the intent that lies behind the ROE, would you describe that ROE as de-escalatory, status quo, or escalatory?

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PROFESSOR STEPHENS: It would be de-escalatory or status quo, would be my reading of it. Not unlike the rules of engagement we had for INTERFET and UNTAET.

10 AIR COMMODORE GRADY: All right. That's all I've got there, chair. Thank you.

THE CHAIR: Okay. Are you right?

15 REAR ADMIRAL DU TOIT: Nothing.

THE CHAIR: Yes. Lieutenant Colonel Mickelberg.

LIEUTENANT COLONEL MICKELBERG: Thanks, Mr Chair.

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THE CHAIR: Yes.

25 LIEUTENANT COLONEL MICKELBERG: Professor, in our discussions you've mentioned your view that Malaysian and Australian forces in your view appeared to be operating as conjoined forces. What do you mean by that?

PROFESSOR STEPHENS: That the – I'm sorry, can you please repeat the question.

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LIEUTENANT COLONEL MICKELBERG: Sure. So you previously referred, in our conversations, that Malaysian and Australian forces were operating as conjoined forces.

35 PROFESSOR STEPHENS: Yes.

LIEUTENANT COLONEL MICKELBERG: In other words, working together.

40 PROFESSOR STEPHENS: Yes. Yes.

LIEUTENANT COLONEL MICKELBERG: And you referred to that in the context that, in your view, the second emergency was a non-international conflict.

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PROFESSOR STEPHENS: That's correct, yes.

5 LIEUTENANT COLONEL MICKELBERG: Yes. So given that Australia
was party to the Five Power Defence agreement and as a result of that
agreement an exchange of notes occurred between Australia and Malaysia
and in that exchange of notes it provided for Australia to maintain
10 accompanied for security purposes at Butterworth and then flowing on from
that a shared plan for the defence of the base, the base being owned by the
Malaysians and Malaysians having a presence, it would seem to suggest to
me – and correct me if I'm wrong – that that provides further – it further
substantiates the fact that the ADF personnel who were deployed there,
RAAF and army, were operating as a conjoined force.

15 PROFESSOR STEPHENS: Effectively, yes.

LIEUTENANT COLONEL MICKELBERG: Okay. I think that's an
important point for us to explore subsequently when we do get down to
brass tax about ROE. It's been asserted that the RCB ROE was defensive
in nature. You've referred to the ROE for INTERFET and UNTAET. Are
20 there other deployments that, in your view, are comparative to the RCB
ROE? In other words, that provide for – that could be described or asserted
as defensive in nature.

PROFESSOR STEPHENS: Yes. So the answer to that question is "yes".
25 Through the 1990s we – Australia – routinely deployed to Somalia, to
Rwanda, to Bougainville, effectively with self-defensive ROE. The only
time that that changed was in 2001 when we deployed to Afghanistan and,
for the first time, we deployed with offensive rules of engagement because
it was an international armed conflict. And I actually recall at the – my job
30 at the time was to brief these rules of engagement to CDF and we did. But
that was in 2001. Prior to that, our experience had always been to deploy
with self-defensive "only" – inverted commas – rules of engagement.

35 LIEUTENANT COLONEL MICKELBERG: Yes. But that does – because
they're self-defensive in nature, my understanding of your answers to the
chair is that that doesn't exclude the capacity for the Australian forces to
apply force in an offensive way if they have to. In other words, if the threat
escalates, for example.

40 PROFESSOR STEPHENS: So the answer to that question is "yes". It is
certainly possible, as I said, in the – at the macro level, that you can go from
self-defence only to an IAC or a NIAC. That is certainly possible as a
matter law, and it's certainly possible that you can escalate up to using more
force, but within a broad remit of what is self-defence. And certainly, we
45 did that in UNTAET, we pushed self-defence to its absolute limit in order

5 that we could effectively achieve the mission, and that was done entirely under the same paradigm. But I think, if I may just add the comment, I don't think the answer to the question should turn entirely on the rules of engagement. Rules of engagement are just one factor that add to the overall picture of the threat that you face.

LIEUTENANT COLONEL MICKELBERG: I agree. Can and do ROE change in a deployment? Is that your experience?

10 PROFESSOR STEPHENS: Absolutely yes.

LIEUTENANT COLONEL MICKELBERG: And who is the arbiter on those changes, normally?

15 PROFESSOR STEPHEN: Well, CDF. All ROE are issued by CDF, but often the requests go up the line. If a situation is changing, the requests go up the line in a ROEREQ, an ROE request for a change, it's reviewed and approved, and sent down the line. Or there could be contingent ROE that apply in a certain set of circumstances, should they appear without that sort of preapproved ROE, should that circumstance eventuate.

20 LIEUTENANT COLONEL MICKELBERG: Yes. And that's certainly been my experience when we were planning for Bougainville. We not only had to consult our government, but also the New Zealand Government. Even though we went in unarmed, we had SAS people afloat who were armed and ready to provide a quick reaction capability in the event that the BRA decided to misbehave themselves. Would you accept that the use of ROE is provided to RTB, or indeed too in any other deployments, to move from, say, one condition of weapon readiness, say from load to action to instant to firing, is likely to be decision of a junior NCO at the lowest level, or indeed one of their soldiers to take the decision?

25 PROFESSOR STEPHENS: Yes, if the circumstances required it. That is something that could occur immediately or it could be a more operationally-directed action, based on the reading of the threat level. There's – the – as you know, the situation could be fluid as to what weapons readiness state you're in, and that can come down, or it can be actioned immediately, based on the threat that you find it.

30 LIEUTENANT COLONEL MICKELBERG: Thanks, professor.

REAR ADMIRAL DU TOIT: Mr Chair, just one belated question.

35 THE CHAIR: Yes. Yes.

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REAR ADMIRAL DU TOIT: Dale, good to see you again.

PROFESSOR STEPHENS: Good to see you, sir.

5 REAR ADMIRAL DU TOIT: Just a quick question on this issue of conjoined forces. I think to be fair it would – we would say that was for the defence of the airfield and not for the broader Malaysian operations against the CT.

10 PROFESSOR STEPHENS: Yes.

REAR ADMIRAL DU TOIT: I think that's important that we just clarify that.

15 PROFESSOR STEPHENS: Yes, that is correct. There's no evidence or material that I could find that we acted – Australia acted in concert with Malaysia more broadly in the non-international armed conflict. I agree.

REAR ADMIRAL DU TOIT: Thank you.

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LIEUTENANT COLONEL MICKELBERG: And I think that the shared Defence plan is the evidence of that, admiral.

REAR ADMIRAL DU TOIT: Yes.

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LIEUTENANT COLONEL MICKELBERG: Yes. For that very point.

REAR ADMIRAL DU TOIT: Yes.

30 THE CHAIR: Tony.

AIR COMMODORE GRADY: Professor. Air Commodore Grady again. I've just got a follow-up question that I've thought of, that came out as a result of the comment that you made there. We've been discussing this inability in a practical sense of being able to shoot to wound. Would you agree that, where tactical forces are not in a position or don't feel that they can comply with the directive that forms the basis of that ROE or orders for opening fire, that they should seek an update to it, that more appropriate reflects their ability to comply?

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PROFESSOR STEPHENS: That is correct. It's part of our doctrine certainly in the modern period – I don't know what it – how it was in the 1970s – that every commander at every level, if they don't understand or need clarification, they're encouraged to seek clarification up the line. And they do. They have. Frequently.

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5 AIR COMMODORE GRADY: And whilst in your letter to the RCB review group you sort of indicate there's not necessarily always a direct relationship between the threat environment and the ROE that are issued - -

PROFESSOR STEPHENS: Yes.

10 AIR COMMODORE GRADY: - - - is it true to say that, whatever that relationship that does exist, as the threat situation deteriorates, that under normal circumstances you would expect to see revised or more forward-leaning or more appropriate ROE being issued to cater for that?

15 PROFESSOR STEPHENS: (Indistinct) - - -

AIR COMMODORE GRADY: So there won't necessarily be a direct correlation but, as things worsened, one would normally expect to see ROE tailored to reflect whatever that original relationship was.

20 PROFESSOR STEPHENS: The short answer to your question, sir, is "yes". But I would also make the point that there is often margins of interpretation. So it may be that the government chooses not to do the big macro change of saying, "We are now in a non-international armed conflict and here is all the law that applies". Rather, it can say, "When you interpret these rules of engagement" – and it was the point you made earlier – "we are willing to escalate in order to achieve the mission and to protect our soldiers and our – and the people we're charged with protecting". So even within the rules of engagement, there is manoeuvre room for understanding about how they're going to be applied in any given circumstance.

30 AIR COMMODORE GRADY: Mm. And the key to appropriately applying ROE is an understanding of command intent. Would you agree with that?

35 PROFESSOR STEPHENS: Yes.

AIR COMMODORE GRADY: It's a quote I got out of ADF doctrine. So - - -

40 PROFESSOR STEPHENS: Yes.

AIR COMMODORE GRADY: - - - it's probably best you do agree with that.

45 PROFESSOR STEPHENS: Yes, I agree.

AIR COMMODORE GRADY: All right. Thank you.

5 THE CHAIR: Thank you, professor. I think the Department of Defence would like to ask you some questions, and I think it'll be Colonel Damian Copeland taking the microphone. Thank you, colonel.

10 COLONEL COPELAND: Thanks, chair. Good afternoon, Professor Stephens. It's nice to see you again.

PROFESSOR STEPHENS: Good to see you again too, Damian.

15 COLONEL COPELAND: So we've had a wide-ranging discussion today on rules of engagement, and at various times during the discussion we've used terms, "rules of engagement". We've referred to "orders for opening fire". We've referred to "degrees of weapon readiness". Could you tell me what your understanding of the relationship is between each of those three terms.

20 PROFESSOR STEPHENS: So I think there's a relationship. Rules of engagement are prepared, as you know, ultimately at the strategic level. Issued often after consultation between departments in Australia. And, you know, the AGs, DFAT, Defence. Issued by the CDF. That engage at the highest strategic level, down to the most tactical. The rules of engagement can contain all of those things. There is also, as I've been discussing, often orders for opening fire that are – is a distillation of what is - could be quite complicated rules of engagement, designed to deal at the strategic, but to be issued usually to the soldier on the ground, a 19, 20-year-old soldier, so he or she has a very clear understanding of what their limits are there and then.

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30 And readiness states are a matter of rules of engagement and for a determination often of the readiness that the commander – whatever commander that is relevant – thinks that the force ought to adopt at that particular moment.

35 COLONEL COPELAND: Thank you. If we can turn to rules of engagement specifically. How would you describe the legal status of an ROE?

40 PROFESSOR STEPHENS: So in contemporary terms, the rules of engagement are orders. If you breach ROE, you're breaching orders and the Defence Force Discipline Act equivalent provision.

45 COLONEL COPELAND: And is it your understanding that the nature of ROE was the same at the relevant time during 1970 and 1989?

PROFESSOR STEPHENS: So I need to – I don't know. I don't know the answer to that question. I've been provided with the different forms of ROE. Different fragments. I really don't know.

5 COLONEL COPELAND: Just in terms of the way in which an ROE operates, it – an ROE authorises the use of force in specific circumstances. Do you agree that, if it's not specifically authorised in an ROE, then a particular use of force is not permitted?

10 PROFESSOR STEPHENS: That is our doctrine. That if you aren't – if you are – you're given permissions to do things, you're given prohibitions, you're given – you're told what you can't do, and if there isn't a rule of engagement, the default position is you can't do it and you need to make a request in order to do it. That's been our doctrinal understanding in terms
15 of approaching interpretation, yes.

COLONEL COPELAND: Do you believe that that doctrinal approach applied during the relevant period?

20 PROFESSOR STEPHENS: I don't know. I don't know. I would assume that would be the way it was understood. But I would make the point that in the early 90s when we, I think, as Defence Legal, reconstituted or established the system, that was a point of debate that we had to encounter ourselves, and that was the collective view that was taken from the early
25 90s onwards. I wouldn't want to speculate how they interpreted the rules back in the 1970s.

COLONEL COPELAND: If we can just turn to the specific examples of the rules of engagement as evidenced and, for example, I have the rules of engagement contained in a document dated 20 December 1978, but it's
30 fairly consistent with the other examples that we've seen. Would you characterise the specific rules and the escalatory measures within the rules of engagement as self-defence?

35 PROFESSOR STEPHENS: Yes. Yes.

COLONEL COPELAND: So could you help us understand, in terms of self-defence, what the requirements are from the perspective of necessity, and the imminency of the threat which enlivens the right to use force in a
40 self-defence situation.

PROFESSOR STEPHENS: So it is based generally on the proposition that you are authorised to use force to defend yourself or others that you have a responsibility to defend in the face of a hostile act or demonstration of
45 hostile intent which is acts preparatory to the commission of a hostile act.

That is the basic statement of how rules of engagement – how self-defensive rules of engagement apply.

5 COLONEL COPELAND: So just turning to the requirement of imminency of the specific threat that you are facing, would you agree that in order to use force in a self-defence measure as represented in the ROE, there would need to be an imminent threat and, conversely, an indirect or a future or possible threat is not sufficient for you to use force in accordance with this ROE?

10 PROFESSOR STEPHENS: Yes, I would agree that the threat needs to be imminent. That's the usual doctrinal position, and that's reflective of the law that sustains our actions in self-defence, yes.

15 COLONEL COPELAND: Still talking about self-defence – and I just want to ask if I might clarify a statement or a response you gave earlier in terms of self-defence. And you mentioned that under there there's United Nation rules which allowed an initial circumstance of self-defence to progress into an offensive type situation. Could you please clarify if you were talking
20 about self-defence from a state perspective as regulated in the UN charter, or are you talking about self-defence from an individual perspective that is represented in the ROE that we have examples of?

25 PROFESSOR STEPHENS: No, I was talking of the latter. So in 1999, the UN General Secretary issued a bulletin that said, in essence – part of which said, in essence, that you might be operating under self-defence rules of engagement, but you may find yourself in a circumstance where the amount of force that you are facing in any particular instance could allow for the characterisation of that incident as being an act consistent – in terms of
30 unarmed conflict, and your general rights in terms of using force in armed conflict might apply in that circumstance.

35 And I don't think that is a contentious point. You can find yourself, if the enemy decides that it's going to engage with you in armed conflict, you may be constrained by your own rules of engagement, but that doesn't stop the characterisation of that attack as being an act in terms of armed conflict giving rise to your rights to respond accordingly. But I would acknowledge that if you were to do that, you would be breaching your rules of engagement, but you would be, nonetheless, authorised more broadly as a
40 matter of international law in what you did.

COLONEL COPELAND: I think we agreed to a point that the Chair made earlier, that Australia at the relevant time wasn't a party to an armed conflict in Malay or Malaysia?

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PROFESSOR STEPHENS: Yes, that's my understanding. We weren't participating more broadly in what I read to be a NIAC occurring in Malaysia in the 1970s.

5 COLONEL COPELAND: So is that, in your view, why the rules of engagement as expressed in the relevant examples, don't refer to the laws or armed conflict?

10 PROFESSOR STEPHENS: Yes. Yes, I think – and that's a natural illustration of how rules of engagement work. Our government may have decided, and did decide, that we were not going to be a formal party joining with Malaysia in fighting the insurgency. Much like we did with Afghanistan in the 2000s. But rather, we were not going to do that, we were going to be restricted to the activities that we were doing in Butterworth.

15 But I think it doesn't detract from the fact that surrounding Butterworth there was – in Malaysia at the time, there was a non-international armed conflict, in my view, that was occurring, giving rise to rights on behalf of the Malaysian forces to use commensurate force under the law to respond to that armed conflict.

20 COLONEL COPELAND: So do you see that as, in part, the reasons why the language used in the ROE doesn't use terms that you would find in the laws or armed conflict, specifically, "prisoners of war", and that the measures are included in terms of "detention", "theft" and "illegal activity", as opposed to "capturing combatants in accordance with"?

25 PROFESSOR STEPHENS: Yes, that's consistent. That's consistent with what I think was Australia's view, that we were not going to be a party, a formal party to the non-international armed conflict.

30 COLONEL COPELAND: So if we take that point, together with the point made earlier in relation to the command intent, and the self-defensive nature, the emphasis on "If in doubt, do not shoot", "If you do use force, use the minimum force", "If you do, in some instances, use lethal force, then do so to wound, as opposed to kill", if we take all those points together, can you see – would it be unreasonable for this ROE to be applied in the context of security against, for example, theft on the base by, for example, local nationals who might enter the base or harm to individuals that might occur, for criminal reasons not related to the armed conflict?

40 PROFESSOR STEPHENS: Yes, I guess that's possible. That's possible, yes.

COLONEL COPELAND: Thanks, professor, that's all the questions I have.

5 LIEUTENANT COLONEL MICKELBERG: Thank you, Chair. Can I ask a couple of follow up questions? So, professor, in the shared defence plan that you were provided with for the defence of the base, annex A to that plan provides the legal basis upon which the defence of the base is to be conducted, and paragraph 1 is pretty explicit.

10 *It says that under Malaysian law, Australian and Malaysian Defence personnel are permitted to protect themselves, their dependants and their property from the threats –*

15 That are then detailed in that annex, which, in my view, is further substance to the fact that we were operating in a conjoint way, that the ROE that then flow on in subsequent annex in that operations order are reflective of the fact that those ROE would have been approved, not by the base commander at the tactical level, because of the political sensitivities at the time, they would have been approved probably at the highest level, probably, if not
20 government, certainly in Australia by the chief of staff's committee and its equivalent in Malaysia.

25 Yes, the base commander probably would have had an input, no doubt. But ultimately the ROE were – flowed on from Malaysian law. That annex – that first annex in annex A of the shared defence plan is quite explicit, it lays down under Malaysian law what powers Australian and Malaysian forces have to – are able to execute in Malaysia for the defence of the base. And it seems to me that that provides further substance to the fact that we were operating in a conjoint way, that the ROE, in my view, I think it's
30 inarguable that those ROE were probably agreed by both governments, and not at the tactical level. We don't have proof of that, but logic would tell me that.

35 We've heard considerably from you that ROE more often than not are agreed – often agreed at the highest level. That's been my experience in relation to planning other operations with DFAT and others, as you've alluded to, the cast of thousands want to get involved, AGs, you name it. I just think that it beggars belief to suggest that these ROE were just plucked out of thin air by the air commodore at the base and only applied to
40 Australian personnel. They didn't, because the plan says otherwise.

AIR COMMODORE GRADY: So just on that point, are you agreeing then that the requirement, the directive to shoot to wound came from the highest levels within government within Australia?

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5 LIEUTENANT COLONEL MICKELBERG: Not at all. In fact, I would say to you, if I can give you – and I was discussing this with the two ground defenders at lunch – didn't have lunch, we actually had a cup of coffee – one of them said, "How do you shoot to wound when you're engaged by someone in the middle of the night?" I thought, "Hmm, pretty good example to give." Where do you refer up the chain, "What do I do now? I've got bad guys out here, do I shoot to wound?" The answer is not of course, the answer is the soldier or the ADG makes the decision - - -

10 AIR COMMODORE GRADY: The key question that we're trying to get to is that where there is an inability to comply with ROE, there is an obligation on the commander in question to raise that..

15 LIEUTENANT COLONEL MICKELBERG: Yes, look, practically speaking, it just doesn't happen that way.

AIR COMMODORE GRADY: Right.

20 LIEUTENANT COLONEL MICKELBERG: I don't know what happens in the air force, but I know what happens in the army. Our junior NCOs and our junior officers are trained to exercise their judgment, and they're trained and trusted to do that, at the corporal level, and our soldiers below them.

25 AIR COMMODORE GRADY: So you ignored it?

30 LIEUTENANT COLONEL MICKELBERG: No, no. Not saying you ignore it. But the fact is that there are circumstances where it requires a judgment (indistinct) to cause. But I want to digress slightly to this issue that was raised by Defence in relation to the immediacy of the threat. Interestingly, in the shared defence plan under "Security States":

35 *Security Amber. This security state will be declared when it is known that a shared defence situation of Airbase Butterworth is imminent.*

40 So clearly, the rules of engagement that the base commander detailed were catering for this issue of immediacy of threat. The fact is, and I think Blind Freddy could see this, that threat raises or lowers depending upon the operational situation. One only has to read history to see that. It's not all firing all the time. And in fact, nine and a half times out of 10 there's not a lot of firing that goes on in war. It's just occasionally it does. But you've got to provide for the worst case, which is why you have ROE, which is why you have orders for opening fire.

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THE CHAIR: Let's try and use the time that we've got available.
Mr Fulcher's – and then - - -

5 MR FULCHER: I do have a question for the professor, but first I'd just
like to say we've all been talking, this is the shared defence plan and the
rules of engagement were written by Australia exclusively. They had to be
agreed with the Malaysians, which means they had to be agreed by the
Malaysian Government. Australia might have written them, but they still
had to get that agreement.

10 We know the political situation at the time was that neither Australia nor
Malaysia wanted it known that there were – you know, that the combat
forces were going to be used in Malaysia. The Malaysians said in one
document that basically, you know, the only way the Rifle Company can
15 come is if it's – you know, basically the same as Australia said publicly, as
being for training purposes.

20 So this very peculiar “shoot to wound” may have come out of that, that
political to and fro between the two governments not wanting – wanting it
to look more benign, if you like. Because the Malaysians certainly wanted
it to look – to our presence to look benign. So that's just my thought.

25 My question to the professor is you said that it's clear that RCB was not
participating more broadly in the non-international armed conflict, by
which I mean you assume we didn't operate beyond the base, we didn't take
offensive action out in the jungles with the Malaysians. Given that it
actually said it was a – that the Malaysians and the Australians were
operating as a conjoined force, would you say – could you say that Australia
30 was therefore participating narrowly in the non-international armed
conflict? Because we were defending the main operational base of the
Malaysians in fighting the CT.

35 PROFESSOR STEPHENS: So I think we are certainly operating in the
midst of a non-international armed conflict, I would agree with the point
that rules of engagement – and I would imagine even in the 1970s,
particularly given the political sensitivities, would have been agreed at the
strategic level, at the highest level of government in Australia, and that the
Australian Government's intention, as evidenced in the ROE, was that we
40 would be limited to base defence and that in that regard, we are working
with the Malaysians, who themselves are engaged in a non-international
armed conflict, meaning that we, ourselves, may become targeted.

45 And if that's the case, the rules of engagement talk about a restraint, talk
about escalated force, and include that rather odd comment about shoot to
wound, which, in my mind, is really a manifestation of this escalation, of

5 this idea of restraint that you are to apply. But that doesn't avoid the reality of the threat that was being faced in the circumstances, and that threat can be very high and the government can – our government can determine that we are going to be restrained in how we react and take the risk on casualties for Australian soldiers. That's my reading.

THE CHAIR: Mr Kelly, do you have a question for the professor?

10 MR KELLY: Professor Stephens, thank you for your time and your contribution. I have a couple of quick questions. Apart from the quote where – I'm not sure who said it now, but every Australian infantry soldier's got to a field marshal's baton in his backpack, so their capacity is quite extensive.

15 You're aware, Professor Stephens, that the airbase at Butterworth was a protected place, under Malaysian law?

PROFESSOR STEPHENS: Yes, I'm aware of that, yes.

20 MR KELLY: Okay. Now, I'm not of the generation where OFOF were employed, I've never heard the term until we came to this Tribunal. Could you please comment on a number of things, and I'm happy to repeat them. First of all, troops were deployed outside the wire in Butterworth, and that was to aircraft that had crashed, it was to, in my experience, into the black areas, outside the airbase to Gurun and whatever. We weren't limited to base defence exclusively. Those were exceptions, and they were rare, but they did happen.

30 I'm more curious about the correlation between the term that we all have discussed "Shoot to wound", and the employment of M60 general purpose machine guns, hand grenades, 84mm Carl Gustaf anti-tank weapons, and how you would characterise the relationship between shooting to wound and employing those weapons, whether a self-defensive or not.

35 PROFESSOR STEPHENS: So let me thank you for that question. There is no correlation obviously with those weapon systems, and my understanding, since the 1990s, I joined the navy in 1989, I've been working with ROE since that time, I have never seen a rule that says shoot to wound, and it just doesn't exist, because for the reasons that have been presented, it's almost impossible to achieve that in terms of any sort of strict legal compliance.

40 But my understanding of that term was really just an illustration of using escalated force. That's how I always understood that old-fashioned term, that you would use escalated force, up to and including lethal force, when

it was required. And it may be required when there is threat to life, to yourself or to those that you are responsible to defend.

5 Let me again say with reference to the 1990s, that was how we deployed on multiple operations around the world, with just self-defence and we were put in some very dangerous situations, and we performed magnificently in those circumstances.

10 MR KELLY: So you would include that deployments like Rwanda, Cambodia, Somalia, Ubon and other warlike situations?

PROFESSOR STEPHENS: Yes.

15 MR KELLY: Some of them were not warlike originally, but later reclassified as warlike.

PROFESSOR STEPHENS: Yes.

20 MR KELLY: I also have a follow up question, which is you're familiar I guess with the fact that RCB's primarily role was as a quick reaction force, and that was a counter-penetration, certainly an aggressive, hostile response to a penetration of the perimeter of the airbase. Would you agree that in the instance of the activation of the quick reaction force, that defensive ROE really don't apply?

25 PROFESSOR STEPHENS: Well, I think we're still bound by self-defence, but it's enabling you to apply force consistent with the threat that you face. So if you are tasked with a particular mission, where that threat is high, your determination of when you are facing a hostile act or a demonstration of hostile intent varies to the threat, the specific threat that you find in front of you at that particular moment.

30 MR KELLY: So in practice, if a hostile force, let's say communist terrorists, were penetrating the wire and you observed that, you wouldn't be asking them "Halt" or "Who goes there?" Nor would you be reeling off this thing that I have never experienced, which is the Malay version of, "Stop, stop, stop" and whatever.

35 PROFESSOR STEPHENS: So you probably would not. The threat would be of such a nature that you would skip those steps and you would respond with using lethal force to meet that threat. And can I say, in UNTAET in the year 2000, we had remarkably similar rules of engagement to what we are discussing here, remarkably. Even down to the saying three times those words. Remarkably identical. And we were faced with the threat where the peacekeeping forces were engaged in active hostilities with militia units

and we only had self-defence. That's all we ever had. Nothing further. Even though I could characterise that in my own mind as a matter of law as a non-international armed conflict, we were never given anything more than self-defence. That enabled us, nonetheless, to achieve our mission.

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It all turns on the threat that you're facing, and the rules of engagement, in my submission, are just an element, a factor in coming to that determination.

10 MR KELLY: Perhaps even a guide. In that example I just gave, it's quite possible that a private soldier would make that escalation in his own mind, or even a section commander who may be commanding the QRF. And in some cases it was a private soldier.

15 PROFESSOR STEPHENS: Yes, if they felt that the threat being faced was sufficient enough that they needed to apply lethal force immediately.

MR KELLY: Thank you, professor, that's all I wanted to ask you. Thank you.

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PROFESSOR STEPHENS: Thank you.

THE CHAIR: Professor, I think we're indebted to you for taking the time with us. One more – a couple more.

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UNIDENTIFIED SPEAKER: G'day, professor. Thank you very much. Just got one question. Under what circumstances in purely peacetime service would Australian infantry be permitted to use lethal force under an ROE? The proposal is that Rifle Company Butterworth was peaceful service.

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PROFESSOR STEPHENS: So the circumstances would be where a threat is made to the life of yourself or to a person you are charged with defending. When that occurs, hostile act or demonstration of hostile intent, you may react appropriately to the actual threat. That is what the rules of self-defence permit, and as I maintained, as the United Nations General Secretary maintains in the 1999 bulletin, you can, as a matter of law, make that swap from self-defence to armed conflict if the circumstances, as a matter of law, establish that. That's possible, as a matter of law.

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THE CHAIR: Colonel Copeland?

COLONEL COPELAND: Thanks, Chair. I'll just quickly respond to a couple of points. Firstly the one about the general threat situation Amber being sufficient to enliven the imminency of a threat for the purpose of self-

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defence. I'd argue that it's insufficient. Imminency is an actual impending threat. Someone is pointing a rifle at you or about to point a rifle at you or someone else whom you are charged to protect. So a general threat environment is not sufficient to enliven the self-defence.

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I think the issue around shoot to wound, one of the aspects to that, in my view, is the risk that the person to whom the force may be used against is not an insurgent. It's potentially a local national who has taken the opportunity to steal something or do something else. So there is a potential reason why – it's preferable not to kill a local national in those circumstances so, where possible, to wound.

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I think the comment about the cojoined nature of the RCB relationship with the Malaysian forces, I would argue that that doesn't create some narrow version of participating in the conflict. The decision for Australia to be a participant in the conflict is one that's made by the government, not by Defence at any level.

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I just want to circle back on this I guess argument that if the QRF were called out, then essentially the ROE is put to one side, and therefore we could use offensive force, which is not articulated, which is not authorised in the ROE. I think that's a mischaracterisation. We've already agreed that the ROE itself is an order. The measures within the ROE are the orders, and so there is an onus on the individual exercising those different levels of force to follow those orders, and it might be that they're conflated in the urgency of the situation.

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But it doesn't permit, as we've agreed, to go beyond the ROE, to use offensive force. Now, it's important to remember that any use of force needs to be accompanied by a degree of certainty that you're using the force against an appropriate person or thing. So that's reflected in the ROE right now, in many cases, and we've said that already, it's how do you shoot to wound in the dark? You can't see the person.

30

It may take some time for you to actually ascertain, as a result of your own actions, or the actions of the individual, whether or not that person is in fact a threat sufficient for you to use the escalatory measures within the ROE. I don't think it gets you to being able to shoot without – on the basis of that person is or isn't a potential enemy. That's not reflected in the ROE.

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MR FULCHER: If I could respond. That was me. I don't know who that is, Copeland, is it, Colonel Copeland?

COLONEL COPELAND: Yes.

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MR FULCHER: The fact that the Australian Government determines whether Australian forces are engaged in a conflict or whatever you like. Well, it was the Australian Government that sent us there, it was the Australian Government that agreed to the joint defence plan that made us,
5 as Professor Stephens said, a cojoined operation to defend the base. So the Australian Government did make that decision, and I would say that it made that decision to have a limited response to the – a limited cooperation with the Malaysians by signing that agreement of the shared defence plan, and assigning Rifle Company Butterworth to operate with Malaysians in
10 defence of that base.

THE CHAIR: I don't know that that's contested.

MR MARSH: I was going to say, Mr Chair, talking about imminency as Mr Milton - Mr Graham read out before, Security State Amber, a defence situation at Airbase Butterworth is imminent. When you read through the shared defence plan, security green was cautionary and there was skeleton staffing of the GDOC. Security Amber alert was a full staffing of the GDOC, in other words, these guys were called out as if there could have
15 been a threat, and we have the documentary evidence that that GDOC was fully staffed from time-to-time, so therefore from time-to-time there must have been an imminent threat, an imminent defence threat to the air base, because the GDOC was fully activated.

MR KELLY: I'd also mention, Chair, that Colonel Copeland talked about we might shoot Malaysian citizens. Well, the communist terrorists were Malaysian citizens, and they were happy to be shot at. But also, we were authorised for hostile and aggressive activities, as the QRF, it was our sole purpose. We were a counter-penetration force, we weren't a defensive
20 force. We were there to attack whoever's penetrating the fence of the - - -

THE CHAIR: Attack, when attacked.

MR KELLY: In a response to an attack.

THE CHAIR: Not proactively.

MR KELLY: Not proactively, you're absolutely right.

THE CHAIR: Yes.

MR KELLY: But still, our function within the activities of the QRF is an aggressive and hostile activity.

THE CHAIR: When called for.

MR KELLY: Sure. When authorised by – and within the framework of the ROE, I'm not suggesting.

5 THE CHAIR: It's good discussion, I'm loath to shut it down, but we are under significant time pressure, and I'm hoping, I expect to get home tonight, I hope that's more than a possibility. I think we should invite Professor Stephens, if he has any last words he wants to say.

10 PROFESSOR STEPHENS: Thank you, Chair. I would make the point that, as I made in my opinion, that ROE certainly are not irrelevant and certainly can assist in coming to a determination that you're charged with making. But I would also make the comment that they're a very blunt instrument, and the Australian Government, for many decades, has in circumstances
15 where we have been involved in warlike activity, or been designated as such, given us rules of engagement that look very similar to what we are looking at here that I've certainly seen. By way of analogy, I find it hard in my own mind to differentiate those deployments on the basis of certainly ROE with the determination you need to make. I think by historic
20 experience, my view is that I would take the view that you can safely make the determination that this was warlike service, but that's just my view.

THE CHAIR: Okay. Look, as I've been hearing you and trying to think, "What does it all mean?", as Julius Sumner Miller would say, you say the
25 rules of engagement are not determinative of whether it is warlike or not. They are limited to self-defence in terms of when action can be activated against a hostile force and it may be in your view that they are not inconsistent with warlike service, but they're not determinative.

30 PROFESSOR STEPHENS: Yes.

THE CHAIR: They could be equally consistent with non-warlike service, or perhaps even peacetime service.

35 PROFESSOR STEPHENS: The rules of engagement themselves, which therefore I agree, which therefore requires a deeper assessment of the threat level that operated at the time.

40 THE CHAIR: Okay. Professor, we're indebted to you. Thank you very much for spending the time with us. I've certainly enjoyed it. I hope you might have enjoyed it too.

PROFESSOR STEPHENS: I have. Thank you very much.

45 THE CHAIR: All right. All the very best. Cheers.

PROFESSOR STEPHENS: Thank you. Bye bye.

5 THE CHAIR: It's 4.30. I'd like to suggest we just take a five-minute comfort break and I will confer with my colleagues about whether we plod on or come back tomorrow.

10 LIEUTENANT COLONEL MICKELBERG: Mr Chair, just one thing, the two RAAF guys, they're going to be here tomorrow.

THE CHAIR: Yes, but we've got a lot to do tomorrow.

15 LIEUTENANT COLONEL MICKELBERG: I understand that. I'm just telling you so that if you think they're going to go away, they don't.

THE CHAIR: No, that's excellent. Thank you.

20 **ADJOURNED**

RESUMED

25 THE CHAIR: We have Group Captain Coopes and Wing Commander Penney today so that we have a clear run today.

30 LIEUTENANT COLONEL MICKELBERG: Can I just clarify for you what documents were provided to Professor Stephens. That question was asked.

THE CHAIR: Yes.

35 LIEUTENANT COLONEL MICKELBERG: So, he had a copy of the shared Defence Plan, including the full shared Defence Plan with Annex A which is the legal basis for the defence of the base.

THE CHAIR: Yes.

40 LIEUTENANT COLONEL MICKELBERG: He also had a copy of field force command staff instruction which laid out the rules of engagement which is the same as the one that Defence has tabled, exactly the same wording, just a different year.

45 THE CHAIR: Yes.

LIEUTENANT COLONEL MICKELBERG: I think that was the basis of what we provided.

5 THE CHAIR: Okay, that's fine. Thank you. All right. As I said, we're going to kick on. If anyone feels the need to go, we will not take offence but we are keen to make optimum use of the time. So, Group Captain Coopes, I understand you're going to give some evidence about the facts of your experience with RCB. Would you prefer to do that on oath or via
10 affirmation?

GROUP CAPTAIN COOPES: On oath.

15 THE CHAIR: I think we have a Bible.

<GROUP CAPTAIN ROBERT COOPES, sworn

20 AIR COMMODORE GRADY: Chair, before we go on.

THE CHAIR: Yes.

25 AIR COMMODORE GRADY: I think I should table the fact that I've shared a professional relationship with both these gentlemen and in the case of Wing Commander Penney, a very small social interaction. But for the purposes of this inquiry, I haven't engaged with them in any way, shape or form prior to this point.

30 THE CHAIR: Okay. Are you comfortable with that, Defence?

COLONEL COPELAND: Yes, thank you, Chair. Thank you.

35 THE CHAIR: Okay, thank you. Right. Who is taking the running? Colonel.

LIEUTENANT COLONEL MICKELBERG: Group Captain Coopes, what was the period of your service in the air force?

40 GROUP CAPTAIN COOPES: I joined the air force in 1968. I am still a serving reserve officer. I am currently the Director of Heritage Estates and Centres, Air Force Headquarters. So, I am in – almost in the museum myself these days. My service in Butterworth was as the base ground defence officer. I marched in 16 August '77 and marched out 30 January
45 '79. So, some of the periods that we're talking about here I was well and

truly across and some of the actions that have been talked about, what the GDOC did and when the GDOC was stood up, so I'm quite happy to clarify some of the very interesting evidence being given today.

5 LIEUTENANT COLONEL MICKELBERG: Before I proceed with some questions, do you have any observations that you'd like to make based on what you've heard so far that you think may assist the Tribunal?

10 GROUP CAPTAIN COOPES: I'd just like to state that it was a joint operation with the Malaysians and I worked very closely with the RMAF during my tour up there. I worked very closely with Rifle Company Butterworth and did detailed briefings for them as did my boss, SQNLDR George Foster, who was there at the time. We had, as I say, day-to-day gathering of intelligence and dissemination of information to the Rifle Company. That was done by my four NCOs that operated at the GDOC and our couple of clerks. So, there seems to be a little bit of sketchy understanding that the GDOC was only manned when we went – certainly it was stood up and manned when we went to amber but when we were at green, we were ready to go. So, VHF, UHF comms, all the radio networks that were needed to be able to talk to the Malaysians, the Rifle Company, service police, the Malaysian security police and the hand down were all on our network.

20 LIEUTENANT COLONEL MICKELBERG: Do you recall during your two years there were there any occasions when the base went to amber?

 GROUP CAPTAIN COOPES: Yes, at least four occasions during my tour we went to amber.

30 LIEUTENANT COLONEL MICKELBERG: Would you agree, as I quoted earlier, that amber is predicated on the immediacy of a threat to the base security?

35 GROUP CAPTAIN COOPES: Yes, the base security was driven by intel that came in by the Malaysian Government to our Headquarters. So, it came down from the one-star's headquarters down to group captain base commander, then to us. It was predicated by roadblocks and a declaration of a curfew, so it meant that the road north and south of Butterworth was closed. We weren't permitted to move after 6 at night until 6 in the morning. That was because of local CT activity in the Kulim area.

40 As I say, each time we went to amber, it was in response to a local security threat that came down through the intelligence, Malaysian intelligence network. So, we would respond and we would then make sure that we analysed that threat and, then, as I say, in conjunction with the Malaysian

commander, our commander would then stand us to and we'd go amber, and once we went to amber we had to be prepared to go to red.

5 LIEUTENANT COLONEL MICKELBERG: So, in your role as the ground defence officer, what were your principal sources of intelligence concerning the CT threat?

10 GROUP CAPTAIN COOPES: Our principal sources of intelligence came in from our headquarters intel section that we worked very closely with that got their normal reports. We got ongoing threat assessments that we would send down to JIO that would analyse it. We got – I would go to weekly briefings at Sungai Petani at the brigade. We would also go on a monthly to six-weekly visit up to the 6 Brigade Headquarters up at Sungai Petani, up at LSR rather, and we also had very close liaison with the OC BD Kulim and we went and visited those on a regular basis. When I say we, on a number of occasions Commander, Base Squadron, the group captain, accompanied me on visits out to discuss local threat situations with those local commanders. So, we had our own sort of field intelligence gathering capability that then came back from the field, so we worked very closely with the army GL group but also did a lot of field intelligence work and were closely involved in the Rifle Company at (inaudible).

20 LIEUTENANT COLONEL MICKELBERG: You've mentioned that you channelled intelligence back to JIO, did they then – did their product after they've analysed it, assuming they did, find its way back to you?

25 GROUP CAPTAIN COOPES: On some occasions, yes. The statement that the likelihood of attack and threat is related to the base, came up when I originally arrived there in late '77. The JIO assessment never really changed, despite the fact that we continued to send incident reports down and I did go down to Australia in '78 and we were debriefed by JIO in '78 with the commander on what was happening on the ground in Malaysia and that was enlightening, so that government did understand in Australia that there was an ongoing threat, albeit within 20 to 30 Ks of the base.

30 LIEUTENANT COLONEL MICKELBERG: When you say commander, are you talking about Commander IADS or the base commander?

35 GROUP CAPTAIN COOPES: Both, Commander IADS, I travelled down with Commander IADS and then CO base squadron, who was Group Captain Brick Bradford.

40 LIEUTENANT COLONEL MICKELBERG: Okay. So, I guess the chair is going to - - -

45

GROUP CAPTAIN COOPES: You could find that in air force history records probably.

5 LIEUTENANT COLONEL MICKELBERG: The IADS is the Integrated Air Defence System which was collocated at the base?

GROUP CAPTAIN COOPES: Yes.

10 LIEUTENANT COLONEL MICKELBERG: With a one-star officer commanding it, an Australia. What do you understand was the nature and proximity of the threat – of the CT threat to the air base?

15 GROUP CAPTAIN COOPES: The CT threat from '77 through to late '78 was at Ipoh, which is probably an hour-and-a-half down from the base and at Kulim which is only 20 to 30K. It was an active cell, CT cell at Kulim, and then quite a larger group which then moved in to the Betong Salient in '78 which is closer to the Thai border.

20 LIEUTENANT COLONEL MICKELBERG: Okay. There's been a mention about civilians who were employed on the base. What was your role in relation to the term – well, as I understand it, they were called LECs, or locally employed contractors?

25 GROUP CAPTAIN COOPES: Yes, locally employed civilians.

LIEUTENANT COLONEL MICKELBERG: Civilians, okay?

30 GROUP CAPTAIN COOPES: Yes, during my tour there was about 1200 locally employed civilians on base. We did have some locally employed civilians who were employed at the armoury and as general hands at the GDOC. There was some concerns from the Malaysian intelligence officer at the time, the counter intelligence staff, that the vetting – Australian vetting of the locally employed civilians wasn't strict enough and we had to assure them that we'd vouch for our staff, regardless of what their background was. That's to say there was a temptation by people to state if somebody was of ethnic Chinese background or Indian background, that they would be more closely looked at because of their family relationships, relatives, et cetera.

40 LIEUTENANT COLONEL MICKELBERG: What was the potential – what sort of weapons is it your understanding that the CTs might have used in the event that they were to attack the base?

45 GROUP CAPTAIN COOPES: My direct intelligence from the Royal Malay Regiment was that, in contacts that they had during that period, they

5 were armed with assault rifles. They had potential access to mortars. They had some other direct fire anti-tank weapons but they then moved to preparing what we call paint bombs and other IED devices we would call them now. But there was quite a number of Malaysian casualties during that period from booby traps and bombs, particularly in that Betong Salient area of Malaysia.

10 LIEUTENANT COLONEL MICKELBERG: We heard earlier from Lieutenant Colonel Charlesworth about I guess what he called the cemetery incident where a gap was found in the wire and there was a question I think from Defence as to who investigated or did RCB investigate it. What comment would you make in relation to that question?

15 GROUP CAPTAIN COOPES: The direct response to breaches on the perimeter were the HANDAU or the Malaysian Security Police and they would do an investigation with the local OCPD Butterworth police and our own provost marshal and his group of local police staff. So, that's when we were at green and if we go on to amber as Charlesworth was talking about today, the ongoing finalisation of that incident would have – well, it would have happened with the Royal Malay Regiment and the RMAF intelligence staff. But as a consequence of the Kampong being very close to the fence and the cemetery layout, we did then institute - and by the time I posted in to Malaysia, there had already been some work started on having a clear path by closing the cemetery down in the year, the Malaysian Government, and it started to clear that, and we started constructing the building for the aircraft.

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30 LIEUTENANT COLONEL MICKELBERG: What were your responsibilities in relation to the shared plan for the defence of the air base and the families protection plan?

35 GROUP CAPTAIN COOPES: The plan for the defence of the base was reviewed with CO base squadron and with OC Butterworth, the air commodore. We reviewed it on an annual basis. The families protection plan was rewritten and updated during my tour because we've heard some of the earlier documents from '71 up to about '74, some of the historic documents, a lot of that was reviewed and sent to the Malaysians and down to Australia for - and we had visits during my period by the Minister of Defence and both Chief of Air Force and Chief of Army because there was a lot of discussion about updating our plans in '77 and '78.

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45 LIEUTENANT COLONEL MICKELBERG: So, were they with the Chief of the Air Force - or when the Chief of the Air Force and the minister visited, I assume it must have been Killen at the time?

GROUP CAPTAIN COOPES: It was.

LIEUTENANT COLONEL MICKELBERG: Were they briefed about –
yes, were they briefed about security concerns in relation to the base?

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GROUP CAPTAIN COOPES: Yes, we actually took the minister across to
the GDOC because we had a very good photographic model and map to –
and we routinely took visitors and briefed them in the GDOC as we did for
all Rifle Company staff when they marched in and marched out. So, the
10 the minister was briefed and he stayed on overnight at the base. So, we had
him and they went to KL the next day for discussions with the Malaysians.

LIEUTENANT COLONEL MICKELBERG: When the GDOC was
activated for heightened security reasons, what actions occurred?

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GROUP CAPTAIN COOPES: When we went to amber we turned on all
of our comms. We got the QRF commander and the 2IC and the OC Rifle
Company to attend for orders and briefings. Certainly, during my time –
I've heard a few different versions today, but certainly during my time we
20 then would review talking about orders for opening fire, and the magazines
for the QRF were taped and the order to then untape magazines, et cetera,
would be given if we went to red. So, the Rifle Company during my tour
had the magazines taped and, as I say, the command to go – when we went
to red, that order had to come from Commanding Officer, Base Squadron.

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LIEUTENANT COLONEL MICKELBERG: Were curfews imposed
during your time there and under what circumstances were they imposed?

GROUP CAPTAIN COOPES: Yes, as I said before, we had I think about
30 four different curfews over the period of my service. One was as a result
of some incidents and riots over on Penang. Some of that was politically
motivated but, again, with counterterrorism, you can't work out who's the
perpetrator and who's not.

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So, we would get the intel brief in from the Malaysians and once the curfew
was agreed, that would come out from Kuala Lumpur. It had to be signed
off by government and it would be implemented province by province. So,
we were a province as well and, as I say, we had just north and south of the
Butterworth base on a number of occasions and what we would need to do,
40 as I say, is make sure that everybody was in lockdown at their – at their
premises. We posted guards during those periods and sentries and Rifle
Company during those periods went to amber.

45

So, the QA was on - was amber during those periods because, as I say, there
was – the reason we were having a curfew was because there was a threat

in the Butterworth area. We – I would also like to visit the reasons that they were able to declare a curfew was because a state of emergency was declared in peninsula Malaysia. They went back to the original declaration in about 1970. In Christmas 1977, the Malaysian Government confirmed that the emergency was ongoing and enduring.

So – and that was in the local papers in Malaysia at the time, but it was very central to what our relationship was with the Malaysian armed force, Malaysian Government, and the ability to continue to have a shared defence plan, and for the Malaysians to routinely then declare curfews and restrict movement for everybody.

LIEUTENANT COLONEL MICKELBERG: So Air Base Butterworth was a Malaysian Air Force base?

GROUP CAPTAIN COOPES: It was a shared air force base. So it was RMA principally, but a shared arrangement with an OC RMA and OC (indistinct).

LIEUTENANT COLONEL MICKELBERG: But they owned the air force base. The Malaysians.

GROUP CAPTAIN COOPES: Yes.

LIEUTENANT COLONEL MICKELBERG: Yes. Because it was handed over to them previously. Okay. During your posting to the air base, were improvements to the security of the air base implemented, and if so, what improvements?

GROUP CAPTAIN COOPES: We did a review of the – in conjunction with the Malaysians – of the observation towers. There were a number of observation towers around the base. And also areas that they wanted machine gun positions. So we did a citing of defensive positions which were then available at the GDOC. So citing of defensive positions around the base was done in conjunction with the Malaysians and the rifle company. So there were a couple of statements today I picked up on that, rifle company commanders were left to their own resources. One of the earlier – so earlier to my tour – certainly, during my tour, the senior ground (indistinct) and myself and my staff worked very closely to give advice to rifle company about if they – if we needed to put extra sandbag bunkers in. We actually put some permanent – more permanent defensive positions in and did more work on the perimeter fence which was ongoing after my tour finished.

LIEUTENANT COLONEL MICKELBERG: And what was the justification for that – those improvements? What – why were they done?

5 GROUP CAPTAIN COOPES: Because we wanted to make it more difficult for incursions from the perceived counter terrorist threat that was at the top of our list of known threats to the base, and to stop any easy incursion to get anywhere near the bigger aircraft. The runways. And as I say, we also had been implemented to do revetments for the aircraft around about that time.

10 LIEUTENANT COLONEL MICKELBERG: So am I correct in concluding that those improvements were the result of concerns about the potential threat to the security of the base?

15 GROUP CAPTAIN COOPES: Quite naturally. That's the natural conclusion. That there was a threat from the indirect or direct fire weapons. And we had a number of areas that – the cemetery area was an easy approach. Yes, we needed to look at protecting ours and Malaysian's assets. So interestingly, one of our major requirement was the protection of
20 Australian assets, as well as people. It's been very interesting listening to the professor's discussion today about rules of engagement. Certainly, he's given me some time to think about where we really stood when implementing our ROE and understood where our commander would've stood, had we opened fire and had a major incursion during that time. We
25 – as I say, we had a number of increased security threat situations during my period up there, and we had a very deliberate way of responding and dealing with that through the GDOC.

30 LIEUTENANT COLONEL MICKELBERG: All right. Thanks, group captain. I think those periods of heightened security is detailed in your submission to the Tribunal.

GROUP CAPTAIN COOPES: Yes.

35 LIEUTENANT COLONEL MICKELBERG: That concludes my questions, Mr Chair.

THE CHAIR: Okay. Mr Marsh.

40 MR MARSH: I'd just like to ask a couple more questions of the wing commander.

LIEUTENANT COLONEL MICKELBERG: No. Group captain.

MR MARSH: Group captain. Sorry, sir. The RAAF Regiment was withdrawn from Butterworth in 1971.

GROUP CAPTAIN COOPES: (Indistinct).

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MR MARSH: 1970. Now, my understanding of the RAAF Regiment is that it is – that its prime role is to defend air bases. That's why it exists.

GROUP CAPTAIN COOPES: Yes.

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MR MARSH: What is the role of the air force defence guards in relation to what they do for the air force?

UNIDENTIFIED SPEAKER: (Indistinct words.)

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MR MARSH: Air force defence guard role. What were they there for?

GROUP CAPTAIN COOPES: Airfield defence flights, we had airfield defence flights that operated in Vietnam, and they were for the security of Australian assets at (indistinct words). We also provided guns for the helicopters. Post Vietnam, there was a lot of discussion about forming a squadron capability, similar to the RAF squadrons. I had the opportunity to go and visit the RAF and have discussions post my Butterworth enlisting. But we didn't have a squadron capability to put on the ground in Butterworth. But after my tour, we had a number of composite deployments where an ADG rifle flight deployed with the rifle company as a platoon. So as air force developed into the 80s, we did then form an ADG squadron which I was the CO of, and we put together a composite squadron which looks a bit like an independent rifle company on the ground, around about 160 people, and that got resourced and built up eighty – up to about 1985. So air force didn't have a capability – other than a – around about a platoon level capability, so a rifle flight – until the 80s. But – yes, the air force intention, as always has been, to be able to secure our assets when they're deployed, and that was part of our prime role, air force defence guards and ground defence, obviously.

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MR MARSH: Okay. Thanks. So in other words, in the 1970s, the air force did not have an airfield defence capability to provide the resources to secure Butterworth and defend Butterworth if needed. Would that be correct?

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GROUP CAPTAIN COOPES: Technically correct. We could've deployed everybody we had in Australia probably and probably done it for 12 months, but then we would've needed serious assistance from – to resource ongoing defence of the base.

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MR MARSH: So would it be fair to say that the role of the rifle company at Butterworth was effectively that which would now be provided – and if we had had the numbers back in the 70s – provided by the airfield defence guards?

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GROUP CAPTAIN COOPES: Maybe.

MR MARSH: Yes. Because what I'm trying to say is, I mean, we've talked about – and there was the political situation, I know, about the sensitivities of Australian forces being there – and I have read some reports about maybe if we had ADGs there, they could operate off the base because they'd be air force and not army – I've seen those sort of comments, but it seems to me that the role of the ADG is primarily defensive anyway, and – correct me if I'm wrong – and therefore the role of the RCB at Butterworth could in some sense be likened to a contingent of airfield defence guards, because they provided what would essentially – would now be an air force defence guard capability.

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GROUP CAPTAIN COOPES: Yes, not necessarily correct.

MR MARSH: Okay.

GROUP CAPTAIN COOPES: I – as I say, because, as I say, we've got a joint element and we have joint operations. The - if we're doing any overseas deployment, regardless of whether the primacy for that role may have been, "Oh, air force, you can look after yourself". You know, having been in the director of ground defence job, working for the chief in '86 to '89, I was heavy delving into policy on what we should be doing in conjunction with army and navy. So I got heavily involved in joint operations later in my career. So, you know, whether it was better for a joint approach, which is where the – back in the early days the reason that the – there was discussions about the battalion being replaced in Malaysia. And we ended up with a rifle company. That was very much deliberated as joint policy and government policy. So splitting hairs about whether it should've been air force defence guards or – and whether we were capable of doing it, or whether it should've been the rifle company, for security of assets and personnel. As I say, within air force at the time though, you're correct, we didn't have the capability to sustain a squadron capability on the ground.

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MR MARSH: Yes, okay. That's all I had to ask.

GROUP CAPTAIN COOPES: Yes.

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MR MARSH: Thanks.

THE CHAIR: Yes. Thank you. Mr Kelly.

5 MR KELLY: Group captain, I've got a couple of – a comment and a couple
of questions. My comment is, I would suggest that the ADG role is not
exclusively defensive because at Ubon they patrolled outside the wire for
up to 20 kilometres. So I would understand that their role isn't only in a
defensive context. But that's just a comment. Not a question. My question
is did – if hypothetically ADGs in Butterworth – or even later in your
10 experience – when they were deployed outside Australia – if they
committed an offence, would they be charged whilst on war service or
whilst on active service? And what was the situation in Butterworth for the
RAAF people who were not ADGs and were guilty of an offence? Do you
have any knowledge of that?

15 GROUP CAPTAIN COOPES: I'll go back and take the first point. ADGs
are trained to do patrolling and if needs be to dominate the approaches to
the air base. So – yes, we do have the capability to deploy (indistinct). The
– you raise an interesting point because we trained up air base protection
20 flights at Butterworth. We had guys from the squadrons – from the
maintenance squadrons that we trained up to be able to step in and do point
security and sentry and to actually do point security in the married quarters
during those increased security operations. The service for our people in
Butterworth under the military law at the time was up to OC Butterworth.
25 But I guess, because we were serving overseas, there may've been a – if
you misbehaved and committed an offence, you probably were finding
yourself posted back to Australia fairly quickly.

30 MR KELLY: But do you have, in your personal experience, any awareness
of ADGs or other RAAF people in Butterworth or deployed anywhere else
outside of Australia being charged whilst on war service or whilst under
active service?

35 GROUP CAPTAIN COOPES: No. I don't.

MR KELLY: Thank you.

THE CHAIR: Right. Defence, do you have any questions of group captain?

40 BRIGADIER HOLMES: We do have a couple. Yes, please, chair.

THE CHAIR: Yes. (Indistinct words.)

BRIGADIER HOLMES: Group Captain Coopes, thank you for your comments. How many times did the GDOC go to amber in your experience?

5 GROUP CAPTAIN COOPES: About four times during my tour.

BRIGADIER HOLMES: And you indicated that there are 1200 locally-employed civilians and others on the base. So when it went to that status, what happened to them?

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GROUP CAPTAIN COOPES: They were told not to parade. So there was nobody cutting the grass. There was a lack of staff in the messes. Lack of extra staff, including staff down at hospitals. So we weren't very popular for that period of time. But LECs were not able to parade - - -

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REAR ADMIRAL DU TOIT: So they were just sent home?

GROUP CAPTAIN COOPES: Sent home, yes.

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REAR ADMIRAL DU TOIT: And then the other civilians, so family members, other off duty air force personnel, people who weren't on a duty, where would they go?

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GROUP CAPTAIN COOPES: We had people that lived in containment married quarters over on Penang, and we had most of the aircrew and security staff and my staff were in married quarters on Butterworth. So during particularly at curfew periods, we had people then bussed and they were told to remain in their married quarter containment area as part of the – and we implemented the family's protection plan. So we would post guards et cetera in the married quarters area. And that was to do two things, that was to make sure that people obeyed the curfew, our own people, and also as a security measure.

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REAR ADMIRAL DU TOIT: Did our air force or the Malaysian Air Force stop flying?

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GROUP CAPTAIN COOPES: The night flying during those periods stopped. So the Malaysians had their emergency helicopter, MEDEVAC aircraft that operated, but most of the – during those periods, the aircraft were put into revetments. There was some discussion that if there was a tangible threat close to the base, that aircraft would be flown out down to Tengah.

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REAR ADMIRAL DU TOIT: Did that happen in any of those four occasions?

5 GROUP CAPTAIN COOPES: We got very close to a decision to – in February '78, to talk about whether the aircraft should move down to Tengah, but the OC Butterworth, he made a decision, along with CMDR Ryan, and said that no, we would leave the aircraft in the revetments.

REAR ADMIRAL DU TOIT: And the duration, how long was one of these Amber events?

10 GROUP CAPTAIN COOPES: The longest event was about 48 hours, and that's to say at the end of 48 hours it becomes very inconvenient for everybody, so normal curfew ran for about 24 hours, but we would run over another 12 or so hours with the threat assessment and then stand everybody down.

15 REAR ADMIRAL DU TOIT: Thank you. Sorry, Chair, one more.

20 MR FULCHER: Thanks, group captain. Apologies if you have covered this already, I didn't pick it up though. Who was it that made the decision to activate and move to Amber?

GROUP CAPTAIN COOPES: Decisions were made by OC Butterworth in conjunction with the Malaysian commander.

25 MR FULCHER: And what was the basis for the decision?

30 GROUP CAPTAIN COOPES: The decision was the Malaysians had declared a curfew, so they were going to close the road north and south Butterworth, which means that – and there was a genuine threat to the base, or there were hostile movements, so they were closing the road north and south of the base, which meant that we went into a curfew situation, which meant that we went to Amber.

35 MR FULCHER: So it was a Malaysian decision, based on the threat?

40 GROUP CAPTAIN COOPES: Yes, as to say, the Malaysians, because it was in a state of emergency, the Malaysians could routinely declare curfew and they declared curfew up and down the peninsula, and as I say, during my tour, four such curfews declared, so we had to react and go to increased security.

MR FULCHER: Thank you.

45 UNIDENTIFIED SPEAKER: So, Mr Chair, just on amplification there. Defence hasn't actually referred to the shared defence plan at all in any of

its submissions, I'm not sure why. But it's pretty clear, the alert levels are stated quite clearly in the shared defence plan, which is signed by the base commander, Air Commodore Parker, this is not the suggestion that the Malaysians were promulgating this, he was promulgating it because he had
5 been appointed as commander for the defence of the base, even though it was a shared base, he was appointed to have responsibility for the defence of the base and it gave him authority over Malaysians in the defence of the base. Pretty clear, well, it's very clear. Crystal clear.

10 But I say to you that for whatever reason, Defence has not referred in its responses to you about this plan.

THE CHAIR: Okay.

15 UNIDENTIFIED SPEAKER: And I don't know why.

THE CHAIR: Comment noted.

20 MR KELLY: I have a subsequent point, Chair, to Group Captain Coopes's comments, and he may want to amplify this or clarify. It seems to me that we have the Australian intelligence agencies making their threat assessment of the situation in Malaysia, and specifically with regard to Butterworth, but from what the group captain just said, I take it that the Malaysians were providing threat assessments that were either (a) causing a curfew to be
25 implemented, and (b) causing the curfew to be terminated.

Those may be independent of what the Australian intelligence agencies were doing as frequently or as infrequently as they may have been. So the reliance purely on the Australian intelligence agency threat assessment of
30 Butterworth may not be the real picture, or the complete picture for the purpose of the Tribunal's determinations.

GROUP CAPTAIN COOPES: Well, I'd like to make a point that we're talking about 1977, we didn't have the internet, we didn't quite send smoke
35 signals to Australia, but we had a great VHF, we had an HF link that ran out of the base down to Australia, so we had our signal going down to Darwin then retransmitted down into Sydney and Melbourne, so we were back in the – not quite the dark ages. But I had to go to – if I wanted to make a phone call to Australia, I had to go and get approval from the group
40 captain.

So to put it in perspective, the passage of information wasn't quite at snail's pace, but compared to today's, it was a matter of getting in a car and going to an intelligence brief, which might take a couple of hours, depending on

whether you had to stop at 10 checkpoints getting to and from Sungai Betani and/or even worse, getting to Alor Setar.

5 And when we went up to Alor Setar, the Malaysians would meet us about halfway and then they would escort us up to Alor Setar. So it – getting the intelligence and disseminating the intelligence was done principally by classified message out of the communications centre, so it had to go down
10 overnight on the wire system to Air Command, and to an intelligence organisation. So we disseminated a lot of information on a weekly basis out of the base and certainly when we talked about our shared defence plan, we had a squadron leader legal officer on board at the base, he was consulted routinely about our (indistinct) and rules of engagement.

15 So in the headquarters staff at Butterworth we did have resources to go and get advice, and as I say, it was 1977 and 1979, it's not 2000. I was involved with the mounting for East Timor and involved with the rules of engagement for East Timor, and I was the operations officer out of Air Command for the mounting to go to East Timor. So I do have a bunch of joint experience.

20 But it was an eye-opening experience for me as a flight lieutenant to march into Butterworth, and having been there six months, my boss left to go to England for three months, and I was left in charge of the defence plan in the senior ground defence role.

25 THE CHAIR: Thank you, group captain. Air Commodore Grady, do you have any questions?

30 AIR COMMODORE GRADY: Yes, I do, thanks, Chair. Yes, thanks, Group Captain Coopes. You've sort of spoken about the threat disposition around Butterworth, but can I ask you to sort of characterise that in a fairly picky summary? How did you personally rate the security situation at the time of your posting?

35 GROUP CAPTAIN COOPES: The threat was – in the Kulin area particularly, a small cell of terrorists that did some damage to a local plantation manager not far from the base, and that was one of the curfew incidents that I talked about. So we did have a small cell that the Malaysians were very concerned about, and the Royal Malay Regiment Police Field
40 Force battalion actually sent a detachment down to help a hand down at Butterworth during that period.

45 The - '78, most of the terrorist activity moved probably further out to Kroh and Baling, which is probably around about 30 to 40 k radiant out. We actually do have a – the Rifle Company Group do have a very detailed map

of all the terrorist incidents that's available. And so during my period, the threat then moved more up towards Alos Setar and the Thai border.

5 I did go out to Kroh and visit the 6th Field Force Brigade Detachment out there, and they showed me firsthand the results of a patrol of theirs that had run into some nasty booby traps the night before. So the direct threat to the airbase, sir, I guess was characterised by the Malaysians as probable. Not necessarily low.

10 AIR COMMODORE GRADY: Was the 1975 JIO threat assessment the last published formal report or threat assessment for Butterworth? You mentioned periodic JIO updates, but in terms of a signed document, was it the last formal assessment?

15 GROUP CAPTAIN COOPES: I don't believe so, sir, but there was a lot of work done on that during my tour. There was a lot of interest out of Canberra on the ongoing threat situation and we did have a team come up from JIO and from field force, to talk about it. And we did a lot of work on wordsmithing our families protection plan and looking at what the total
20 threat assessment was. But certainly when I arrived there, that 1975 report was the one that we were using.

AIR COMMODORE GRADY: And how did you file that into your plans for the base? I mean, were there particular things that you drew from that
25 report that you were sufficiently concerned about to adopt a particular posture, or a need to train to a particular outcome, anything like that?

GROUP CAPTAIN COOPES: We knew that we had to be able to respond
30 fairly quickly if there was an incident, so there was really no such thing as routine security at Butterworth during my tour, we'd better talk about routine security. The Rifle Company was there, we had a level that we could actually react to, but we did – my staff had ongoing training for base combatant personnel. We had a higher level of training for people to be able to – of all trades, to be able to be part of that.

35 We had about 120 people trained up in our base combatant flight that we could actually bring in for extra security tasks from the squadrons. So they were brought up to speed with their weapon training and to be able to do local point defence duties and training.

40 So that was the extension of the whole base defence plan, it just wasn't solely relied on Rifle Company Butterworth, we had the HANDAU Malaysians, we had our own security guards and dogs, we had the provost marshal and his group of local security patrol people who would deal with
45 things like local theft and people getting into trouble, that's our own local

5 people, and making sure that we were able to then, when people arrived on a monthly basis, we used to brief – we had a situation brief and an intel brief that was given to – one was for the families that arrived, there was one given to all uniforms that arrived, and we had very detailed briefs for Rifle Company as they arrived, and as they do as an extension of our training.

10 AIR COMMODORE GRADY: I'll come back to the BCP in a moment, but just staying on the family theme, the RAAF families' protection theme. My understanding is that the plan for the families in the event that action was required for their protection was to be relocated to the base or to safe centres on Penang.

15 GROUP CAPTAIN COOPES: Yes, they were relocated over into the RAAF centre at Penang for the families or containment in their married quarters, and we would post guards at the married quarters.

AIR COMMODORE GRADY: Or to the RAAF school or to - - -

20 GROUP CAPTAIN COOPES: To the RAAF school, yes.

AIR COMMODORE GRADY: And the base itself.

GROUP CAPTAIN COOPES: Yes.

25 AIR COMMODORE GRADY: So that was state Charlie. In your time there was state Charlie ever activated? Was there ever a need to go as far to get folk to safe centres?

30 GROUP CAPTAIN COOPES: With the – I'm going to call it Penang incident, which was the riots on Penang, we actually went to a situation where we put security into the married quarters area at the RAAF centre and over in the married quarters at Penang. So it wasn't a, say, a full implementation of the whole families protection plan, but about a three-quarter implementation of the families protection plan. And that was on the – we got Commander IADS to sign off on. So Commander IADS, the two-star, would sign off on any major change which involved the protection of the families.

40 AIR COMMODORE GRADY: I've seen earlier versions of the plan, but I understand that later versions included consideration for removal of families down to Singapore or to Australia.

GROUP CAPTAIN COOPES: Yes.

AIR COMMODORE GRADY: To the best of your knowledge, across not only your tour but the entirety of the RCB deployments up there, was there ever a situation or a degradation in the security environment where serious consideration was given to removing the families out of Malaysia?

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GROUP CAPTAIN COOPES: There was discussion in February '78, during my tour. It never eventuated. But we actually also, down around the table, and there was serious discussion with Commander IADS, OC Butterworth, CO Butterworth and the COs of the squadrons, as I say, the threat as it emerged, blew over. But all the plans got dusted off and it was serious consideration and discussion back to Australia about whether we would actually move people down to Singapore.

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AIR COMMODORE GRADY: All right, sorry, I just want to pick up on that. So are you saying that over and above that local discussion, or the discussion of the local commanders, there was discussion back to Australia around that possibility?

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GROUP CAPTAIN COOPES: Yes. Yes, there was.

20

AIR COMMODORE GRADY: Okay. I just want to – in your submission there, at para 2 in fact, you mention that:

Malaysian Armed Forces were on an operational footing and the ADF was there in direct support.

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GROUP CAPTAIN COOPES: Yes.

AIR COMMODORE GRADY: Is that actually true? In the sense that are you saying that Australia was somehow in active participation in the Malaysians' counter-terrorist campaign?

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GROUP CAPTAIN COOPES: That's not what – it would have been RAAF Base Butterworth were in direct support to the security of the base, so that's the context of that.

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AIR COMMODORE GRADY: All right. So not to the outcome of – not to any campaign outcome?

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GROUP CAPTAIN COOPES: No. No.

AIR COMMODORE GRADY: So I just want to pick up on your BCP there. You mentioned you had quite a number of them. I've seen – well, I thought I saw that over and above the fact that they were there to provide a security footprint at times when the RCB wasn't available, and in your

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submission you talk about them going to Malacca and PULADA, is it – training the Royal Malaysian Infantry Regiment. How often did that occur, by the way? How often was the RCB away?

5 GROUP CAPTAIN COOPES: Well, I'll clarify on that, because the company – whole company never went, we always had a platoon and a small headquarters staff available for QRF. So certainly the base commander allowed the rifle company to deploy a platoon plus to go – during my period, for training, and to go and do some jungle warfare training. But there was always a footprint. During that period we were then able to put on standby our airbase combatant flight, our trained TECHOs, and if there was a need to then go to increased security, we were able to then post – call them in and post them on a static defence duty.

10
15 AIR COMMODORE GRADY: So over and above that role that the BCP had in backfilling, in RCB absence, am I right in suggesting that there was a more standing role for the BCP in the shared defence plan?

20 GROUP CAPTAIN COOPES: Yes.

25 AIR COMMODORE GRADY: In the sense that the BCP were the first responders, for want of a better term there, in the protection of identified vital points. Is that right? I'm referring here to the way the vital points and the key points are allocated into squadron or BCP personnel in OPORDER 1/71.

30 GROUP CAPTAIN COOPES: Yes.

35 AIR COMMODORE GRADY: One of the annexes there.

40 GROUP CAPTAIN COOPES: Yes.

45 AIR COMMODORE GRADY: So is there a situation where the BCP would have deployed somehow in the event of an attack on the base, they're being overrun or need assistance, is there a scenario there where the QRF would have been called out to augment them or to provide for relief in place, for that BCP group that's under pressure?

50 GROUP CAPTAIN COOPES: Well, it was a layered response. The BCPs, the Rifle Company provided the QRF, the BCPs provided, you're correct in saying that we placed the BCPs out to do the static defence positions and they did some key roles in providing security down to things like the HF transmitters, so some vital points. And the Rifle Company were there to do that response role, so provide a quick reaction force.

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THE CHAIR: Can I just ask a question? What is BCP? Base combatant personnel?

5 GROUP CAPTAIN COOPES: Base combatant personnel. TECHOs, clerks or whatever from our squadrons up there that we would bring in to do base security duties.

10 AIR COMMODORE GRADY: I'm just wondering whether there was ever a scenario that was envisaged where the BCP might have been provided almost immediate relief in place, under pressure, at night, under attack. And if that was ever part of the risk profile, whether that was rehearsed?

15 GROUP CAPTAIN COOPES: It certainly was rehearsed during my period, we've actually put the – called the whole BCP flight, and Gary can speak to during his time. But we had regular rehearsals, in conjunction with the Rifle Company, of calling out the BCPs, Rifle Company to do there. We would then bring the duty officers into the GDOC, we'd have the Malaysian duty officer in the GDOC. So as I say, the GDOC was manned, fully manned, and we would roll our comms out. So yes, we did do regular
20 exercises and involved the base combatant flights with the Rifle Company.

AIR COMMODORE GRADY: Good. You mentioned again in your submission that:

25 *All aircrew were subject to threat whenever they flew in Malaysian airspace, and there was a great deal of dread and uncertainty over their fate if a crash in the jungle occurred.*

30 I don't want to put words into your mouth, but I'm assuming a lot of that was to do if they somehow ejected over the jungle and fell into the wrong hands.

GROUP CAPTAIN COOPES: Yes.

35 AIR COMMODORE GRADY: But I just want to pick up on this subject of threat. Was there really a thought that counter-terrorists had weapons of some sort that – over and above small arms fire on the immediate approach and departure – could have been involved in the downing of a RAAF airplane?

40 GROUP CAPTAIN COOPES: The CT had a direct fire capability where they could have. Our advice from the Malaysians was that it was only probable. They couldn't guarantee that if a pilot ejected, so basically most of our response was if a pilot ejected, and that did happen during my tour, and we had a search and rescue response team, which involved the ADGs
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and we did use some of the Rifle Company guys to go out and search the jungle and find the very thankful pilot hanging from a tree. But the Malaysians couldn't guarantee how they would – a pilot would be treated if he fell into CT hands.

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AIR COMMODORE GRADY: I just want to zoom in on this bit about, “Subject to threat whenever they flew.” Again, I don't want to put words into your mouth. You're not saying that they had the weapons that could down necessarily an aircraft, but that comment is pretty much in relation to the fact that they might fall into the wrong hands, land in the middle of a CT camp or whatever?

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GROUP CAPTAIN COOPES: Yes, yes.

15

AIR COMMODORE GRADY: All right.

GROUP CAPTAIN COOPES: That's the angle that I was taking there.

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AIR COMMODORE GRADY: You mentioned the possibility that the CTs had mortars. I've read lots of stuff about that, was that ever actually confirmed?

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GROUP CAPTAIN COOPES: Yes, the Royal Malay Regiment actually recovered an 81mm mortar from one of those teams, just going back. So they did have them, whether they had the ammunition and the wherewithal and the training, but yes, they did have the capability.

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AIR COMMODORE GRADY: My next bit is really a question of clarification. I think you've already touched on some of these, but I want to draw a strong correlation between your alert status and GDOC manning. You've mentioned that – and I'm going to assume that, for the most part, apart from when the GDOC was activated, that the base was at Green, and that implies that it was skeleton-manned, and under that arrangement you've got all your comms equipment, or most of your comms equipment, up and there are people in place that can activate it relatively quickly. Is that a fair summation?

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GROUP CAPTAIN COOPES: Yes, that's right, sir.

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AIR COMMODORE GRADY: This is the tricky bit. You mention that the GDOC was activated, or went to Amber four times in your time.

GROUP CAPTAIN COOPES: Yes.

AIR COMMODORE GRADY: But when you say it was activated, does an activation imply automatically an elevation to Amber?

5 GROUP CAPTAIN COOPES: No, it doesn't, sir.

AIR COMMODORE GRADY: So you can be activated, independent of Amber?

10 GROUP CAPTAIN COOPES: Yes.

AIR COMMODORE GRADY: Okay.

15 GROUP CAPTAIN COOPES: We routinely ran – had the GDOC running when we did training and rehearsals.

AIR COMMODORE GRADY: I'm going to come back, I've got a list of the activations that were done in your time there, and I'm going to ask you to correlate for me which of those was Amber and which of those was just an activation, if we understand the difference. In your time there, did anyone ever declare a Red?

20 GROUP CAPTAIN COOPES: No.

AIR COMMODORE GRADY: Are you aware of a Red ever being declared across the RCB deployment period?

25 GROUP CAPTAIN COOPES: No, so we went to Amber during the curfews, and you wipe the sweat off your brow the next morning, so nothing had happened overnight that you didn't have to go to Red.

30 AIR COMMODORE GRADY: It's probably handy if I just jump to this table now. And I'm talking about, in your submission again you refer to two windows of increased security operations, that being September to November '77 and then periodically from April to September '88. I was going to ask you the nature of those threats, but it's probably easier if I just go to the table, and I'm drawing these from the monthly – the CO Base Squadron Monthly Reports.

35 GROUP CAPTAIN COOPES: Yes.

40 AIR COMMODORE GRADY: I'm the first to recognise that in that period, from April – August '77 through to your departure in January '79, which is a total of 18 months.

45 GROUP CAPTAIN COOPES: Yes.

5 AIR COMMODORE GRADY: There were only five CO Base Squadron reports available. So there are big gaps here, right. But what appears very apparent is that in September '77 there was a possible threat to ABB.

GROUP CAPTAIN COOPES: Yes.

10 AIR COMMODORE GRADY: On 30 October, a month later, increased security on a lower level than normal to cover a possible threat to ABB. So were they activations of the GDOC?

GROUP CAPTAIN COOPES: Yes.

15 AIR COMMODORE GRADY: But not Ambers?

GROUP CAPTAIN COOPES: Yes, not Amber.

20 AIR COMMODORE GRADY: And that goes on, they're sort of at roughly monthly intervals there for at least the next month. Was there a command changeover at the end of '77 or the beginning of '78? Because the language changes in the - - -

25 GROUP CAPTAIN COOPES: Yes, there was a changeout, Group Captain Thorpe marched out and Group Captain Bradford marched in.

30 AIR COMMODORE GRADY: So now we're starting to be very – a bit more specific, rather than the language, "Possible threat to ABB," we're now referring to what appears to be the rationale for activation around that. And in April there were two. The anniversary of the MNLF movement. And then again, few – about a week later, CPM Inauguration Day.

GROUP CAPTAIN COOPES: Yes.

35 AIR COMMODORE GRADY: So can I get you to confirm they are activations.

GROUP CAPTAIN COOPES: Yes.

40 AIR COMMODORE GRADY: Not ambers.

GROUP CAPTAIN COOPES: All right.

45 AIR COMMODORE GRADY: And then later on in September – this is the last one – we've got a CPM anniversary, and then a four-day period which is a major air ADEX 4 of 78.

GROUP CAPTAIN COOPES: Yes. During the ADEX- - -

5 AIR COMMODORE GRADY: (Indistinct) activate.

GROUP CAPTAIN COOPES: Yes.

AIR COMMODORE GRADY: So none of those are ambers.

10 GROUP CAPTAIN COOPES: The – during the 8X, we went to amber.

AIR COMMODORE GRADY: Oh, you went to amber. Right.

GROUP CAPTAIN COOPES: Yes. For 8Xs. Yes.

15 AIR COMMODORE GRADY: All right.

GROUP CAPTAIN COOPES: Although they were called 8Xs, we went to amber because of the aircraft that were deployed. So we had F-111s deployed at the base.

20 AIR COMMODORE GRADY: All right. That’s a good segue then because prior to your arrival there and looking at some of the other reports available, in December ’75 to January ’76 there’s also possible threat to F-111 aircraft that covers the period 21 January through to 4 February. So the question then is, was it a routine procedure with the arrival of strategic assets or, you know, critical assets like the F-111, that you would – there would be an automatic declaration of amber.

25 GROUP CAPTAIN COOPES: Not quite automatic but yes, we – we didn’t – we would review what assets were coming, what extra protection was coming, and yes, we would go to amber - - -

AIR COMMODORE GRADY: It was seen as a - - -

35 GROUP CAPTAIN COOPES: - - - in that period. Yes.

AIR COMMODORE GRADY: - - - prudent precaution.

40 GROUP CAPTAIN COOPES: Yes. (Indistinct.)

AIR COMMODORE GRADY: But it nonetheless resulted in the declaration of an amber.

45 GROUP CAPTAIN COOPES: Yes.

AIR COMMODORE GRADY: Yes. All right. Well, I can bring us out again. The old much-reported shoot to wound. But were you aware of that part of the ROE?

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GROUP CAPTAIN COOPES: I was amazed today to hear that because I – we certainly never – during my period there – talked about “shoot to wound.”

10 AIR COMMODORE GRADY: So – yes, it’s interesting. I share some of the concerns about its executability but I’m just wondering about the fact – you know, I can’t get past the fact that, by virtue of it being in the ROE, it reflects command intent, and as Colonel Mickelberg has sort of pointed out, potentially strategic intent, that somehow appears to have gone through to the keeper, in at least a failure to bring an inability or unwillingness to comply with that to higher authorities. That seems extraordinary to me.

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UNIDENTIFIED SPEAKER: Same.

20 AIR COMMODORE GRADY: But let me ask you this. You were, it seems to me, on a fairly close, personal relationship with Brick Bradford. Who do you think – and I know Brick was an OC Butterworth, but who do you think was the issuing authority for the ROE?

25 GROUP CAPTAIN COOPES: The - - -

AIR COMMODORE GRADY: And I say that because we’re talking about ROE that was issued by the GDOC.

30 GROUP CAPTAIN COOPES: Yes.

AIR COMMODORE GRADY: So do you have any insight as to who the issuing authority was?

35 GROUP CAPTAIN COOPES: Yes, the – it was always minimum going to the group captain. And he cleared it with – he’d usually clear it with the OC. But normally it was – he was the – the one that was certainly the sign-off authority for (indistinct) C2 for ground defence order.

40 AIR COMMODORE GRADY: I missed the first part of that. He was the sign-off authority for?

45 GROUP CAPTAIN COOPES: In my chain of command, my C2, he was the (indistinct) to go to get sign-off for – you know, if we went to go to – depending what intelligence was gathered, it always came down through

the headquarters, so from the OC, down to the group captain, but the group captain was the prime driver, certainly during my time.

5 AIR COMMODORE GRADY: Final question, I think. Again, we've sort of touched on this, but two incidents there during your tour. Green on blue type stuff. Well, where would you rate the risk of casualties resulting from green on blue in your overall scheme of risks. So looking at risks of CT attack and casualties resulting from a conventional assault on the bases. Something like that. Versus a green on blue engagement with RMA.

10 GROUP CAPTAIN COOPES: Certainly, I went out of my way during my tour to make sure that our guys knew exactly where the Malaysians were and the Malaysians knew exactly where we were and whose arcs of fire – who was pointing the weapon where. We did have an incident where a vehicle ran a checkpoint (inaudible) curfew, and the Malaysians opened fire on us. Those guys spent a long time recovering from that incident. So – but we had no – I was concentrating on what was the threat from insurgency. But the daily challenge was making sure that everybody on the base knew what their responsibilities were, and we did have a language problem between the Malaysians and our guys but, with a lot of gentle prodding, most of the rifle company commanders – and certainly our base (inaudible) flight guys – did a very good job. So - - -

25 AIR COMMODORE GRADY: Yes, no question. Okay. That's it for me.

THE CHAIR: Well, group captain, thank you exceedingly for that. That's been very, very helpful, putting the RCB into the broader perspective of the base. So that's good. Lucky last. Wing Commander Penney, would you prefer to give your evidence on oath or affirmation.

30 WING COMMANDER PENNEY: On oath, please.

THE CHAIR: Okay. Marilyn will take care of that.

35 <WING COMMANDER GARY PENNEY, sworn

THE CHAIR: Right.

40 LIEUTENANT COLONEL MICKELBERG: Thank you, Mr Chair. Gary, what was the period of your service in the air force?

45 WING COMMANDER PENNEY: I joined in 1970 and served 34 years. Got out in 2004 with the rank of wing commander. In 1976 I attended the

Officer Cadet School Portsea where I graduated in 1977 in June, and during my period of service I deployed to both Kuwait and East Timor as part of INTERFET. I was the commanding officer of No. 2 Airfield Defence Squadron, and the Officer Commanding of Airfield Defence Wing.

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LIEUTENANT COLONEL MICKELBERG: And when did you deploy to Butterworth?

10 WING COMMANDER PENNEY: I deployed to Butterworth 2 December 1979, and left on 3 December 1981.

LIEUTENANT COLONEL MICKELBERG: And what was your role at Butterworth?

15 WING COMMANDER PENNEY: I was posted to Butterworth as the base ground defence officer. I was subordinate to a squadron leader ground defence officer who was the senior ground defence officer, and as such I ran the GDOC, the Ground Defence Operations Centre. I was responsible for the training of base combatant personnel on the base, liaison with Royal
20 Malay Airforce and Royal Malay Regiment, and also my company Butterworth.

LIEUTENANT COLONEL MICKELBERG: And what – in relation to the relationship you had with the Malaysian Defence Force and Malaysian
25 Police, what was the purpose of that relationship?

30 WING COMMANDER PENNEY: It was multifold I guess. I guess the primary reason was the sharing of intelligence or the receipt of intelligence briefings. I attended the infantry brigade at Sulutani, 6 Brigade, on a monthly basis. And if I didn't, then the senior ground defence officer did. I would often go in company with the base command, the CO base squadron. The ground liaison officer would quite often go with us. The base intelligence officer. On occasion. The base police officer. So we'd do that usually on a monthly basis. I would also go to the police skill force
35 unit at Kulim and on occasion, to (indistinct) brigade – or battalion, sorry – in Penang.

LIEUTENANT COLONEL MICKELBERG: And so when you travelled to these locations for meetings with the Malaysian security forces, was there
40 an element of risk to their – your safety and the safety of other air force personnel that were travelling with you?

WING COMMANDER PENNEY: I'd have to answer "yes" to that. We never ever travelled after dark. It would generally be – well, it would

always be during the day, and on times that were agreed to by both us and by (inaudible words).

5 LIEUTENANT COLONEL MICKELBERG: Okay. To what extent was the airbase – in your opinion – was the airbase resourced to protect weapons and ammunition? And how did that level of resourcing compare, in your opinion, with other Australian airbases?

10 WING COMMANDER PENNEY: Well, let's start with weapons. Butterworth was – Butterworth held more weapons of different natures than any other base that I've ever seen in 34 years in the air force back in Australia. The nature of those weapons went from (indistinct) weapons – oh, but let me categorise that – to fully automatic SLRs, to sub-machine carbines, pistols, and SLRs. The amount of those store – those weapons
15 enable – would have enabled us to arm the base personnel to such an extent that they'd be able to provide point protection within the key areas as required. The amount of ammunition was far in excess of anything I've ever seen in Australia either before or after. We had rounds – well, ammunition that allowed us to regularly practice. Those base combatant
20 personnel that were rolled and tasked with automatic weapons. Section commanders that had machine carbines. The aircrew were trained and practiced on a more frequent basis than I've ever seen in Australia. We had no problem gaining ammunition from Australia. My experience is – through the years of service – is that it was almost a beg to get to
25 ammunition on occasion. It never occurred in Butterworth. We held extra stocks of ammunition within the ammunition area. We held regular use ammunition outside the armoury. And we were also that Rifle Company Butterworth (indistinct) as well.

30 LIEUTENANT COLONEL MICKELBERG: So what do you perceive to be the justification for that level of resourcing?

35 WING COMMANDER PENNEY: Primarily the threat. Can I make a couple of points that I did note through this morning. And I guess this may be out of context to some degree. But I hear – or heard the bit about “shoot to wound.” I must admit I have never – or I never saw that within a rifle company – sorry, within a shared defence plan at Butterworth. I would offer that I suspect that where that came from was the 1971 op order, and I suspect there were op orders subsequent to that. I know that I was tasked
40 to review the shared defence plan on an annual basis and at times more frequently, and I never at any stage saw “shoot to wound.”

LIEUTENANT COLONEL MICKELBERG: Would it surprise you, Gary, that it was still there in the December '78 RCB unit standing orders?

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5 WING COMMANDER PENNEY: It would absolutely shock me. Never
– I briefed – and part of my role was to brief the Rifle Company
Butterworth, firstly starting with the reconnaissance by the OC Rifle
Company incoming, and he would normally arrive with his CSM. I would
10 give him a briefing on the shared defence plan and their responsibilities,
roles and tasks underneath that. I would brief them on the rules of
engagement and the orders for opening fire. And then on arrival of the
advance party, the 2IC, I would brief him and his crew. When the rifle
company arrived en masse, they would receive a group briefing and then
15 the OC and his platoon commanders would receive a briefing with inside
the GDOC. That would be attended by the base commander. And their
roles, tasks, responsibilities, rules of engagement, and orders for opening
fire would be given again. And at no stage did I ever brief “shoot to
wound.” I just was not aware of that. I never saw it on any document.

LIEUTENANT COLONEL MICKELBERG: Can I just go back to the
question about level of resourcing.

20 WING COMMANDER PENNEY: Yes.

LIEUTENANT COLONEL MICKELBERG: What security measures
were in place to protect the weapons and the ammunition? And how would
you compare them to security for weapons and ammunition storage at
RAAF bases at that time in Australia?

25 WING COMMANDER PENNEY: I would have to say that the security of
weapons and ammunition within RAAF bases at that time in Australia was
a little abysmal to be honest. And that’s coming from the heart.
Butterworth was different, but there were - within the ammunition dump
30 itself, within the J Group area, there were my SSP guards 24/7 and armed,
and they were - and I refute what was said before - they were at the action
condition.

35 And I can tell you that because in 1989 some time down the track, I
experienced a green on blue with the Malay SSPs engaged a patrol of mine
on the airfield. It was during an exercise. We were using blank
ammunition. The Malays or the Malay guard on the other side determined
that it was a real threat and an incident, and he engaged with M16 fire from
40 the other side of the base which ricocheted through the revetments and also
impacted on 3 Squadron A.

LIEUTENANT COLONEL MICKELBERG: Okay. Thank you. Now,
JIO in their security study of 1975 - pardon me - had assessed there was
45 potential for locally employed civilians sympathetic to the CTs to commit
acts of sabotage or to be involved in other acts that might include violence

against Defence personnel. What concerns did you have about the LECs and the potential they posed to the threat to the security of the base?

5 WING COMMANDER PENNEY: I had a fair amount of concern with the employment of locally employed civilians on the base. The vetting of those locally employed civilians was very much wanting. I think it was basically, “do you have the skills to do it?” but there was nothing in terms of the security background check on those people. We had one that was employed within the GDOC, and another that was employed within the armoury. I
10 sacked one of them because I was concerned about his level of security, and he was not replaced.

LIEUTENANT COLONEL MICKELBERG: Did the intelligence that you were privy to when you were there indicate there was a threat to RAAF
15 personnel when travelling from the airbase to liaise with Malaysian Defence and police? I think I might have asked this question already.

WING COMMANDER PENNEY: Yes, you asked that before, but let me say again, there was a perceived threat of some activity against us. During
20 the time that I was there, there were in fact several incidents. There was a vehicle ambush at Kulim. There was an IED at Sungai Petani, and on one occasion where I deployed with elements of the rifle company down to an area north of KL there was a contact at that time with two CT KIO.

25 LIEUTENANT COLONEL MICKELBERG: So who was responsible for dispatching the CTs?

WING COMMANDER PENNEY: Malay regiment.

30 LIEUTENANT COLONEL MICKELBERG: Right. But you actually saw them.

WING COMMANDER PENNEY: I saw the bodies, yes.

35 LIEUTENANT COLONEL MICKELBERG: The end result, okay. Did the intelligence that you were privy to indicate there was a threat to RCB personnel when they were travelling from the airbase to live firing ranges outside of the airbase?

40 WING COMMANDER PENNEY: Simple answer to that is yes, and for that reason, precautions were taken in the way that they moved in convoy, separated, armed, and never at night.

45 LIEUTENANT COLONEL MICKELBERG: And how would you describe the nature of that threat? I mean, I’ve seen the intelligence that

indicates the CTs were successful in ambushing Malaysian security force road convoys. What means were they using to do that?

5 WING COMMANDER PENNEY: They were using a combination of IED and small arms.

LIEUTENANT COLONEL MICKELBERG: Okay. Where was live firing - was live firing conducted at the airbase for the RAAF personnel?

10 WING COMMANDER PENNEY: It was conducted on base. We had a 23-metre range on base, but we also went to Sungai Dua on Penang.

15 LIEUTENANT COLONEL MICKELBERG: Okay. To your knowledge, did the RAAF chain of command at the airbase expect within the event of an attack on the airbase that Australian casualties were possible?

20 WING COMMANDER PENNEY: Whilst it wasn't discussed to that extent, it was expected that should we get an incursion on base or an off-base attack, then yes, casualties could be expected.

LIEUTENANT COLONEL MICKELBERG: So essentially what you're saying is it was implicit.

25 WING COMMANDER PENNEY: Yes.

LIEUTENANT COLONEL MICKELBERG: Okay.

WING COMMANDER PENNEY: Can I go a step further?

30 LIEUTENANT COLONEL MICKELBERG: Yes, sure.

35 WING COMMANDER PENNEY: That during the air Defence exercises, the casevac of casualties, whether taken by base combatants or Rifle Company Butterworth, was practiced, was rehearsed, and that was in concert with 4 RAAF Hospital, that provided the clearing plus the staging.

40 LIEUTENANT COLONEL MICKELBERG: Okay. Just for the benefit of the Tribunal, in submission, I think, 66, Lieutenant Colonel Linwood's submission, there's some photographs showing RCB practising casualty evacuation with RAAF helicopters at the base. And there was also obviously vehicle ambulances. Was there a threat to the safety and security of families, and what security measures were in place in the married quarters, to your knowledge?

5 WING COMMANDER PENNEY: While I was there, there was no actual threat that we received, but we operated on the Families Protection Plan, and that was as previously discussed by moving the families to various points on Penang, and should the occasion arise, actually exfil-ing back to Singapore.

10 LIEUTENANT COLONEL MICKELBERG: And in the event that an evacuation was to occur, was there a role for RAAF and RCB personnel to provide an element of protection for the families as they move from the married quarters to wherever they were being flown out of?

15 WING COMMANDER PENNEY: Absolutely. Rifle Company Butterworth would be tasked with convoy escort and the families at that stage we projected would be moved on buses and each of those buses would have an escort.

20 LIEUTENANT COLONEL MICKELBERG: And during your tenure as the ground defence officer, to your knowledge was the RCB QRF rehearsed in call outs to the married quarters?

25 WING COMMANDER PENNEY: Not only was it called out, it was expected and demanded under our requirements that they would do a QRF rehearsal whether that be counterattack or counter penetration into the on base married quarter areas, and that would also be by day or night, and on occasion we'd travel along with them just to make sure it was as we required.

30 LIEUTENANT COLONEL MICKELBERG: What do you understand by the term or the tasks counterattack and counter penetration?

35 WING COMMANDER PENNEY: Counter penetration we used within a key area or a key - or a vital point where an incursion had been made by a threat force, and the QRF would then go into a counter penetration force to counter any further penetration of the threat past the existing forces in place. That is the base combatants.

LIEUTENANT COLONEL MICKELBERG: And counterattack?

40 WING COMMANDER PENNEY: Counterattack would be against a threat or an incursion already in progress, and it would be a means of stopping the attack before it got to the vital point or key area.

45 LIEUTENANT COLONEL MICKELBERG: So in other words, as you say, stop them or eject them.

WING COMMANDER PENNEY: Correct. Well, contain and destroy.

LIEUTENANT COLONEL MICKELBERG: Okay. Now, to do that, they're going to have to use force in an offensive way, are they not?

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WING COMMANDER PENNEY: They are.

LIEUTENANT COLONEL MICKELBERG: Yes. So would you see the ROE, or the rules of engagement, as put forward in the plan, the shared defence plan, providing for the use of offensive force subject to the nature of the threat as we've just described in the context of counter penetration and counterattack.

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WING COMMANDER PENNEY: Yes, I would, because that distilled down to orders for opening fire to the individual soldier on the ground and their section commanders.

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LIEUTENANT COLONEL MICKELBERG: And is that something that is now taught to ADGs?

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WING COMMANDER PENNEY: You mean quick reaction - - -

LIEUTENANT COLONEL MICKELBERG: Yes.

WING COMMANDER PENNEY: It's always been one of our primary roles.

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LIEUTENANT COLONEL MICKELBERG: Did the ROE - is your understanding of the ROE for the defence of the airbase provide for the use of lethal force to protect the safety of Defence personnel, their families, and Defence property?

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WING COMMANDER PENNEY: Without doubt.

LIEUTENANT COLONEL MICKELBERG: And during the period under consideration by the Tribunal, that is 1970 to 1989, to your knowledge, were ROE and or OFOF used by ADGs at airbases in Australia during peacetime?

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WING COMMANDER PENNEY: Not of that nature, never.

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LIEUTENANT COLONEL MICKELBERG: That concludes my questioning, thank you. Mr Chair.

WING COMMANDER PENNEY: Can I just add a couple of facts too that I think might be pertinent.

LIEUTENANT COLONEL MICKELBERG: Sure.

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WING COMMANDER PENNEY: In 1981 - I'm pretty sure it was 1981 or end of 1980 - the Malays saw fit to deploy HANDAU at company strength to both RAAF Base Butterworth - or to airbase Butterworth, and also to the RMAF Base at Kuantan, and that was conducive to the threat they perceived at the time.

10

Now, the HANDAU - I've heard people talk earlier today about HANDAU. HANDAU are Special Forces, Royal Malay Air Force. We're not talking about normal troops; we're talking about highly trained troops that were trained particularly to counter this sort of insurgency. So that's the one point.

15

The rules of engagement, I hear it quite often, and I agree with the professor. The rules of engagement, the orders for opening fire that I had at Butterworth during the period that I was there, '79, '80 - sorry, '80, '81 - were entirely consistent and reflective of those that I had when I deployed as part of INTERFET into East Timor in 1999. There was no difference. So I'd like to support that statement. Yes, that'll leave me. That's good.

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THE CHAIR: Okay. Defence, do you have any questions?

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UNIDENTIFIED SPEAKER: Sorry, go ahead.

BRIGADIER HOLMES: Thank you, Chair. Just a couple. Wing Commander Penney, you mentioned earlier that you briefed the ROE, but the ROE didn't include the phrase "did not wound." Can you confirm what ROE and OFOF you briefed?

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WING COMMANDER PENNEY: The briefing that I gave on rules of engagement were consistent with that that was provided by the shared Defence plan at the time which were "aim shots," and the - just let me think back - - -

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BRIGADIER HOLMES: No, no. In the shared Defence plan, that's - - -

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WING COMMANDER PENNEY: Yes, sorry, yes. Consistent with the shared Defence plan plus the orders for opening fire after that were as you would normally expect; it was aim shots. It was if somebody was prosecuting a threat you could engage; and if they weren't and they were actually leaving the area, you could not, and that stopped at the base field.

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BRIGADIER HOLMES: Thank you. Can you clarify “never travel after dark”? So this is as formed troops or in uniform. Where did you live? Did you go home at night-time? Go out?

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WING COMMANDER PENNEY: Yes, well - - -

BRIGADIER HOLMES: Troops go out? Was there local leave?

10 WING COMMANDER PENNEY: No, it was formed troops - formed bodies in uniform.

BRIGADIER HOLMES: Didn't travel after dark.

15 WING COMMANDER PENNEY: Nope.

BRIGADIER HOLMES: We had a large discussion about the use of blank ammunition and the difficulties with combining blank and live ammunition in carriage and how that's controlled, and I think it made everyone twitch in the room when we were talking about that. You just gave us an example of an incident where green on blue occurred where blank ammunition was misinterpreted, and in fact the noise of that triggered another event. What happened after that particular serial? Did we stop using blank ammunition? What does the follow on from that event. You're a year before - - -

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25 WING COMMANDER PENNEY: 1981.

BRIGADIER HOLMES: So it's actually over the same period time as Lieutenant Colonel Linwood was there.

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WING COMMANDER PENNEY: Yes. And to put it in context, it was an airfield defence squadron was deployed from Australia for an exercise on Air Base Butterworth, and they were going through how they would, if deployed, defend Butterworth, you know, with the (indistinct). As part of that exercise, they had blank ammunition, and that did happen on Butterworth where during an air defence exercise, blank ammunition would be used. It was never used by Rifle Company Butterworth on Butterworth. It was ADGs engaging an exercise contact on the flight line and that's what precipitated the green on blue.

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40 BRIGADIER HOLMES: Okay.

THE CHAIR: Were they visiting ADGs?

45 WING COMMANDER PENNEY: They were, indeed, sir.

THE CHAIR: Yes, they weren't based there.

5 BRIGADIER HOLMES: That's the key point. They weren't - - -

WING COMMANDER PENNEY: No. No, they flew from Australia on a rapid deployment to exercise that capability.

10 THE CHAIR: Okay. Makes sense.

REAR ADMIRAL DU TOIT: What year was that?

WING COMMANDER PENNEY: 1989.

15 REAR ADMIRAL DU TOIT: '89.

WING COMMANDER PENNEY: Yes.

20 REAR ADMIRAL DU TOIT: So right at the end of a - - -

WING COMMANDER PENNEY: Right at the end.

BRIGADIER HOLMES: Right at the end, yes.

25 THE CHAIR: Okay.

BRIGADIER HOLMES: And then you talked about the family plan and what you would do and what would happen and different responsibilities. How often in your time there did the families practice or was there a rehearsal of the family evacuation plan?

30 WING COMMANDER PENNEY: It was actually war gamed. We never included the families in that actual process. I think the base commander would have found it very upsetting having half the families on his back, so it was war gamed.

BRIGADIER HOLMES: Thank you. Thank you, Chair.

40 THE CHAIR: Okay. Can I just ask one other question following on from Defence? And did RCB personnel participate in that war gaming, Gary?

45 WING COMMANDER PENNEY: Absolutely, yes. In fact, I should add that during the RCB deployments there were a number of shoots conducted both with tactical exercise without troops conducted within the GDOC, and external to the GDOC that included RCB personnel.

BRIGADIER HOLMES: So basically for the benefit of the Chair, they're scenario-based exercises where they talk through what might happen for the contingency plan.

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THE CHAIR: Yes. I understand that.

MR KELLY: Quick question.

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THE CHAIR: Mr Kelly.

MR KELLY: Quick question, please, Wing Commander. Same as I asked group captain - the previous gentleman. In your experience, was anyone of the ADG group that you commanded ever charged whilst on war service or whilst on active service either in Butterworth or any offshore deployment, and did that extend beyond the ADG group to any other RAAF personnel?

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WING COMMANDER PENNEY: Whilst I was at Butterworth, there was certainly no charges whilst on active service conferred on any of the air force people.

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MR KELLY: Were they charged at all?

WING COMMANDER PENNEY: Oh, yes.

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MR KELLY: So they were charged but not whilst on active service or whilst on war service.

WING COMMANDER PENNEY: Correct, yes, they were just - I guess under the Defence Force Discipline Act charged with the normal occurrence. I was aware that whilst the Rifle Company Butterworth personnel were there, if they were charged, the opening line was "whilst on active service did." So - - -

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MR KELLY: Might I also add, Chair, that I've deployed outside Australia several times over several years and never except for Butterworth was "whilst on war service" or "whilst on active service" a prefix for a (indistinct).

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THE CHAIR: No, we are - - -

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MR KELLY: I wasn't charged a lot, I must say. Probably should have been.

BRIGADIER HOLMES: We have provided clarification when the DFDA came in force and then the Army Act in this particular use of the phrase was adjusted. The Air Force Act doesn't have the same terminology for all sorts of different reasons, but I'd have to get the Air Force Act, and I'm not an expert in it. I'm just being fed information, and so.

AIR COMMODORE GRADY: Yes, it was army specific.

BRIGADIER HOLMES: Army specific, so although the questions are to our air force colleagues, it's a different Act enacted for different groups.

THE CHAIR: Yes, that's as I understand it.

MR ARTHUR: It's 1901, that pre - it's pre air force.

LIEUTENANT COLONEL MICKELBERG: Mr Chair, I do have - and I don't know if you're interested or not, but I actually have a copy of a charge report from an army person deployed under - whilst on war service.

THE CHAIR: I don't think we need that.

LIEUTENANT COLONEL MICKELBERG: You probably don't need it.

THE CHAIR: No.

MR KELLY: Well, (indistinct).

THE CHAIR: Do you have any questions?

REAR ADMIRAL DU TOIT: Nothing from me.

AIR COMMODORE GRADY: I've got a couple. Hoping to skip through these fairly quickly. So from your timeline, you were in situ there at Butterworth not long after GROUP CAPTAIN Coopes had gone home.

WING COMMANDER PENNEY: True.

AIR COMMODORE GRADY: So is his experience much the same as what you had? And particularly there in relation to the security situation.

WING COMMANDER PENNEY: Fairly similar, yes. Probably a little bit more subdued (indistinct) than his, yes.

AIR COMMODORE GRADY: Yes, I was going to ask. Yes, so you feel it might have improved slightly from when - - -

5 WING COMMANDER PENNEY: Look, it ebbed and flowed, to be honest. Most of it depended on the CT and what they were capable of doing and what they intended to do.

AIR COMMODORE GRADY: And they got vote, apparently.

WING COMMANDER PENNEY: Yes, they did.

10 AIR COMMODORE GRADY: So but in relation to what I thought I picked up in relation to the experience about Amber activations equalling essentially a curfew, was that experience as well?

WING COMMANDER PENNEY: No, we didn't have any curfew.

15 AIR COMMODORE GRADY: All right, so did you ever go to Amber?

WING COMMANDER PENNEY: Yes, we did. Generally during ADEX and we did activate the GDOC on two, possibly three times.

20 AIR COMMODORE GRADY: So no curfews, you went to Amber in exactly the same way as they went to Amber before the F-111 conversion.

WING COMMANDER PENNEY: Correct, sir. Yes.

25 AIR COMMODORE GRADY: But then there were a couple of other incidents that were driven by specific intel feeds.

WING COMMANDER PENNEY: They were driven by threat briefings that we received through the commander 6 Brigade to Sungai Petani or the local police force.

30 AIR COMMODORE GRADY: Yes, okay. So they're delinked from red-letter days in (indistinct).

35 WING COMMANDER PENNEY: (Indistinct).

AIR COMMODORE GRADY: All right. There's actually quite a lot of RCB end of tour reports that coincide with your tenure, and when you read them, you're struck by - I don't want to say pedestrian, but there is a nature to these things that it's difficult to reconcile against a claim for warlike service. Have you got a comment on that?

40 WING COMMANDER PENNEY: I think, you know, we're very lucky during that period that we had no incidents as such, but it doesn't take away

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5 the fact that the threat was there, whether it be perceived or real. The threat briefings that I received from 6 Brigade and the police field force indicated that there was a threat. It was generally within the Betong Salient, east of Kulim as well, and also down the spine towards KL. So that threat was, I guess, the posture that we adopted at Butterworth and the reason that - well, in my opinion, the reason - primary reason that the rifle company was there.

10 AIR COMMODORE GRADY: So we've discussed previously that the 1975 JIO Report and its predecessor, the '72 ANZUK report both assessed the likelihood of an attack of Butterworth of unlikely. Do you feel as though that completely mischaracterised the situation?

15 WING COMMANDER PENNEY: I think it's a pretty brave call on my bar.

AIR COMMODORE GRADY: How would you have assessed it?

WING COMMANDER PENNEY: I would have assessed it as possible.

20 AIR COMMODORE GRADY: Possible.

WING COMMANDER PENNEY: Not probable, but possible.

25 AIR COMMODORE GRADY: Possible, yes

WING COMMANDER PENNEY: (Indistinct) I understand those terms.

AIR COMMODORE GRADY: Happy with that. Did you ever go to Red?

30 WING COMMANDER PENNEY: No.

35 AIR COMMODORE GRADY: Not sure whether I asked you that or not. I think the next question I had there was drawn from your submission which I think was probably one of the clearer statements of the live rounds and the fact that they were meant to have been in taped magazines, and I think we've broadly established that for the most part that held true.

WING COMMANDER PENNEY: Yes.

40 AIR COMMODORE GRADY: Do we all agree with that? Or on base activities. No?

UNIDENTIFIED SPEAKER: No, not in my time.

AIR COMMODORE GRADY: No. And so picking up on that then, I'm going to put to you, was it your expectation that the RCB or the QRF in particular that live rounds were held in taped magazines?

5 WING COMMANDER PENNEY: Absolutely. Not only they had live rounds in the magazine taped, they had first line on and on the truck the QRF vehicle they had a second first line in magazines in ammunition boxes.

10 AIR COMMODORE GRADY: So as far as at least you were concerned, the expectation that they were live, were taped.

WING COMMANDER PENNEY: Yes.

15 AIR COMMODORE GRADY: There was a discussion this morning about the QRF being at action with live.

WING COMMANDER PENNEY: Not to my knowledge.

AIR COMMODORE GRADY: No?

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WING COMMANDER PENNEY: Not to my knowledge.

AIR COMMODORE GRADY: Does that surprise you?

25 WING COMMANDER PENNEY: Yes, it does. But that's not to say - I'm talking about my period of service there.

30 AIR COMMODORE GRADY: Sure. No, I'm happy with that. I'm only asking you to sort of cast your judgement against that, yes. Again, you talk briefly about briefing the RCB and others on arrival, but particularly in relation to the RCB, you briefed ROE.

WING COMMANDER PENNEY: Yes.

35 AIR COMMODORE GRADY: Which as you said didn't include reference to the shoot to wound. Sort of begs the question, I think, Defence have asked as to what the reference for your brief was. But my question to you specifically is that would you be surprised to know that at least as late as '82 the reference to shoot to wound was in the RCB ROE.

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WING COMMANDER PENNEY: Yes, I think you asked me that before, but, and again my response is yes, I would be surprised, yes.

AIR COMMODORE GRADY: And again, final point, a cheap shot, I get it, but you mentioned that there was no difference between the ROE that used in INTERFET and what you saw at RCB?

5 WING COMMANDER PENNEY: Correct.

AIR COMMODORE GRADY: The obvious cheap shot being with the exception of the shoot to wound.

10 WING COMMANDER PENNEY: Cheap shot.

AIR COMMODORE GRADY: The INTERFET didn't have that, did it? Yes, no, sorry. That's all I've got.

15 WING COMMANDER PENNEY: Master of cheap shots.

THE CHAIR: Okay. Is there any more for anymore?

20 LIEUTENANT COLONEL MICKELBERG: I just would like to make one comment, Mr Chair about this issue of the likelihood of attack on the base, and the air commodore and I had this discussion just before lunch and he's just said it again. He's said that the likelihood of attack was unlikely, and I'll quote direct from the JIO assessment.

25 *Likelihood of attack: it is unlikely that any threat to the airbase will arise from an external military attack on Malaysia.*

Key point. External military attack.

30 *(b) there is a potential threat to the base from the CTO and related communist subversive organisations.*

35 *(c) CTO policy will be directed towards consolidating the infrastructure of Peninsular Malaysia, but this will not be taken at the point at which decision is made to launch the second phase of revolutionary warfare, et cetera.*

40 *(d) it is possible that the CTO could decide to attack the base if the presence of Australian forces became a major political issue in Malaysia or if there were a large-scale civil disturbance and industrial unrest. We consider this development unlikely for the present.*

45 So what we're talking about here is not about the attack on the base was unlikely. (b) captures it very succinctly:

There is a potential threat to the base from the CTO and related communist subversive organisations.

5 It's as simple as that.

THE CHAIR: But doesn't the latter sentence para that you read out take that threat and rate it as unlikely?

10 LIEUTENANT COLONEL MICKELBERG: No, it doesn't, because it's talking about the fact that if our presence became a major political consideration then the possibility might arise.

THE CHAIR: And it uses the word "unlikely" there.

15

MR KELLY: Unlikely from an external threat to Malaysia.

AIR COMMODORE GRADY: No, no, that's (indistinct) - - -

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THE CHAIR: No, no, I'm talking about the CT threat.

LIEUTENANT COLONEL MICKELBERG: Only if our presence became a major political consideration, which it wasn't at the time.

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THE CHAIR: Which seems to me to put it as below - - -

LIEUTENANT COLONEL MICKELBERG: Which it wasn't at the time.

THE CHAIR: No.

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LIEUTENANT COLONEL MICKELBERG: Okay.

THE CHAIR: So, yes, look - - -

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LIEUTENANT COLONEL MICKELBERG: So at the time they made this assessment, they're saying it was a potential threat to the base. We need to get that straight.

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THE CHAIR: Look, there's no question that we have to be very careful - - -

LIEUTENANT COLONEL MICKELBERG: I agree.

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THE CHAIR: - - - in the way we quote or summarise these things.

LIEUTENANT COLONEL MICKELBERG: That's why I'm saying.

THE CHAIR: The wording is important. That point is taken.

5 LIEUTENANT COLONEL MICKELBERG: Okay.

THE CHAIR: We could possibly argue all day about what that all means, but if we are going to attribute words, we must attribute them correctly.

10 MR MARSH: But part of that where it says (indistinct) paragraph 48, talks about the possible forms of attack, and down the bottom it says, while the service efforts are, nevertheless the use of booby traps and minor acts of sabotage whilst the political groups are relevant (indistinct) and pose a distinct threat, both to base and Australian personnel.

15 THE CHAIR: Yes.

MR MARSH: Now, that was the possible forms of attack, and I would suggest that that possible threat - a distinct threat than something higher than a likely or a possible threat.

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THE CHAIR: All right.

MR MARSH: But we also have other documents such as documents which talk about the RMF advised of possible rocket attack and so on, Air Base Butterworth in the next 30 days or something like that.

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THE CHAIR: Look, I'm sure there will be a deal of discussion on this tomorrow. I'm going to call pull up stumps now. It's been a long day. I thank everybody for their contribution, witnesses, representatives, and those supporting, and for those souls at the back who've managed to sit through all of this without going spare. Thank you for your attendance. We will start at 9 o'clock tomorrow, and it's going to be another full day. There's a lot of ground to cover. So, I look forward to seeing you then, but on behalf of the three of us, a sincere thank you for everything that's been - all the effort that's been expended today. It's beer o'clock.

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MATTER ADJOURNED UNTIL 09.00 AM 4 APRIL 2023

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