



THE HON BRUCE BILLSON MP

Minister for Veterans' Affairs  
Minister Assisting the Minister for Defence

Mr Robert Cross  
Chairman  
RCB Review Group  
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Dear Mr Cross

Thank you for your submission of 18 August 2006 to the Minister of Defence, the Hon Dr Brendan Nelson MP, concerning 'warlike' nature of service classification for the activities of the Rifle Company Butterworth stationed in Malaysia for the period 1970 to 1989. As this matter falls within my portfolio responsibilities your correspondence has been passed to me for response.

I have taken account of your recent correspondence to the Director of Coordination in Air Force dated 5 May 2007 in which you advise that in 1975 a pump house on Penang Island was fired on by 'communist terrorists' and that two unexploded mortar bombs were found by grass cutters embedded in the mud at the northern end of the Butterworth Airbase runway.

Your submission was assessed by the Nature of Service Review team. It is Defence policy to consider and review nature of service anomalies for past operations and deployments in the context of legislation and policy in force at the time. This is to ensure that anomalies are considered against the values and standards applied to other operations in the same broad timeframe.

The repatriation legislation in force for the period in question was the *Repatriation (Special Overseas Service) Act 1962*. Under this legislation, three conditions were necessary to qualify for repatriation benefits. Firstly, that a special area has been prescribed; secondly, that the personnel were serving in the special area; and thirdly, that personnel were allotted for special duty within the special area.

Allotment for special duty, which conferred qualifying service eligibility to units or individuals, was the responsibility of the Service Chiefs. It was their responsibility to determine whether the operations on which Australian forces deployed were sufficiently hazardous to attract the full package of benefits provided under repatriation legislation.



During the first part of 1965, an Interdepartmental committee was formed to advise the government of the day on the need for additional guidance to the Service Chiefs on the required elements before allotment for special duty was made. In response to the recommendations of this committee, on 7 July 1965, in Cabinet Decision 1048, the Services were directed that 'allotment for special duty' should only be made at a time when the personnel are exposed to potential risk by reason of the fact that there is a continuing danger from activities of hostile forces or dissident elements. Cabinet decided that allotment should therefore be confined to personnel specifically allotted for duty in relation to Indonesian infiltrators or communist terrorists in circumstances where there has been a specific request for the assistance of Australian forces and where the task has been clearly defined.

Special duty was intended to be for those periods when Australian forces deployed in the designated special area were called out and deployed on operations against an enemy or dissident elements at the request of the host country; in this case Malaya. Any decision by the Service Chiefs to allot their personnel for special duty is therefore considered an acknowledgement that the level of danger incurred during the conduct of such operations was sufficient to attract the full package of veterans' benefits. No submission to the government of the day to declare the Butterworth Air Base a special area has been found and I note that no recommendation was made to the Chief of the General Staff at the time of the Rifle Company Butterworth (RCB) initial deployment to declare their activities 'special service'. I note also that the RCB was involved primarily in garrison duties and were not involved in the conduct of any operations.

On Page 17 of your submission, you correctly point out that the Australian Government's intention regarding the forces deployed in Malaysia and Singapore. The passage you quote states that:

*'...forces deployed in Malaysia and Singapore will be available to oppose any insurgency which is externally promoted, which is a threat to the security of the region and which is beyond the capacity of Malaysia and Singapore to handle...'*

This same intention is reflected in the Cabinet Decision 1048, where Cabinet decreed that allotment is to be made only where there is:

*'...a specific request for the assistance of Australian forces and where the task has been clearly defined...'*

There was no specific request from the Malaysian authorities to conduct operations against communist terrorists operating in the area of the Butterworth Airbase which was beyond the capacity of the Malayan forces to handle.



I note that your submission seeks a 'warlike' classification for RCB activities during the period in question. The definitions of 'warlike' and 'non-warlike' were not introduced until May 1993. Defence considers it inappropriate to assess your claim against the 'warlike' and 'non-warlike' definitions as they were not in force at the time of the service under review. However, when viewed against the definitions of 'warlike' and 'non-warlike', the criteria that are most appropriate are those contained in the definition of 'non-warlike' service. Within the 'non-warlike' definition, the application of force is limited to self-defence and casualties could occur but are not expected. By contrast, in the 'warlike' definition, the application of force is authorised (other than in self-defence) and there is an expectation of casualties.

Importantly, your submission was also assessed against the incurred danger test which is the fundamental concept underlying the award of the full package of veterans' entitlements. The notion of incurring danger, or being exposed to the risk of harm, as a condition of 'qualifying service' has been the basis of legislation and policy since 1914. In examining your mission and tasks in the context of Australia's strategic objectives in the region at the time together with rules of engagement, threat assessments and the other issues you raised, the key issue is a judgement on the extent to which RCB personnel were exposed to the risk of physical and mental harm and whether or not it was sufficient to justify allotment for special duty by the Vice Chief of the Defence Force, Lieutenant General Ken Gillespie, AO, DSC, CSM.

After careful examination of your submission, the Vice Chief of the Defence Force has advised that the extent of the danger incurred by the RCB during the period 1970 to 1989 was not sufficient to warrant allotment for special duty required under the *Repatriation (Special Overseas Service) Act 1962* and under Cabinet guidance issued in July 1965.

By way of comparison, units that were allotted for duty in the same broad time period were fighting in South Vietnam and were engaged on operations in Borneo/Sarawak and other parts of Malaya. In these conflicts, Cabinet guidance to the Service Chiefs was clearly met before units were allotted for special duty. This is evidenced in part by the numbers of casualties suffered by the forces involved. 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.

Defence also regards as significant the fact that no approach was made to Australian Government at the time to declare the base a special area and no recommendation regarding special duty was put to the Chief of the General Staff at the time of the initial RCB deployment. Nor were any submissions made in 1975 when, as you point out, the threat from communist terrorists within Malaya was at its peak.

I also note the findings of the *Review of Veterans' Entitlements* chaired by Justice Clarke. Justice Clarke found that the RCB's tasks were infantry training and after-hours patrolling of the perimeter of the base, thereby contributing to base security in conjunction with the Malaysian security forces, the RAAF Airfield Defence Guards and RAAF Police. The rules of engagement were protective only.



Justice Clarke also found that although there is no doubt that the RCB was involved in armed patrolling to protect Australian assets, it is clear that training and the protection of Australian assets are normal peacetime garrison duties. The Clarke Committee expressed the view that peacetime service, whether rendered in Australia or overseas, can at times be arduous and even hazardous. However, on its own, this is not enough to warrant its consideration as operational or qualifying service for benefits under the *Veterans' Entitlement Act 1986*. It concluded that neither 'warlike' nor 'non-warlike' service was rendered in Malaysia or Singapore immediately following the cessation of Confrontation on 11 August 1966, or subsequently in Butterworth under the Five Power Defence Arrangement or the Australian and New Zealand and United Kingdom Force. The Australian Government accepted this recommendation.

Having taken account of the advice from Defence as an outcome of their consideration of your submission, I am not prepared to overturn the advice from Defence nor the advice from the Clarke Review regarding 'warlike' service. The degree of exposure to the risk of harm was not sufficient to warrant the full package of repatriation benefits.

However, the arguments tendered in your submission do indicate that service at the base during the period in question can be considered hazardous service. During the period 1972 to 1994 Defence personnel generally were eligible for veterans' entitlements as a result of continuous full time service for a period of three years, or two years for National Servicemen. I note that hazardous service is defined in section 120 of the *Veterans' Entitlement Act* as:

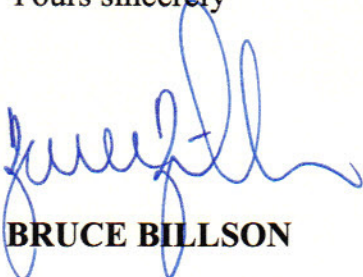
*'...service in the Australia Defence Force of kind determined by the Minister for Defence, by instrument in writing, to be hazardous service for the purpose of this section.'*

I am prepared to declare retrospectively this period of service as hazardous pursuant to section 120 of the *Veterans' Entitlement Act*. This would allow the more beneficial standard of proof to be applied to claims relating to service with the RCB.

The award of the Australian Service Medal will also apply to those who served at the Butterworth Air Base during the period in question.

I appreciate your interest in this matter.

Yours sincerely



**BRUCE BILLSON**