



COMMONWEALTH OF AUSTRALIA

Proof Committee Hansard

**HOUSE OF
REPRESENTATIVES**

STANDING COMMITTEE ON PETITIONS

Petition on reclassification of service by the Rifle Company Butterworth 1970-89

(Public)

WEDNESDAY, 29 OCTOBER 2014

CANBERRA

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HOUSE OF REPRESENTATIVES
STANDING COMMITTEE ON PETITIONS

Wednesday, 29 October 2014

Members in attendance: Mr Broadbent, Mr Buchholz, Mrs Elliot, Dr Jensen, Mrs Prentice.

WITNESSES

COOPER, Ms Jacqueline, Director Nature of Service Branch, Department of Defence 1
ROBERT, The Hon. Stuart, Assistant Minister for Defence, Commonwealth Parliament 1
THOMPSON, Colonel Murray, Acting Director General Military Strategic Commitments,
VCDF Group, Department of Defence 1

COOPER, Ms Jacqueline, Director Nature of Service Branch, Department of Defence

ROBERT, The Hon. Stuart, Assistant Minister for Defence, Commonwealth Parliament

THOMPSON, Colonel Murray, Acting Director General Military Strategic Commitments, VCDF Group, Department of Defence

Committee met at 10:43

CHAIR (Dr Jensen): I welcome all witnesses and members of the public to the Petitions Committee hearing today, where we will discuss a selected petition. Under the rules of the House of Representatives, the Petitions Committee is required to consider if petitions comply with the requirements for petitioning the House. If so, the petition may then be presented to the House, and the committee may refer it to the relevant government minister for a response. We may also hold public hearings into petitions, allowing both principal petitioners and government agencies to further consider the concerns raised in petitions and the response made.

I remind participants and interested parties that, in undertaking hearings on a petition, the committee is not endorsing or advocating on the contents of a given petition, nor are we able to grant the requests made in petitions. It is not the committee's practice to make any recommendations based on hearings of this kind. These hearings are an opportunity for participants to cover in more detail the issues raised in petitions which, as we know, are restricted to 250 words, and for the committee to hear about people's experiences of engaging with the petitions process.

Today we will be hearing from representatives from the Department of Defence to discuss a petition which calls for the reclassification of the military service of Rifle Company Butterworth between 1970 and 1989. I now invite representatives from the Department of Defence to discuss the petition. I remind witnesses that, although the committee does not require you to give evidence under oath, this hearing is a legal proceeding of parliament and therefore has the same standing as proceedings of the chambers themselves. The evidence given today will be recorded by Hansard and will attract parliamentary privilege. If you would like to make a brief opening statement, we can then go straight to questions.

Mr Robert: Thanks Chair, and thank you for the opportunity to come along as the responsible minister and to bring Colonel Thompson, Director General of Military Strategic Commitments, and Ms Cooper. It was interesting speaking to Colonel Thompson before; he actually spent three years of his life—I think you said as a 'RAAF brat', Colonel—

Col. Thompson: I did.

Mr Robert: on RAAF Base Butterworth in the 1970s. It is good that we can bring someone along who is not only a military professional but who can also speak firsthand on what it was like there at the time, with mum and dad, at Butterworth.

I would like to make an opening statement. I thank the committee for its interest in the matter of the nature of service classification for Army's Rifle Company Butterworth, and for the opportunity to address you. On 3 March, the committee referred to me a petition seeking reclassification of the service of Rifle Company Butterworth between 1970 and 1989. The petition contends that because those troops were deployed to provide a protective and quick reaction force, this service should be reclassified from 'peacetime' to 'warlike'.

In preparing a response to the petition, a senior research officer with no prior involvement in earlier Defence reviews of Rifle Company Butterworth's service has reviewed and extended prior research. The research undertaken has been considerable and it has been thorough, including re-examining all available official documentation held at the War Memorial and the National Archives of Australia, encompassing opened, closed and not-yet-examined documents. Defence records were also examined, including RAAF Base Butterworth commanding officer reports, RAAF unit history records, and commanders' diaries for those Australian battalions which provided an infantry rifle company for rotation through Butterworth. This research sought to define roles and responsibilities of the infantry rifle company which rotated through Royal Australian Air Force Base Butterworth, and the environment in which members of the Australian Defence Force served, including the level of exposure to the risk of harm.

By way of background, approximately 9,000 Australian Defence Force personnel served on infantry rifle company rotations between 1970 and 1989. It is estimated that up to 19,000 members of the Royal Australian Air Force also served at Butterworth during the same period. In addition, there were Australian public servants and teachers working at or near the base. For RAAF personnel, these were accompanied postings, with families living in married quarters located outside the base perimeter fence in the nearby area and on Penang. There were no restrictions placed on movement by car, taxi or bus in the Butterworth area, or on travel via ferry to Penang

Island. During the Vietnam conflict, which ended in 1972, Penang was a formal rest and recuperation leave centre. Also, at least from the 1960s to now, Penang has been an unrestricted international holiday destination. While Australian forces remained in Malaysia following the confrontation ceasefire on 11 August 1966, no state of war or emergency existed and, accordingly, the Malaysian government made no further requests for assistance in security operations. Therefore, there were no allotments of Australian forces for special duty in Malaysia after 14 September 1966, and Australian forces were not engaged in any operations against hostile forces or dissident elements.

Ownership of the Butterworth Air Base was transferred to the Malaysian government on 31 March 1970. Until 1970, security at Butterworth was provided by the Royal Air Force, but responsibility transferred to the Malaysian authorities with the transfer of ownership. The program for rotating an infantry rifle company to Butterworth was implemented on 15 November 1970 by the Australian, New Zealand and British battalions from the 28th Commonwealth Brigade, which was located in Singapore. Interestingly, New Zealand also deployed a company on rotation from 1971 to 1973. With the withdrawal of the Australian battalion from Singapore in September 1973, a company group was provided from the Australian base battalion, deploying on three-month rotations. It was around January 1980 that the infantry rifle company located at Butterworth on rotation assumed the title of 'Australian Army Rifle Company Butterworth', or RCB. The roles of the infantry rifle company were to provide a ground force presence in Malaysia; to conduct training; and, as claimed in the petition, to assist in the security of Butterworth, if required, and to provide a quick reaction force, if required. However, importantly the infantry rifle company was not to be involved in local civil disturbances or to be employed in operations outside the perimeter of the air base. The Malaysian armed forces were responsible for the security of the base, and RAAF personnel had primary responsibility for internal base security. The infantry rifle company provided a quick reaction force, normally a section size of 10 diggers, outside of normal weekday working hours—1800 hours at night through to 0600 hours. RAAF property and assets were not guarded during normal working hours when they were under surveillance of air force personnel working on the flight line or elsewhere on the air base.

The rules of engagement and the orders for opening fire for the infantry rifle company, which also applied to all RAAF personnel, were defensive in nature and were to be applied within the air base only. In the event of a security emergency being declared, the infantry rifle company was to assist with the protection of facilities, personnel and families under the direction of the officer in command in the air base. The ground defence operations centre was established to manage all emergencies at the air base, including security related emergencies. While this operation centre was manned on a regular basis, such as during air defence exercises, simulations of a declared emergency and during the movement of highly flammable material as a precaution in response to local disturbance or potential threat, no security emergency was ever declared at RAAF Base Butterworth.

No attempt has been made by Defence to conceal the fact that there was a level of threat to RAAF Base Butterworth, but the level of threat was assessed as low. To give you some credence, the level of threat in Iraq for combat operations now is assessed as high. Defence has acknowledged that there were instances of elevated concern over possible threats to the base from communist terrorists, as they were known at the time, and local racial disturbances that gave cause to the GDOC, which is the Ground Defence Operations Centre, to be manned at times and for security practices to be changed. However, the daily routine of the air base continued unabated throughout the period.

Whilst communist terrorists were active at various times and in various parts of the Malaysian Peninsula, life continued as normal for the local population, as well as those posted to Butterworth and their families who lived outside the wire. Instances of the perimeter fence being cut were not attributed at the time to communist terrorists, but considered to be done for the purpose of petty theft. There was never an attack on RAAF Base Butterworth by communist terrorists. While the period of 1966 to 1989 has been referred to as the second emergency, this title appears to have been applied retrospectively—there is no historical record of the Malaysian government ever declaring a second emergency.

Submissions seeking review of a nature of service classification of past service are considered in the context of the legislation and policies that applied at the time of the service under review. The applicable legislation was for the period of RCB service, 1970 to 1989, was the Repatriation (Special Overseas Service) Act 1962. Special overseas service, which is equivalent to the contemporary classification of warlike service, required that personnel be allocated for special duty within a declared special area. Special duty was defined under that legislation as 'duty relating directly to the warlike operations or state of disturbance by reason of which the declaration in respect of the specific or the special areas was made'. Because no state of war or emergency existed in Malaysia after the end of confrontation on 11 August 1966 and because the Malaysian government made no request to the

Australian government for military assistance after this date, ADF personnel were not engaged in duty relating to warlike operations or a state of disturbance in Malaysia between 1970 and 1989.

As a result, ADF service, including those at Butterworth, cannot be considered to be the special service under this act at the time, the Repatriation (Special Overseas Service) Act 1962. Therefore, instead of seeking reclassification of their service under the Special Overseas Service Act, Butterworth claimants are seeking a warlike classification under the current framework, which was incorporated into the Veterans' Entitlements Act 1986, and they were seeking this in 1997. Warlike operations under this current framework, since 1997, are defined as 'those military activities where the application of force is authorised to pursue specific military objectives and there is an expectation of casualties'. These operations can encompass, but not are not limited to, a state of declared war, conventional combat operations against an armed adversary, and peace enforcement operations, which are military operations in support of diplomatic efforts to restore peace between belligerents who may not be consenting to intervention and may be engaged in combat and activities. No ADF service at Butterworth through the period 1970-1989 including those of Butterworth meets any of these criteria. The Butterworth—or the RCB, the Rifle Company Butterworth—were not pursuing any specific military objectives, were not authorised to use force beyond the minimum required for self-defence and there was definitely no expectation of any casualties.

Importantly, at no time throughout the period 1970 to 1989 did any Australian government consider it necessary or appropriate to reconsider or reclassify the Rifle Company Butterworth or any ADF service at Butterworth. As advised earlier, 28,000 ADF personnel or there about served at Butterworth during the period. Since 2006, Defence has provided responses to 40 submissions from 17 claimants seeking reclassification of this service from 1970 to 1989 and one claimant for the reclassification of other ADF services at RMAF Base Butterworth. Many of these claims have been form letters generated by simply one or two individuals. There is no evidence to suggest that the views of the 17 individual claimants seeking reclassification of Butterworth service are supported by the majority of the estimated 28,000 personnel who served at Butterworth between 1970 and 1989.

RCB service has been considered by several independent reviews, which have consistently found it to be peacetime service. The 1994 Committee of Inquiry into Defence and Defence Related Awards concluded that: Neither does the Committee consider that service at Butterworth was clearly and markedly more demanding than normal peacetime service...

Despite noting that service at Butterworth in Malaysia was one of the specific areas of ADF service that the review was asked to advise on, the *Review of service entitlement anomalies in respect of South-East Asian service* by Justice Mohr in 1999 made no recommendation of the reclassification of service at Butterworth.

The 2003 *Review of veterans' entitlements* by a committee led by Justice Clarke stated that training and protection of Australian assets are normal peacetime garrison duties. The committee considered that peacetime service, whether rendered in Australia or overseas, can be arduous and even hazardous. But these factors alone do not warrant consideration of that duty as operational or qualifying service for veterans under the Veterans' Entitlement Act 1986. The Clarke committee concluded that no evidence was found that service at South-East Asia currently established as peacetime service should be considered warlike. No operational area was prescribed, no specific armed threat was present and there were no rules of engagement to pursue specific military objectives.

The 2011 *Inquiry into recognition for members of Rifle Company Butterworth for service in Malaysia between 1970 and 1989*, concluded by the Defence Honours and Awards Appeals Tribunal, recommended that no change be made to the current medallic entitlements, as there was no convincing evidence that the service of the RCB was warlike. A nature of service review board in 2011 considered RCB service and found that it was appropriately classified as peacetime service. The board—consisting of senior executive service band 2 representatives in the Department of the Prime Minister and Cabinet, Department of Veterans' Affairs, Department of Finance and Department of Defence—was established to consider claims for the reclassification of past service.

The final report by Medallic Recognition Joint Working Group: Service in South-East Asia 1950-2011 in 2013, sponsored by the New Zealand government, stated that the service of its rifle infantry company between those three years—which served similarly to the RCB at Butterworth—was not operational service. The New Zealand JWG, joint working group, found that the communist terrorist activity was of very slight significance to the New Zealand deployment to Butterworth and did not characterise the tours in anyway.

I do not that the petition contends that Defence, in assessing the claims, has not apply consistent standards, been misleading with its facts, not considered key data provided, denied natural justice, rewritten history in retrospect and based decisions on budgetary constraints rather than recognising service at the appropriate level.

Defence has comprehensively examined and re-examined the available official documentation to confirm the roles of the infantry rifle companies that rotated through Butterworth and to assess the extent of exposure to the risk of harm.

Defence is confident that all records and other evidence provided by claimants has also been considered. No attempt has been made to conceal the fact that there was a level of threat to RMAF Base Butterworth, but the levels assessed as low. The daily routine of the air base continued unabated throughout the period. Service personnel and their accompanying families had no restrictions on movements and nearby Penang was a popular tourist destination.

I acknowledge that the roles of the Rifle Company Butterworth were to provide a ground-force presence in Malaysia to conduct training to assist in the security of Butterworth if required and to provide a quick reaction force if required. However, these roles in themselves do not constitute a warlike classification.

CHAIR: I am sorry to interrupt. Can I get a member to move that a subcommittee consisting of me and Mr Buchholz be formed for the purposes of holding this roundtable on petitions? We would not have a formal quorum without moving that. To move it allows the hearing to continue.

Mrs PRENTICE: I so move.

Mr Robert: It is a fact that RCB service does not meet the essential criteria for classification as special overseas service or as warlike service, because Australian forces were not engaged in any operations against hostile forces or dissident elements after the end of confrontation on 11 August 1966. The Defence review is consistent with several independent reviews that considered RCB service, including the external New Zealand review. I also note that at no time throughout the period 1970 to 1989 did any Australian government consider it appropriate to change the classification of any ADF service at Butterworth from peacetime service. The decision not to retrospectively reclassify RCB service is not based on budgetary constraints. Whereas all matters presented to government, including those dealing with past ADF service, must include consideration of any costs associated with the proposal, the decision to maintain the peacetime classification is based on the review of the nature of RCB service.

In conclusion, the service of Rifle Company Butterworth has been reviewed comprehensively by Defence and by several independent reviews, including a review by New Zealand. Reviews of service have found consistently that this service does not meet the essential criteria for reclassification as special overseas service or as warlike service. The role and responsibilities of the RCB, and all evidence of the exposure to the risk of harm, support the extant peacetime classification. At no time throughout the period 1970 to 1989 did any Australian government consider it necessary or appropriate to reconsider or change the classification of RCB or any other ADF service at RMAF Base Butterworth. I take this opportunity to acknowledge the valuable contribution of all ADF service at Butterworth, including that of the Rifle Company Butterworth. The peacetime classification in no way denigrates the sometimes difficult and arduous nature of these deployments. Once again, I am grateful for the opportunity to address you on this matter and am happy for me or the Defence team to take any questions that the committee may have.

CHAIR: First, in response to this petition, which states that no state of war emergency existed in Malaysia between 1970 and 1989, how would you characterise the activities of communist insurgents from Sarawak or the official peace between the Malaysian government and Malaysian communists?

Mr Robert: I will pass that to Colonel Thompson (a) because he is the subject matter expert and (b) because he was a child growing up there at the time.

Col. Thompson: There was a communist insurgency, but it was extremely low level. It was actually along the border areas of what is now Thailand, and certainly by the mid-seventies it would be characterised as banditry more than a comprehensive insurgency. There were very limited attacks on any Malaysian constabulary, because it was a police action. The military were not deployed against them—only very occasionally. By 1989 it had ended. The communist terrorist Chin Peng, who had been living the jungle, was an old man and he finally came out and effectively ended the communist insurgency.

CHAIR: Former RCB personnel have stated that they and their families expected that combat would occur and that casualties would be sustained and have argued that it is not relevant whether actual combat occurred if there was an expectation that combat would occur. Is that consistent with the practice during the period 1970 to 1989?

Col. Thompson: It is all a matter of perspective. There were certainly no orders given and, although certain orders to Rifle Company Butterworth may well have heightened the risk in their order of training and raising people's awareness, I can tell you firsthand that the everyday expectation, especially of families, was one of an

idyllic and peaceful lifestyle rather than any threat ever. I will pass to Ms Cooper, who can categorise some of those.

Ms Cooper: The point the claimants are making is the concept of perception of harm, which was discussed by Justice Moore when he did his review. It has also been tested in the courts. Many people have claimed they have warlike service, because they perceived danger and they all felt danger; however, the conclusion from the courts was that there had to be a real and objective danger, not just a perception of danger.

Mr Robert: Chair, if you look through the commanders' diaries and look to the evidence of government and military at the time, there was never an expectation of casualties occurring. If I look at my time as a military officer in 1998 in Bougainville during the crisis there, we were unarmed—the first unarmed mission. It was seen as a peace-making operation and while there was an Australian Service Medal issued, not an Active Service Medal—no-one was claiming it was war-like, but it was quite common for us to be confronted by weapons and knives and weapons in faces, there were confronting issues in reconciliation and disarming rebels, but no-one was claiming that Bougainville should be increased to war-like service.

Mrs PRENTICE: So Bougainville was non-war-like?

Mr Robert: Absolutely. It is a peace-monitoring group which comes under deployment allowance as opposed to international campaign allowance. We faced consistent issues in danger, engaging with hostile rebel groups, challenging banditry and theft across the area and helicopters engaged by weapons fire. And that is a peace-monitoring arrangement.

Mr BUCHHOLZ: To your knowledge, have the petitioners sought an audience with you or with the Department of Defence?

Mr Robert: I cannot remember offhand. It would not surprise me if they had. Most claimants who want me to exercise ministerial discretion on these issues always want to come to present their case. As a general rule, I do not do it because we have established processes in place—notwithstanding the Defence Honours and Awards Appeals Tribunal, the professional body which seeks to explain that. It is a bit like me getting involved in a court case, which we would not do. Because we have DHAAT as a tribunal which sits on these matters, I tend not to entertain discussion outside of—

Mr BUCHHOLZ: Are you aware of any other claims of a similar nature by a different group or any other organisation?

Mr Robert: I am going to pass that to Jackie who is head of nature of service.

Ms Cooper: Other claims by a different group regarding the—

Mr BUCHHOLZ: Regarding the similar claim which has been made in—

Mr Robert: Are there any other operations, Jackie—Somalia, Rwanda?

Ms Cooper: We are constantly getting claims for reclassification of past service going back as far as to pre-Vietnam. A similar one would be 4RAR after the end of confrontation. When they returned to their barracks at Terendak in Malacca they sought to have war-like service for the period after confrontation for 12 months after that. That is the most similar.

Mr BUCHHOLZ: Are you able to advise the committee whether there is any precedent where there has been a reclassification?

Ms Cooper: Yes. We have reclassified, as the minister said, Rwanda. We have reclassified a short period in UNTSO service, the UN observers in Israel and Palestine. That was only a 33-day period. Over such a long period, not any major ones. We have reclassified mainly service of individuals who may not have been recognised at the time as having been contributing to a war-like operation.

Mr BUCHHOLZ: Can you give an oversight as to the reasoning for the reclassification in those instances, so we can draw a comparison?

Ms Cooper: Rwanda was reclassified as war-like due to exposure to the risk of harm and primarily there was exposure to the risk of psychological harm.

Mr BUCHHOLZ: And the risk rating in that conflict?

Ms Cooper: That was high all the way through. Those people were out in the areas where the warring factions were operational.

Mr Robert: Did that include the massacre?

Ms Cooper: Yes. It was classified as non-war-like in the first instance because it was considered a humanitarian mission. As it became obvious, they were at risk there and the soldiers did have to defend some of the local citizenry. It was reclassified as war-like.

Mr BUCHHOLZ: Is there any way that the defence force could see any light of this being reclassified? Is the evidence you have given us conclusive?

Mr Robert: Yes.

Mr BUCHHOLZ: I am just asking for the *Hansard* record, because I have no doubt our petitioners will troll through Hansard looking to make sure that we have gone as hard as we can.

Mr Robert: That is a question the government should answer. Based on all the available evidence we have, written and otherwise, there is nothing that would at present indicate that the risk level would move from low.

Mrs PRENTICE: Has there been any request from the Bougainville people to have their service reclassified?

Mr Robert: Not that I have seen. Jacqueline, anything from the department?

Ms Cooper: Yes, we have had one or two. I believe they have also had a request through the Defence Honours and Awards Appeals Tribunal to have the medallic recognition raised to a AASM.

Mrs PRENTICE: Am I allowed to ask where it is going?

Ms Cooper: It has been denied.

Mrs PRENTICE: It has been denied?

Ms Cooper: We have reviewed the service and it is—

Mr Robert: It was an unarmed operation. I was in the middle of it at the very start.

Mrs PRENTICE: It was not friendly.

Mr Robert: No. I ran the force protection element of it—out there every single day in it. However, it was still unarmed. We were unafraid with our little yellow hats on.

CHAIR: Former RCB personnel have likened their service to that undertaken by Defence Force personnel in East Timor between 1999 and 2003. Is this a reasonable comparison? If not, how does the service of RCB differ from that undertaken by Australians in East Timor?

Col. Thompson: I would say that the nature of service was considerable. East Timor was an armed operation with an expectation of casualties, with a real threat from the insurgents at the time. Combat patrols were extensively taken and force protection measures—which you would expect in a warlike circumstance—were undertaken. The Rifle Company Butterworth—it would be difficult to draw any comparisons with what went on in East Timor.

CHAIR: Any further questions? Are there any concluding remarks that you would like to make? Okay. Thank you very much for your evidence. If the committee has further questions for you, the secretariat will contact you. We have now come to the end of our public hearing session. I thank all participants for their contribution. It has been a most interesting public hearing. As our participants today know, it is not the committee's practice to make recommendations on the basis of this kind of public hearing, nor is it the committee's role to investigate petition issues beyond hearing from relevant ministers and petitioners. The aim of today's hearing is to amplify the issues raised by petitions and to look into them, particularly in the light of any government response. There will be an official transcript which will be published on the committee's website in due course.

Resolved that these proceedings be published.

Committee adjourned at 10:13