

COMPLAINT

Mr K.N. Marsh
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Wahroonga, NSW 2076

4 December 2016

The Secretary
Department of Defence
R1-5-B Secretary Suite
Department of Defence
PO Box 7901
Canberra BC ACT 2610, Australia

Dear Secretary

I submit the following complaint against the Nature of Service Branch (NOSB), Department of Defence, for investigation and resolution.

In 2001 the Minister Assisting the Minister for Defence approved the award of the Australian Service Medal 1945-75/Australian Service Medal for non-warlike operational service at Butterworth Air Base for Australian service members who had served at the Base till the end of 1989. At the time Service Chiefs accepted that fact of the 1968-89 Communist Insurgency War, that an Australian Infantry Company was permanently deployed to the Base as a Quick Reaction Force, and that communists had been active in the area close to the Base. The facts on which that decision were made can be easily verified.

The decision was consistent with the 'significant principle' established by Justice Mohr in the *Review of Service Entitlement Anomalies in Respect of South-East Asian Service 1955-75*, 'that if ADF personnel are placed in circumstances where they may be used to react to an assessed threat made by the Australian Government Intelligence Agencies, it has to be considered operational service. This is regardless of whether that threat is realised or not'. The decision was also in harmony with the Service Chiefs' policy on the award of the ASM, and harmony with CIDA principles

The review of service at Butterworth in 2000 - 2001 was considered at the time to be a natural consequence of Mohr's Review - designed to tidy up unfinished business. For some reason however, the recognition of non-warlike operational service has not resulted in recognition of same under the Veterans' Entitlements Act 1986.

Following submissions from representatives of the Rifle Company Butterworth for recognition of warlike service in 2007 the then Minister agreed to recognition of what in effect is non-warlike service for RCB Veterans. However, the instruments approving this decision were botched. Further representation in 2009 resulted in a review of the Nature of Service (NOS) at Butterworth, this being completed in 2011. The outcome was that the NOS at Butterworth did not meet the essential requirements for either warlike or non-warlike service.

Advice given to the Minister at the time, and eventually the Parliamentary Petitions Committee in 2014, by NOSB, fails to mention the 2001 decision and the facts it was based on. Further, that advice contains serious and misleading statements of fact, ignores relevant high level documents - both in terms of origin and security classification - and fails to address the key fact of 'incurred danger' as determined by Mohr and later Justice Clarke.

The advice given by NOSB can only be seen as false and misleading. Consequently Ministers and the Parliament have been misled by the Department and military veterans unfairly denied recognition and entitlements that have been earned.

I submit the following for your investigation and response and will appreciate a response by 15 February 2016. If I have not heard from you by then I will consider further options for seeking justice on this matter.

Yours Sincerely,

K.N. Marsh

COMPLAINT AGAINST THE NATURE OF SERVICE BRANCH (NOSB)

NATURE OF COMPLAINT

1. I submit this complaint against the NOSB for your investigation. The evidence provided below will show that since 2010 reports prepared by NOSB in response to claims made by veterans who served at Butterworth Air Base up to the end of 1989:

- Do not address the 'very significant principle established by MAJGEN Mohr ...'that if ADF personnel are placed in circumstances where they may be used to react to an assessed threat made by Australian Government Intelligence agencies it has to be considered operational service. This regardless of whether that threat is realised or not'.
- Fails to acknowledge the 2001 decision to recognise non-warlike operational service at Butterworth to the end of 1989 and the evidence on which that decision was made.
- Makes selective use of documents to support the claim that service during the period was nothing more than peacetime service.
- Support their case by lifting statements out of context.
- Ignore key documents that show the real reason a Rifle Company was deployed to Butterworth between 1970-1989.

2. The approach taken by NOSB since 2010 has:

- Denied fair treatment to veterans seeking to have the classification of their service reviewed.
- Denied veterans access to repatriation benefits that they should be entitled to.
- Misled Ministers of the Crown.
- Misled the Parliamentary Petitions Committee and, therefore, the Parliament.
- Devalued the Australian Service Medal 1945-75 and Australian Service Medal as an award recognising operational service. At the time the decision was made to recognise service at Butterworth with the appropriate version of these medals Service Chiefs were agreed that they should not be awarded for peacetime service, regardless of how hazardous that may have been¹.

¹ *ADF Medals Policy - Where We Have Been and Where We Are Going*. Copy obtained under Freedom of Information Act at:
<http://ramational.org.au/wp-content/uploads/2011/11/CDF-Policy-Medals-1991.pdf>. Accessed 28 Nov 2016

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THE LEGAL POSITION - AN OBJECTIVE TEST

3. Justice Mohr, in the *Review of Service Entitlement Anomalies in Respect of South-East Asian Service 1955-75*, stated : 'In essence, Section 7A the VEA 1986 requires that a veteran must have 'incurred danger from the hostile forces of an enemy' before such service becomes 'qualifying service' for the 'service pension'².

4. Mohr concluded that the test as to whether or not danger had been incurred was an objective one determined by 'the facts as they existed at the time the danger was faced'. He determined an 'objective danger' was established if:

- An armed enemy is proven to have been present; or
- ... 'a serviceman is told there is an enemy and that he will be in danger ...'

On the last point Mohr was quite clear: 'The member's experience of objective danger at the time will not be removed by 'hindsight' showing that no actual enemy operations eventuated³.

5. Justice Clarke, in the *Review of Veterans' Entitlements*, concurred with Mohr. At 11.60 he stated:

If then, the military authorities consider that a particular area is vulnerable to attack and dispatch armed forces there, they are sending forces into harm's way, or danger. This was the second point made by Mohr - that veterans ordered to proceed to an area where they are endangered by the enemy will not only perceive danger, but to them the danger will be an objective one

² *Review of Service Entitlement Anomalies in Respect of South-East Asian Service 1955-75*. Feb 2000 (The Mohr Report), p.8

³ *Ibid*, p.9

based on rational and reasonable grounds. In these circumstances, what the historian says he or she has learned since the war about the actual intention of the enemy is hardly relevant.⁴

NON-WARLIKE OPERATIONAL SERVICE DETERMINATION 2001

6. On 15 April 2001 the Minister Assisting the Minister for Defence, the Hon. Bruce Scott MP, approved a recommendation to recognise non-warlike operational service in South East Asia from 31 Oct 1971 to 31 Dec 1989 with the award of the Australian Service Medal (ASM)^{5, 6}. The basis on which this decision was made included the following facts:

- A communist insurgency within the borders of Peninsular Malaysia.
- The establishment in 1970 of a Rifle Company (Rifle Company Butterworth - (RCB)) as a quick reaction force to meet the communist threat to Butterworth and to be responsible for the internal security of the Base. This role continued till the end of the communist threat at the end of 1989.
- Communist activity close to the Butterworth base.
- Known incidents of the RCB quick reaction force being fired at by the poorly trained Malaysian Airforce Defence Guards.
- A known stand-off between RCB members and communist terrorists.

These and other facts proving the reality of the communist threat, including the direct threat to Butterworth, are readily confirmed.

7. The decision recognised 'the principle established by MAJGEN Mohr, during his deliberations on service in SE Asia that if ADF personnel are placed in circumstances where they may be used to react to an assessed threat made by the Australian Government Intelligence Agencies, it has to be considered operational service. This is regardless of whether that threat is realised or not'. It was also 'consistent with CIDA Principle No 3 which states, inter alia, *care must be taken in recognising service by some the comparable service of others is not overlooked or degraded*'⁷.

⁴ Review of Veterans' Entitlements. Jan 2003 (The Clarke Report).

⁵ The recommendation was authorised by Admiral C.F. Barrie, CDF on 10 Apr 2001. The date on which it was approved by the Minister is hard to decipher.

This and other documents referred to in this complaint relating to the decision to award the ASM to the end of 1989 are included as attachments to a submission from the Vice Chief Defence Force to the Defence Honours and Awards Tribunal's *Inquiry into the Recognition of Members of Rifle Company Butterworth for Service in Malaysia between 1970 and 1989*, dated 23rd June 2010, with the exception of the *ADF Medals Policy - Where We Have Been and Where We Are Going*.

⁶ The term Australian Service Medal (ASM) is used generically to refer to both the ASM 1945-75 and the ASM

⁷ Minute, *Review of Service Entitlement in Respect of the Royal Australian Air Force and Army Rifle Company Butterworth Service 1971-1989*. Air Commodore McLennan DGCMF to CDF. 28 Mar 01. Attached to the VCDF's submission to the Defence Honours and Awards Tribunal's *Inquiry into the Recognition of Members of Rifle Company Butterworth for Service in Malaysia between 1970 and 1989*, dated 23rd June 2010.

8. The principle established by MAJGEN Mohr is described in the ADF Medals Policy, referred to below, as 'very significant', being made by Mohr 'in his capacity as a South Australian State High Court Justice'⁸

9. Air Commodore McLennan also advised the decision was in accord with a recent paper regarding the award of the ASM.⁹

This submission has been endorsed by the CA and CAF. The recommendations made in the submission meet with the principles of the 1993/94 Committee of Inquiry into Defence and Defence Related Awards and accord with the recommendations at paragraph 27 of the recent paper entitled "ADF Medals Policy - Where We have Been And Where We Are Going" recently approved by yourself and the three Service Chiefs.

10. The 'ADF Medals Policy' paper specifically ruled out awarding the ASM for overseas peacetime service, including training. It was reserved for service 'in situations that include international security treaties or agreements' such as the Far East Strategic Reserve or Five Power Defence Agreement (FPDA), service that required 'specific military skills' of a kind that allowed a declaration of non-warlike service by the Minister, and 'service involving that with an international coalition force and where other countries involved have recognised their defence personnel with a medal ...' Butterworth operated as part of the FPDA requiring 'specific military skills'. Service with the Malaysian armed forces to the end of 1989 is recognised by the award of the Malaysian Service Medal (PJM). This determination was made before the decision to extend the ASM to the end of 1989.¹⁰

NOSB REPORT 'BACKGROUND INFORMATION PAPER NATURE OF SERVICE CLASSIFICATION - ADF SERVICE AT RAAF BUTTERWORTH, 14 OCTOBER 2011

BACKGROUND

11. In 2007 former members of the Rifle Company Butterworth (RCB) made a submission to the then Minister for Veterans' Affairs, Bruce Billson MP, to have their service at Butterworth between 1970-1989 recognised as warlike service. Following a review by Defence it was determined there were grounds for recognising this service as non-warlike service, but there were no grounds to support warlike service (for the purposes of this paper, non-warlike service includes hazardous service). This was agreed to by the Minister in the last day's of the Howard Government.

⁸ *ADF Medals Policy - Where We Have Been and Where We Are Going*. (para. 19). Copy obtained under Freedom of Information Act at: <http://ramational.org.au/wp-content/uploads/2011/11/CDF-Policy-Medals-1991.pdf>. Accessed 28 Nov 2016

⁹ Minute from Director General Career Management Policy to Chief of the Defence Force of 21 March 2001.

¹⁰ *ADF Medals Policy - Where We Have Been and Where We Are Going*.

12. Approximately 18 months later, in 2009, a member of the RCB Review Group wrote to Minister Robert Snowden noting that the decision of the former Minister had not been actioned. It was then discovered that the legislative instruments signed by Billson to implement the decision had not been registered and, were in fact, flawed. Following efforts to 'resolve the legal status of the Instruments and the process by which the matter might finally resolved ... in mid-2011 Defence conducted a "first principles" review of all ADF service at Butterworth from 1971 ...' The 'review examined official Government and Defence Force correspondence available within Defence and from the Australian War Memorial and National Archives of Australia, as well as the various submission which had been made by various claimants over the years.'

13. This review concluded:

... that the previous 2007 review relied heavily on selective information, and that little objective research was undertaken to either corroborate or disprove the statements which had been made by the claimants. Although the advice provided to Minister Billson was the best available at the time, it has subsequently been shown to be inadequate and misleading. Certainly the evidence now available does not support the claim that RCB was an operational deployment.

14. Consequently service at Butterworth post 1966 would remain classified as peacetime service. Despite this eligibility for the Australian Service Medal 1945-75 or Australian Service Medal (which by regulation can only be awarded for prescribed non-warlike operations) would not be affected¹¹.

NOSB's ERRORS AND OMISSIONS 2011

15. NOSB in 2011 ignored the 2001 decision. Why? Was this a deliberate attempt to hide the fact from the Minister that a decision had been made in 2001 that recognised 'the principle established by MAJGEN Mohr, during his deliberations on service in SE Asia that if ADF personnel are placed in circumstances where they may be used to react to an assessed threat made by the Australian Government Intelligence Agencies, it has to be considered operational service. This is regardless of whether that threat is realised or not'¹².

16. NOSB in 2011 stated ' that the previous 2007 review relied heavily on selective information, and that little objective research was undertaken to either corroborate or disprove the statements which had been made by the claimants'¹³. Why was the 2001 evidence ignored? To quote from that evidence:

¹¹ Paragraphs 11-14 summarise a letter from the Parliamentary Secretary for Defence, Senator the Hon David Feeney, to the Chairman, RCB Review Group, of 19 May 2012. Two documents giving the reasons for the decision accompanied the letter, both prepared by Defence's Nature of Service Branch (NOSB). The following comments relate to the document 'Background Information Paper Nature of Service Classification - ADF Service at RAAF Butterworth', dated 14 October 2012.

¹² Minute, *Review of Service Entitlement in Respect of the Royal Australian Air Force and Army Rifle Company Butterworth Service 1971-1989*. Air Commodore McLennan DGCMF to CDF. 28 Mar 01.

¹³ Letter from the Parliamentary Secretary for Defence, Senator the Hon David Feeney, to the Chairman, RCB Review Group, of 19 May 2012

Added to the hazards involved for the RCB were the Malaysian Airforce Defence Guards (Handau). These were conscripts who were also employed to provide security to the Air Force base. Advice from the Army Historical Unit is that they were an additional hazard as they had various levels of training (not particularly good) and it was not unusual for the Handau to overreact when surprised and shoot at the unknown. Such incidents are known to have occurred during RCB quick-reaction response training in which RCB members came under fire. There is also a known incident in the early 1970s that during such training, a contact was made with the Malay terrorists, however this resulted in a 'stand-off' situation and although tense, did not result in any exchange of fire or casualties. Due to known armed terrorist activities, the northern regions of the Malay Peninsular were 'no go' areas for ADF personnel.¹⁴

17. This advice 'from the Army Historical Unit' shows clearly that a risk of casualties existed at the time and cannot therefore be dismissed as 'hearsay.' Further, the list of known incidents listed at paragraph 6 (above) are all verifiable and therefore 'objective'. Further, there is ample objective evidence available from the National Australian Archives and other places demonstrating the risk to Australian forces at Butterworth. This was acknowledged by NOSB in 2014 - see below.

18. In 2011 NOSB concluded 'the evidence now available does not support the claim that RCB was an operational deployment'¹⁵. Again, evidence listed above demonstrates clearly that this is at odds with the 2001 decision. That no mention is made of that decision must raise questions about the integrity of the 2011 report.

19. NOSB, at paragraph 14, state that 'in the event of a security emergency due to a communist terrorist threat, the Air Base Butterworth Defence Operations Centre (GDOC) was to be activated and all Malaysian and ADF personnel at Butterworth formed a Base ground defence force with specified defensive duties'. At paragraph 15 they state 'Air Force has advised that no security emergency was ever declared at Butterworth'¹⁶. This retrospective statement is hardly relevant given the principle established by MAJGEN Mohr.

20. The above statement is problematic because it seems to deny that increased security measures were implemented at different times in response to the perceived threat. Base Squadron CO Reports for the period Jan 76 -Sept 78, under the heading *Defence Section Operational*, clearly show that the GDOC was regularly manned owing to *possible ground*

¹⁴ Appears to be an attachment to *Ministerial submission from Chief of the Defence Force to Minister Assisting the Minister for Defence of 10 April 2001*. Attached to the VCDF's submission to the Defence Honours and Awards Tribunal's *Inquiry into the Recognition of Members of Rifle Company Butterworth for Service in Malaysia between 1970 and 1989*, dated 23rd June 2010.

¹⁵ Letter from the Parliamentary Secretary for Defence, Senator the Hon David Feeney, to the Chairman, RCB Review Group, of 19 May 2012

¹⁶ Background Information Paper, Nature of Service Classification - ADF Service at RAAF Butterworth, Nature of Service Branch, 14 October 2011

*threat to Air Base Butterworth*¹⁷. What was this threat if not from enemy forces? That the GDOC was manned can only mean members of the GDOC would have been told that an enemy attack was possible. To quote Mohr:

... if a serviceman is told there is an enemy and that he will be in danger, then that member will not only perceive danger, but to him or her it will be an objective danger on rational and reasonable grounds. If called upon, the member will face that objective danger. The member's experience of the objective danger at the time will not be removed by 'hindsight' showing that no actual enemy operations eventuated¹⁸.

21. At paragraphs 34-36 NOSB¹⁹ misrepresent the 2000 'Review of Service Anomalies in Respect of South-East Asian Service 1955-1975 (Mohr Report). They say:

Para 34. ... Mohr discussed ADF service at ... Butterworth up to 1975. He noted the Malayan Emergency formally came to an end on 31 July 60 and activity from communists was then effectively contained in the Thai/Malay border region. Although there was still some danger abroad, this danger was remote from activities at ... Butterworth. Consequently, with the exception of service in the Thai/Malay border region, he considered that 31 July 60 was a suitable date to signify the end of the period of qualifying service for the service pension during the Malayan Emergency.

Para 35. However, as there was still some remote danger throughout the Malayan peninsular, Justice Mohr stated that the nature of service from 31 Jul 60 until the end of the operational period would still satisfy the conditions for it to be classified as operational service. He recommended that eligibility for qualifying service for the service pension during the Malayan Emergency should be restricted to those allotted for service up to and including 31 Jul 60, and the period from 1 Aug 60 to 27 May 63 inclusive remain as operational service ...

Para 36. It is of some interest that Justice Mohr did not make specific reference or recommendations regarding service by the RCB. Possibly this omission is an indication that he considered all service beyond 27 May 63 as not appropriate for further consideration.

22. The falsehood presented in paragraph 21 (above) is shown in attachments to the June 2010 submission to the Defence Honours and Awards Tribunal 'Inquiry into the Recognition of Members of Rifle Company Butterworth for Service in Malaysia between 1979 and 1989' by the Vice Chief Defence Force, Lieutenant General D.J. Hurley AC, DSC. It seems highly improbable that these documents would not have been known to NOSB a little over 12 months later. Therefore it seems the comments at paragraph 36 of the NOSB are intentionally misleading.

- Air Commodore McLennan advised the CDF, in minute dated 5 Apr 01, '... that ... Mohr ... attempted as much as possible to stay within their TOR [Terms of Reference] ... Part of the TOR included review of service in SE Asia in relation to the

¹⁷ NAA: A9435, 75. *Commanding Officers' reports - Monthly reports unit history sheets (A50) - Base Squadron, Butterworth, 1944 to 1988.*

¹⁸ *Review of Service Entitlement Anomalies in Respect of South-East Asian Service 1955-75.* Feb 2000, p.9

¹⁹ NOSB, 14 October 2011

geo-political context of FESR, which concluded on 31 Oct 1971. CONSEQUENTLY, SERVICE AT BUTTERWORTH BETWEEN 1971 AND 1989 WAS NOT CONSIDERED (emphasis added). However, in implementing the recommendations, it was considered incumbent on Defence to consider any wider implementations flowing from them and their relationship to the CIDA principles²⁰.

- While acknowledging legibility of the date is poor, the Minister Assisting the Minister for Defence, Bruce Scott, approved recognition of non-warlike service in Malaysia to the end of 1989 on what appears to be 15 Apr 01. The Minute signed by the Minister along with the Chief of Defence Force, acknowledged that this decision was a flow on from the Mohr Report. It also acknowledged the communist threat and the quick reaction security role of the RCB. To quote: 'In view of the conditions that existed in Singapore and Malaysia after the ... Confrontation ... until the end of FESR ... it is considered duties in Butterworth are equally deserving of an award due to the terrorist threat which existed and the purpose of maintaining regional security. This is in keeping with CIDA principles²¹.

23. In 2014 NOSB prepared a report for the information of the Parliamentary Petitions Committee²². At paragraphs 87 to 95 NOSB repeat what is said at paragraph 21 above, ignoring what Defence had clearly stated in 2001 (para. 22, above). It is clear from page 34 of Mohr's report that his review of service at Butterworth was included in Chapter 5 of his report, *Far East Strategic Reserve in Malaysia*, service that came to an end on 31 October 1971. This fact was known to Defence in 2001 (see para. 21 above). The 2014 NOSB statement clearly misled the Petitions Committee.

SIGNIFICANCE OF THE 2001 DECISION

24. The Mohr review was established to address perceived anomalies associated with SE Asian service in the 1955-75 period. It is clear from his report that this included both medallic recognition and access to repatriation benefits.

25. Mohr agreed that, owing to the conflict on the Malaysian Thailand border in the 1960-63 period 'there was still some remote danger throughout the Malayan peninsular', it was appropriate to recognise service during this time as what is now called non-warlike service. Under the Veterans' Entitlements Act 1986, this period was accepted as operational service for the purpose of the Act²³.

²⁰ Minute from Director General Career Management Policy to Chief of the Defence Force of 5 April 2001

²¹ Ministerial submission from Chief of the Defence Force to Minister Assisting the Minister for Defence of 10 April 2001

²² Background Paper, Parliamentary Petition Dated 3 March 2014, Rifle Company Butterworth 1970-1989

²³ *Review of Service Entitlement Anomalies in Respect of South-East Asian Service 1955-75*. Feb 2000 p.p 33,34

26. The 2001 decision to recognise non-warlike service till the end of 1989 was an outcome of the Mohr Review. This review accepted the danger to Butterworth was much closer during this period than in 1960-63. By denying access to repatriation benefits available to veterans from the earlier period to those who served in Malaysia and Singapore in the post Confrontation period Defence and the Department of Veterans Affairs have created an anomaly the Mohr review was tasked to address.

2014 REPORT TO THE PARLIAMENTARY PETITIONS COMMITTEE

27. In response to a petition to the Parliamentary Petitions Committee seeking a review of the nature of service by members of the Rifle Company Butterworth with the aim of achieving a reclassification to warlike service the NOSB prepared a report for the information of the Petitions Committee, dated 28 April 2014²⁴. As with the 2011 report, there is no mention of the 2001 decision regarding recognition of operational service at Butterworth.

28. At paragraphs 87 to 95 NOSB refer to Mohr, as they did in 2011 (see above, para. 20), again misrepresenting his committee's report. At para. 92 they correctly report, as they had so earlier, that Mohr considered it appropriate that service from the end of the Emergency in 1960 till May 63 remain operational, but not qualifying, service in Malaysia and Singapore with the exception of that service rendered in the Malay/Thai border region. However, this is contradicted at para. 130 under the heading *Nature of Service Classification*:

The Malayan Peninsula has had a long and varied history of being an operational area for the ADF since World War II. The area of Butterworth was a (*sic*) designated an operational area from 29 June 1950 to 31 July 1960 during the Malayan Emergency with the Malay/Thai border area remaining an operational area until 16 August 1964.

29. The statement at para. 130 is obviously incorrect (see para 25 above). Given other errors or intentionally misleading statements in the document the question must be asked was this omission intentional?

30. At para. 19 NOSB state: 'In December 1989, Chin Peng, the leader or the Malaysian Communist Party signed a peace accord with the Malaysian Government, bring to an end what is sometimes called the Second Emergency and has been described as:

*... a low-intensity campaign of subversion and counter-subversion in Singapore and sporadic jungle skirmishes in Malaysia.*²⁵

²⁴ *Background Paper, Parliamentary Petition Dated 3 March 2014, Rifle Company Butterworth 1970-1989. Nature of Service Branch. 28 April 2014*

²⁵ NOSB provide the source as:

<http://www.themalaysianinsider.com/sideviews/article/the-forgotten-insurgency-that-failed-ong-weichong-and-kumar-ramakrishna>

31. The above quote is lifted out of context. Authors Ong Weichong and Kumar Ramakrishna, in their article *The “forgotten” insurgency that failed*, state:

The ongoing debate over the historic role of Chin Peng, the recently deceased Communist Party of Malaya (CPM) Secretary-General, has thus far tended to focus attention on his actions during the years 1948 to 1960, known as the Malayan Emergency. What has been less discussed is the CPM's re-launched armed struggle in 1968.

This second phase, sometimes called the Second Emergency, dragged on till the final formal cessation of hostilities in 1989. The CPM's revived armed struggle actually posed a serious security threat that required the combined efforts and resources of the Malaysian, Thai and Singapore governments to resolve.

... Between 1968 and 1973, CPM groups infiltrated back into Peninsular Malaysia and quietly re-established an underground support network; 1974 then saw an upsurge in CPM terrorism, including assassinations, sabotage and bombings against government installations and personnel on both sides of the Causeway. Such action included the high-profile assassination of Abdul Rahman Hashim, Inspector-General of the Malaysian Police.

The Second Emergency gradually developed into a low-intensity campaign of subversion and counter-subversion in Singapore and sporadic jungle skirmishes in Malaysia. By 1988, the jungle war had gone against the CPM and its underground network had collapsed. Chin Peng agreed to a peace treaty to formally end the Second Emergency a year later.

...By August 1974, the party had sundered into three different factions that sought to outdo one another in open bloody battles with the Malaysian government and amongst themselves, destabilising its painstakingly built-up support network in the process.

32. The full sentence from which the quote is taken says: 'The Second Emergency gradually developed into a *low-intensity campaign of subversion and counter-subversion in Singapore and sporadic jungle skirmishes in Malaysia*' [emphasis supplied]. The picture NOSB sought to paint with this quote is clearly different to the picture painted by the article's authors. A copy of the article is attached.

33. Again, at para. 81, NOSB again downplay the situation in Malaysia at the time. 'A letter from the Army History Unit to Mr Robert Cross on 11 February 2004, notes that:

No state of 'war' or emergency has existed in the Federated States of Malaysia since the establishment of the need in 1970 to deploy a rifle company at BUTTERWORTH. Professor David Homer at the Australian National University agrees that no military threat against the national interests of Malaysia has emerged since the cessation of hostilities with Indonesia (since Confrontation ended on 11 Aug 66).

34. It is an historical fact that a national state of emergency was declared in Malaysia following the May 1969 riots. In his paper *The Emergency Law in Malaysia - Political Security of Liability?*, Rizal Yaakop, Senior Lecturer at School for History, Politics and Strategic Studies, University Kebangsaan, Malaysia, reports that the 1969 proclamation of

emergency, plus three others proclaimed in 1960, 1964 and 1977 had not been lifted at the end of the 1968-1989 Insurgency War²⁶.

35. In his 1977 paper *Peninsular Malaysia: The "New Emergency"*, Richard Stubbs refers to the 1 September 1975 description of the security situation in Peninsular Malaysia by Prime Minister Tun Razak as the 'New Emergency'. On page 259 Stubbs comments on the 1975 tightening of security laws and the introduction of 'special courts ... to try suspected terrorists'²⁷.

36. At paragraphs 45 and 46 NOSB comment on the Ground Defence Operations Centre.

RAAF Base Squadron Commanding Officer Reports for the period 1970 to 1988 record that weapons training and range practices were conducted monthly for the Mobile Flight Reserve (later Ground Defence Section), RAAF Police and Base Security Guards, and on an irregular basis for other RAAF personnel. Ground defence courses were also a regular training activity at the base to ensure that RAAF personnel were aware of their responsibility in regard to the security of the base.

The GDOC was established to manage all types of emergencies at the air base, including security related emergencies. OC RAAF Base Butterworth was responsible for the command of the GDOC and the OC of the infantry company was appointed as one of the ground defence advisers to support the operation of the Operations Centre. While the GDOC was exercised on a regular basis, especially during air defence exercises, simulation of a declared emergency or in the movement of highly inflammable material, no security emergency was ever declared at the RAAF Base Butterworth.

37. Base Squadron CO Reports for the period Jan 76 -Sept 78, under the heading *Defence Section Operational*, clearly show that the GDOC was regularly manned owing to *possible ground threat to Air Base Butterworth* and on significant communist anniversaries²⁸. The above statement is clearly wrong. As will be shown below, NOSB also acknowledged increased security arrangements established in 1975 owing to the communist threat.

38. At para 122, NOSB supply an amended version of the criterion for warlike service.

Warlike operations are those military activities where the application of force is authorised to pursue specific military objectives and (the degree of exposure to the risk of harm is such that) there is an expectation of casualties. Warlike operations include a state of declared war, conventional combat operations against an armed adversary and peace enforcement operations.

²⁶ Mohd Rizal Yaakop. *The Emergency Law in Malaysia - Political Security of Liability?*. October 21, 2010. Electronic copy available at: <http://ssrn.com/abstract=1695727>. Accessed 27 Nov 2016

²⁷ Richard Stubbs. *Peninsular Malaysia: The "New Emergency"*. Pacific Affairs. Vol. 50, No.2 (Summer, 1997. pp. 249-262. Accessed at https://www.jstor.org/stable/2756301?seq=1#page_scan_tab_contents, 27 Nov 2016.

²⁸ NAA: A9435, 75. *Commanding Officers' reports - Monthly reports unit history sheets (A50) - Base Squadron, Butterworth, 1944 to 1988*.

39. Compare the above with the criterion below. NOSB have added (*the degree of exposure to the risk of harm is such*) and deleted *These operations encompass but are not limited to*. While the change appears subtle, it is significant. Section 7A of the Veterans' Entitlements Act simply requires that a person 'incurred danger from hostile forces of the enemy' without any further attempt to qualify the risk associated with that exposure. This is seen in the following definition of warlike operations.

Warlike operations are those those military activities where the application of force is authorised to pursue specific military objectives and there is an expectation of casualties. These operations encompass but are not limited to:

- a state of declared war;
- conventional combat operations against an armed adversary; and
- peace enforcement operations that are military operations ...²⁹

40. By way of comparison, 'Non-warlike operations are defined as those military activities short of warlike operations where there is a risk associated with the assigned tasks(s) and where the application of forces is limited to self defence. Casualties could occur but are not expected'³⁰

41. Examples of non-warlike operations included with the definition include hazardous operations such as mine clearance, and weapons inspection, and peacekeeping operations. Non-warlike operations seem directed at hazardous operations where there is no danger incurred from the hostile forces of an enemy.

NOSB 2014 ACKNOWLEDGE THREATS TO BUTTERWORTH

42. The 2014 NOSB paper³¹ acknowledged assessed threats to Butterworth from the communists insurgents. It also acknowledged threats to Australian military families. For example:

Para 20. ... There is a threat to the security of the air base and damage to property arising from:

- (a) *A resurgence of militant communist activity both overt and covert'*
- (b) *Sabotage or malicious damage; and*
- (c) *Industrial disputes.*

Para 21. A Shared Defence Plan existed 'to counter the threat to the base'.

²⁹ Vice Chief of the Defence Force. Submission to the Defence Honours and Awards Tribunal's *Inquiry into the Recognition of Members of Rifle Company Butterworth for Service in Malaysia between 1970 and 1989*, dated 23rd June 2010. para 32. Other sources confirm this to be the official definition.

³⁰ *Ibid*, para 33.

³¹ *Background Paper, Parliamentary Petition Dated 3 March 2014, Rifle Company Butterworth 1970-1989*. Nature of Service Branch. 28 April 2014

Para 26. A Family Protection Plan issued in May 1972 to address the identified threat 'racial communal disturbances to families resident in Butterworth Married Quarters'.

Para 28. 'The ANZUK Intelligence Group Threat Assessment up until the end of 1972 notes ... While there is a potential threat ... from the Communist Party of Malaysia (CPM) the Communist Terrorist Organisation (CTO), and other related subversive organisations:

It is unlikely therefore , that the CPM/CTO will, as a deliberate act of policy, attempt an attack on Air Base Butterworth ... it is possible, but we consider it still unlikely, that the CPM/CTO the Base in certain circumstance ... there is definitely a risk that one or more CTs, or members of subversive groups ... could, regardless of ... policy attempt an isolated attack on or within the Base at any time.

Para 30. 'On 3 April 1975 Chief of Air Staff (CAS) provided advice to the Minister regarding the state of security at the air base as a result of rocket attacks at RMAF Base Sempang (Kuala Lumpur) and at a military base at Penang on 31 March and 1 April 1975 respectively. The advice noted that increased security arrangements had been implemented at the air base, however there is no specific mention of the infantry company and its role in the advice.

Para 35. A subsequent CAS Minute to the Minister on 7 April 1975 included detail on the increased measures at the air base which included the use of the Australian infantry company personnel on picket duty.

Para 36. 'In 1975 while OC RAAF Base Butterworth believed there is a little threat to the base. DAFI Report No 33 on security at Butterworth in July 1975 notes that:

The possibility of the CT possessing operation mortars adds to the threat against Air Base Butterworth. However, it is most likely that warning of an impending attack would be received prior to the attack taking place.

Para 37. 'DAFI also saw a threat from indirect weapons such as 81/82mm mortars as expressed in DAFI Report No 34.

Para 40. 'The JIO assessment in October 1975 confirmed that it would be unlikely that a threat to the air base would arise from an external threat on Malaysia, but acknowledged that there is a potential threat to the base from CTO and related communist organisations. They also assessed that it is unlikely that the CTO will as a deliberate policy attack the air base, although it acknowledged that a group could do this on their own initiative ...

43. To reiterate, Justice Clarke in the *Review of Veterans' Entitlements* concurred with Mohr. At 11.60 he stated:

If then, the military authorities consider that a particular area is vulnerable to attack and dispatch armed forces there, they are sending forces into harm's way, or danger. This was the second point made by Mohr - that veterans ordered to proceed to an area where they are endangered by the enemy will not only perceive danger, but to them the danger will be an objective one

based on rational and reasonable grounds. In these circumstances, what the historian says he or she has learned since the war about the actual intention of the enemy is hardly relevant.³²

NOSB's CONCLUSION 2014

44. Despite acknowledging the above threats NOSB concluded at para 159(d): 'ADF service at Butterworth between 1970 and 1989 does not meet the essential criteria for classification of *special duty*, as *warlike* or *non-warlike* service, or as *hazardous* service'.

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45. The proper nature of service classification at Butterworth - peacetime, non-warlike or warlike - must be determined on the facts as they were at the time, including the expectations of the military authorities³³. There is clearly established objective evidence of an armed communist threat and expectations that an attack could occur, including that acknowledged by NOSB in 2014. These facts stand, regardless of the presence or not of the RCB. That aside, there are facts that NOSB ignore³⁴. Some of these are discussed below.

46. At para 29 NOSB note that the 1971 ANZUK Threat Assessment to Butterworth³⁵ commented *The fact that the infantry company was not available on the base at all times was seen, at the time, as a weakness by OC RAAF BUTTERWORTH*. Is this not a strange statement if the main reason for a permanent deployment of an army company to the Base was for training purposes, as maintained by NOSB?

47. The National Australian Archives file, *NAA: A703, 564/8/28 Part 3, RAAF Butterworth – Ground defence plans*³⁶, provides the rationale for the permanent deployment of an infantry company to Butterworth. This makes it clear the army presence was considered necessary given the security threat then present. This file is not acknowledged by NOSB.

48. On 2 March 1972 a representative of the Secretary, Department of Defence, A. E. Tange, wrote to the Secretary, Department of Air, regarding 'Security at Butterworth.' The Secretary's office stated 'It will be necessary for us shortly to brief the Minister for Defence on the outcome of various examinations that have been made of the security problem at Butterworth.'³⁷ Tange outlined his understandings of the situation and asked for confirmation

³² Review of Veterans' Entitlements. Jan 2003 (The Clarke Report).

³³ This was the position of both Mohr and Clarke

³⁴ At para 6 NOSB claim to have carried out extensive research on the matter, listing a wide scope of authorities. It would therefore seem there is no excuse for them not acknowledging those sources that appear not to support their position.

³⁵ ANZUK Intelligence Group (Singapore) Note No. 1/1971 - *The Threat to Air Base Butterworth up to the end of 1972*, dated 30 November 1971

³⁶ NAA: A703, 564/8/28 Part 3, *RAAF Butterworth – Ground defence plans*

³⁷ NAA: A703, 566/2/148 Part 5, *Formation, organisation and movement – HQ RAAF Butterworth*. Folio 52.

or correction. The letter confirms the permanent presence of an infantry company to provide 'a ready-reaction force'. Owing to Malaysian sensitivities it was necessary to use flag flying, training and a change of scenery as a cover. Again, NOSB have not acknowledged this file.

... In addition, Malaysian reluctance having been overcome, the ANZUK force will now provide one infantry company on rotation through Butterworth on a full-time basis, ostensibly for training, flag-showing and a change of scene. The presence of this company will provide the Commander with a ready-reaction force which he can use inter alia to supplement elements available to him under the joint Malaysian-RAAF Plan, but short of an actual overt breach of security the Commander cannot use these troops for guard of other security duties.

49. The SECRET Defence Committee Minutes of 11 Jan 1973, at para 22, clearly state that following the withdrawal of ANZUK forces security for Butterworth will be provided by the rotation of a rifle company from Australia. Para 28 (e) states this deployment 'could be presented publicly as being for training purposes'. Again, training was a cover for the real purpose of the deployment³⁸. Again, not acknowledged by NOSB.

OTHER REVIEWS

50. NOSB, in 2014, refer to other service reviews, including that Committee of Inquiry into Defence and Related Awards (CIDA) and that of Justice Clarke. The one review ignored is that completed in 2000/2001 as an extension of the Mohr Report. That these reviews found no evidence to support claims of warlike or non-warlike service at Butterworth could well be explained by the fact that most of the evidence now available was still under embargo at the times these reviews were conducted.

CONCLUSION

51. In 2001 the Minister Assisting the Minister for Defence approved the award of the ASM1945-75/ASM for non-warlike operational service in Singapore to the end of 1975 and Butterworth, Malaysia, till the end of 1989. This decision recognised 'the principle established by MAJGEN Mohr, during his deliberations on service in SE Asia, that if ADF personnel are placed in circumstances where they may be used to react to an assessed threat made by Australian Government Intelligence agencies, it has to be considered operational service. This is regardless of whether that threat is realised or not'. Mohr was adamant that the nature of service must be determined by the facts that existed at the time and not that which has been discovered since. Clarke, in 2003, agreed with Mohr when he said:

If then, the military authorities consider that a particular area is vulnerable to attack and dispatch armed forces there, they are sending forces into harm's way, or danger. This was the second point made by Mohr - that veterans ordered to proceed to an area where they are endangered by the enemy will not only perceive danger, but to them the danger will be an objective one

³⁸ NAA: A7942, F59 The Five Power Arrangements and ANZUK, folios 177, 173

based on rational and reasonable grounds. In these circumstances, what the historian says he or she has learned since the war about the actual intention of the enemy is hardly relevant.³⁹

52. NOSB in both 2011 and 2014 have ignored the decision made in 2001 and the principle established by MAJGEN Mohr. Instead they have relied on a retrospective assessment, based on the fact that no defence emergency was declared, to deny recognition of operational service, either warlike or non-warlike, to Butterworth veterans in the period up to the end of 1989.

53. Evidence shows that post 2010 NOSB have made false claims regarding Justice Mohr's report in regards to service at Butterworth. Yet the true facts are included with a 2010 submission by the Vice Chief of the Defence Force that must have been known to NOSB.

54. NOSB have misrepresented authors Ong Weichong and Kumar Ramakrishna, ignored high level documents both in terms of originator and security classification, and lifted evidence from NAA files while ignoring other evidence in the same files that represent the true situation at Butterworth.

55. Consequently, NOSB have misled Ministers of the Crown, the Australian Parliament, and unfairly disadvantaged possibly in excess of 20,000 Australian Defence veterans.

REMEDIES SOUGHT

- NOSB acknowledge the errors in their 2014 paper prepared for the Parliamentary Petitions Committee and withdraw the Paper.
- NOSB submit a new paper to the Petitions Committee that addresses the 'significant principle' established by MAJGEN Mohr. Specifically, this paper to address the following:
 - Between 1968 and 1989 was there an armed enemy present in Malaysia and the area near to the Butterworth Base? Or
 - Were ADF members at Butterworth told there was an enemy present and that they may be called on to face that enemy? Or
 - Did Australian military authorities send forces to Butterworth believing at the time that the Base was vulnerable to attack?
- Review that nature of service classification at Butterworth based on the facts as they were known at the time, and not by applying knowledge that came after the event.
- Acknowledge the decision made in 2001 regarding non-warlike operational service and the facts that decision was based on.
- Acknowledge those facts as pointed out above regarding evidence ignored or not acknowledged by NOSB, e.g. the correspondence from Tangey and the Defence Committee minutes of 11 Jan 1973.
- Make a public apology to those veterans who have been disadvantaged by decisions based on the misleading information provided by NOSB.

³⁹ Review of Veterans' Entitlements. Jan 2003 at 11.60.

- Make appropriate reparation to those veterans and their families who have been denied access to their entitled benefits and proper recognition of their service by the actions of NOSB.

ATTACHMENT

The "forgotten" insurgency that failed, Ong Weichong and Kumar Ramakrishna