



**Senator the Hon David Feeney
Parliamentary Secretary for Defence**

Mr Robert Cross
Chairman
RCB Review Group
4/15 Gardiner Street
ALDERLEY Qld 4051

19 MAY 2012

Dear Mr Cross

I am writing to you because of your long-standing involvement in the issue of the nature of service determination for Australian Defence Force (ADF) who served at Butterworth Air Base. This issue has proven to be administratively and legally complicated and it has taken some time to resolve the conflicting information and decisions. As you would appreciate, there was also the matter of the medallic recognition of ADF service at Butterworth which was considered by the Defence Honours and Awards Tribunal last year.

In view of this delay and the complexity of the issues involved, I am now writing to provide you with a detailed explanation of the matter so that you have a complete understanding of the issues and the outcome. I have also enclosed two of the key documents which were used in reaching this final decision.

In 2007, following a number of representations, including yours on behalf of the Rifle Company Butterworth (RCB) Review Group seeking a warlike classification for service with RCB, Defence conducted a review of ADF service at RAAF Butterworth from 1970 to 1989. A recommendation from this review was that while there were no grounds to support a warlike classification, there were grounds for reclassification from peacetime service to non-warlike or to hazardous service under section 120(7) of the *Veterans' Entitlements Act 1986* (VEA).

At that time it was considered that hazardous service under section 120(7) of the VEA could only be applied after 7 December 1972 and so on 18 September 2007 the then Minister for Veterans' Affairs, the Hon Bruce Billson MP, on behalf of the Minister for Defence, signed Instruments of Determination of Hazardous Service from 6 December 1972 to 31 December 1989 and non-warlike service from 15 November 1970 to 6 December 1972.

Subsequently, on 4 October 2007, Minister Billson wrote to you advising that service with RCB could not be classified as special duty or warlike service as the "degree of exposure to the risk of harm was not sufficient to warrant the full package of repatriation benefits."

However Minister Billson further advised that he was "prepared to declare retrospectively

this period of service [1970 to 1989] as hazardous pursuant to section 120 of the *Veterans' Entitlements Act*."

On 22 May 2009, you wrote to Minister Snowden referring to the letter from Minister Billson and advising him that the retrospective declaration of hazardous service did not appear to have been followed through. You also asked whether the retrospective classification of hazardous service extended to the RAAF personnel who were also at the base.

In considering your letter, the Department of Defence discovered that the original Instruments of Determination signed by Minister Billson on 18 September 2007, had inadvertently omitted the RAAF Airfield Defence Guards (ADG), Police and Security Guards (dog handlers), although it was clear that their service was similar to that of RCB. Of more significance, however, it was determined that the Instruments had not been formally registered on the Federal Register of Legislative Instruments and consequently all service at Butterworth from 1966 (post Confrontation) remained classified as peacetime service.

Since that time, the Government has been seeking to resolve the legal status of the Instruments and the process by which the matter might finally be resolved. In order to achieve a definitive outcome, in mid-2011 Defence conducted a "first-principles" review of all ADF service at Butterworth from 1970 when responsibility for security at the base transferred to the RAAF. This 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 submissions which had been made by various claimants over the years.

The 2011 Defence review found that official documents generally indicted that the roles of the RCB were to provide an Army presence, to conduct training and, if required, to assist in the ground defence of Butterworth. It assessed 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. The primary role was in fact to maintain a presence following the withdrawal of the British Forces from South East Asia and to assist with the routine protection of Australian assets at the Butterworth Air Base.

Operational plans for the defence of Air Base Butterworth after 1970 indicate that the primary ground defence force external to the Base was the Malaysian Special Police, while inside the Base security and ground defence remained a RAAF responsibility. If RCB was required for ground defence it would be subordinate to RAAF command and operational requirements. In practice RCB was mostly involved in infantry training activities and the ready reaction and ground defence tasks were only secondary. Notably, in the 19 years from 1970 to 1989, RCB was never required in an emergency ground defence capacity.

It is Government policy that all nature of service reviews are considered in the context of the legislation and policies that applied at the time of the activity or operation under review. In the case of ADF service at RAAF Butterworth from the end of Confrontation in 1966 to the end of the RCB quick reaction role in December 1989, the relevant Acts are the *Repatriation (Special Overseas Service) Act 1962* and the VEA.

Hazardous service was introduced into legislation in 1985 in order to cover service that was substantially more dangerous than normal peacetime service, but could not be classified as peacekeeping service, although it attracted a similar degree of physical danger. Hazardous service had not previously been applied before 1986, however it is technically possible for it to be applied retrospectively should the Minister for Defence choose to do so.

For any ADF service at Butterworth from 1970 onwards to meet the original intent of hazardous service, the service would need to be shown to be “substantially more dangerous than normal peacetime service” and “attract a similar degree of physical danger” as “peacekeeping service”. Peacekeeping service generally involves interposing the peacekeeping force, which may be unarmed, between opposing hostile forces. The immediate threat to the peacekeepers is by being directly targeted or by being caught in the crossfire of the opposing forces.

Based on the evidence now available, it is considered that the level of risk associated with ADF service at Butterworth from 1966 (post-Confrontation) is not sufficient to be considered to be “substantially more dangerous than normal peacetime service” or that it should be considered as “attracting a similar degree of physical danger” as peacekeeping service. Consequently it does not meet the intent of hazardous service under section 120(7) of the VEA.

I note that previous independent reviews have come to a similar conclusion. In March 1993, the Committee of Inquiry into Defence and Defence Related Awards (CIDA) chaired by General P.C. Gration, did not consider that service at Butterworth was clearly and markedly more demanding than normal peacetime service.

The 2003 Review of Veterans' Entitlements (the Clarke Review) described the RCB's tasks as infantry training and after-hours patrolling of the base perimeter, thereby contributing to base security in conjunction with the Malaysian security forces and the RAAF. The Clarke Report accepted that RCB was involved in armed patrolling to protect Australian assets, but concluded that training and the protection of Australian assets were normal peacetime garrison duties. It agreed 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 VEA. It recommended that no further action be taken in respect of peacetime service at Butterworth after the cessation of Confrontation.

Further, reclassification of ADF service at Butterworth before 1985 as hazardous service would not accord with the policy of considering past operations in the context of the legislation and policies that applied at the time. Cases are considered on their merits and where a clear anomaly or significant disadvantage or injustice exists, exceptions to policy are allowed where there is no other available remedy. The evidence does not indicate that peacetime service at Butterworth from 1966 (post-Confrontation) creates an anomaly or unfairly disadvantages any personnel such as might support an exception to the policy based on this consideration alone.

As a result of complete and detailed consideration of all the available information, including all the various submissions from individuals and key stakeholders in this matter, the Government has determined that all ADF service at Butterworth from the end of Confrontation in 1966, will remain classified as peacetime service.

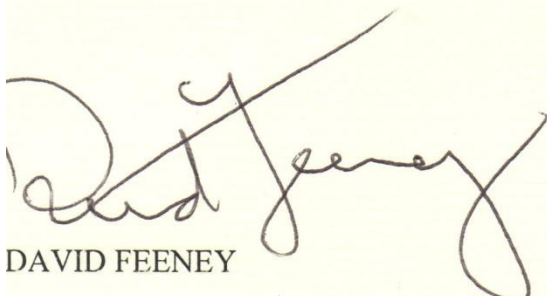
I expect that this advice will come as a disappointment to you. However following the administrative and legal uncertainty which surrounded the matter, a fresh review was necessary to fully investigate the circumstances and provide a definitive and final outcome.

Again I apologise for the delay in resolving this matter and for the necessity for me to retract the advice from Minister Billson that the service of RCB from 1970 to 1989 would retrospectively be reclassified as hazardous service under section 120 of the VEA. I have written to Mr Billson to explain the circumstances of the decision.

Notwithstanding this final decision on the nature of service classification of peacetime service for all ADF service at Butterworth from 1966, eligibility for the award of the Australian Service Medal 1945-75 or the Australian Service Medal will not be affected by this latest decision.

I hope that this detailed explanation provides you with the information necessary to understand the reasons why ADF service at RAAF Butterworth from 1966 will remain classified as peacetime service. I do stress that this decision will not be reconsidered by Government unless there is demonstrably new and compelling evidence that such a classification is manifestly wrong.

Yours sincerely



DAVID FEENEY