



RCB Review Group
Unit 4/15 Gardiner St.
ALDERLEY 4051

18th June 2018

The Defence Ombudsman
Commonwealth Ombudsman,
GPO Box 442,
Canberra ACT 2601

RIFLE COMPANY BUTTERWORTH - COMPLAINT

Dear Sir or Madam

I make this complaint in my capacity as Chairman of the Rifle Company Butterworth Review Group.

My complaint is in relation to the Department of Defence handling of the claim for an upgrade of service for Rifle Company Butterworth 1970-1989 (RCB) to *warlike* service. The approach of the department to the claim since 2006 and through a number of reviews, briefing papers and correspondence has been characterised by a method that is best described as wilful and endemic administrative deficiency.

I shall demonstrate that Defence has erred in a number of ways in examining the claim for upgrade that has resulted in the department coming to conclusions that no reasonable person could reach with an unbiased examination of all available evidence. The examples I shall point to do not constitute the entirety of evidence I have on hand and I undertake to provide you with all the evidence I have available to me should you require it.

The Department of Defence has been approached on a number of occasions since 2006 to rectify the anomaly of RCB recognition and the response has mostly been negative.

In a letter from Vice Chief of the Defence Force, Vice Admiral R.J. Griggs, received in April 2018, he advises that Defence will not conduct any further reviews.

Administrative Deficiency

To appreciate the breadth and scale of the deficiency I have presented my examples in six broad categories:

1. **Substitution** of readily available facts with Defence's preconceptions.
2. Making **assertions** without providing any evidence or reasoning to support them.
3. **Disregarding** evidence provided to them by claimants.
4. **Taking account** of irrelevant matters and not taking account of relevant matters.
5. **Failing** to take account of important principles that have governed determination of service since WWII.
6. **Lying**.

Combinations of these deficiencies can be found in all the reviews, briefings and correspondence prepared by Defence on this matter. The examples I shall now provide do not encompass all examples of the particular deficiency and may be placed in more than one category, but will hopefully provide you with enough evidence to conclude that there has been a serious administrative failure by the department.

Substitution

In a Defence Department Nature of Service Branch (NOSB)¹ document produced in 2011, the author states that *"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 inclusive as not appropriate for further consideration"*.²

Rather than trying to guess what was in Justice Mohr's mind the author could have considered the available evidence. Justice Mohr said himself in relation to examining service at Butterworth *"I have found it difficult to comment in such specific terms as such service ranged over almost all of the period covered by the Review ..."*.³ Or the author could have considered Minute ref 2000-34836 Pt 1 where Air Commodore R.K. McLennan advises at para 2 that *"... the Mohr review attempted as much as possible to stay within their TOR, which was to review service in SE Asia between 1955-1975. Part of the TOR included review of FESR, which concluded on 31 Oct 71. Consequently, service at Butterworth between 1971 and 1989 was not considered."*

It is not therefore that Mohr considered *all service* beyond 1963 as not deserving of consideration but that his TOR did not permit him to examine most of it. As well, much of the extant evidence was not available to him at the time due to the 30 year rule.

Defence makes much of the situation for Defence Force families in the Butterworth region as though their presence is indicative of a *peacetime* situation. They have argued on a number of occasions that as Australia allowed families to be present during the period it cannot be considered *warlike* as Australia would not do such a thing. The first instance of this argument was in a letter to Mr Robert

¹ NOSB has changed its name to Nature of Service Directorate but NOSB throughout refers to the body performing the same function.

² NOSB, Background Information Paper Nature of Service Classification – ADF Service at RAAF Butterworth, 14 October 2011, para 36.

³ The Hon R.F. Mohr, REVIEW OF SERVICE ENTITLEMENT ANOMALIES IN RESPECT OF SOUTH-EAST ASIAN SERVICE 1955-75, February 200, p ix.

Cross, Welfare Officer 8/9 RAR Association. Defence stated that *“Had it been warlike, Australia would not have put families or other innocent civilians in such danger...”*⁴

The author of this letter is clearly not aware that families of ADF personnel were present in Malaya, including the Butterworth region, during the entire First Emergency⁵. A newspaper article of the time even notes the departure of the “FIRST WIVES to join their soldier husbands in Malaya.”⁶

The Defence Committee of the time thought having Service families present in the theatre of operations had *“a valuable effect on morale, not only of the married members, but of the force as a whole”*.⁷ Due to the initial sparsity of suitable housing in Malaya, 2 RAR had a ‘points system’ to rank soldiers’ families for relocation to Malaya.⁸

Clearly Australia does send families into danger: it did so in the First Emergency and again in the Second.

In October 1975 the Department of Air even warned that *“the obvious and immediate effects from rocket mortar and other forms of attack... [would be] the death and injury to personnel and families”*.

⁹ Nor was it just direct attacks on the base that concerned contemporary authorities, with the Joint Intelligence Organisation (JIO) warning that *“... the use of booby-traps and minor acts of sabotage by subversive groups are relatively common throughout Peninsular Malaysia and pose a distinct threat, both to the Base and to Australian personnel and their dependents.”*¹⁰ They also noted *“Acts of terrorism against RAAF married quarters adjacent to the base...” were possible.*¹¹

Defence states on a number of occasions that families were located outside the base perimeter as were the officers mess and hospital and that none of these had any “protective arrangements”.¹² Living off the base was also the case for families during the First Emergency from August 1954 when the Kulim area (where Butterworth is located) was declared “White” (out of the war), but ADF personnel stationed at Butterworth still attracted *warlike* service recognition. Nor is it even true that there were no “protective arrangements” for families or the amenities. There was no fence that is certain. As Wing Commander J.I. Brough advised *“I could not support the request for a perimeter fence, particularly surrounding the area of the Officers and SNCOs messes, and the hospital. A fence which is not, and will not be, under constant surveillance is of no use as a ground defence measure.”*¹³ But though there was never a fence that does not mean that there were no “protective arrangements”. There was in place, at least from May 1972, an RAAF Families Protection Plan for protection of families both in married quarters near the base and in Penang. On 7 April 1975 the CAS, AM J.A. Rowland informed the Defence Minister of “increased security arrangements” including for the protection of families. He advised that to supplement existing security “including off-base

⁴ Miller, A., Assistant Advisor, Letter to Mr Robert Cross, Welfare Officer 8/9 RAR Association on behalf of Minister Assisting the Minister for Defence, 5 September 2001.

⁵ For instance see: Radcliffe, M, *Kampong Australia: The RAAF at Butterworth*, NewSouth Publishing, 2017

⁶ The Age, 14 October 1955.

⁷ Notes from Defence Preparations Committee, A816 52/301/328, National Archives of Australia.

⁸ 2 RAR, Routine Orders, 18 November 1955, AWM95 – AACD, AWM.

⁹ Department of Air, *Brief for DCAS Concerning Security of Butterworth*, 564/8/28, October 1975.

¹⁰ Joint Intelligence Organisation, *The Security of Air Base Butterworth*, October 1975, para 48(d).

¹¹ *Ibid.*, para 48(e).

¹² i.e. NOSB, Background Information Paper Nature of Service Classification – ADF Service at RAAF Butterworth, 14 October 2011, paras 33-34.

¹³ Brough, J.I., 589/38/4(40), (undated), *Air Base Butterworth – Fencing*.

family security patrols” that nine RAAF Service Police had been dispatched.¹⁴ Defence’s assumption that because there was no fence there were no “protective arrangements” is demonstrably wrong.

A letter from the Vice Chief of the Defence Force, Vice Admiral R.J. Griggs, received in April 2018 as well as including aspects of the administrative deficiency outlined herein asserts that a number of reviews have included RCB service and consistently found it to be *peacetime* service.¹⁵ The Admiral knows or ought to know the limitations of the reviews he cites, none of which examine RCB service beyond 1971 and none of which had access, due to the 30 year rule, to the evidence that has become available in the past few years. The fourth review is a New Zealand review and since, from September 1973, any New Zealand presence in Malaysia was unrelated to Butterworth it is hardly relevant to service conditions there for the period in question.

Assertions

Defence constantly claim that for the RCB deployment there was “no expectation of casualties” or “definitely no expectation of casualties”. Expectation of casualties is one of the requirements for award of *warlike* service. Defence has never provided any evidence or explanation as to how it came to this conclusion or even what method it used to come to this conclusion. There were certainly no battle casualties; however, the expectation at the time is what must be considered and a retrospective cant that the base was never attacked is irrelevant to this consideration. Nowhere will you find the words “we expect casualties” or “we don’t expect casualties”. Instead it is necessary to look at the historical documents to infer from concerns aired and situational appreciations at the time the likely expectations of those in command. Below is a sample of those concerns and appreciations from a range of reports, documents and correspondence prepared at the time, none of which have been considered by Defence.

- [para 54. (b)] There is a potential threat to the base from the Communist Party of Malaya (CPM), the Communist Terrorist Organisation (CTO), and related communist subversive organisations, whose aim is the establishment of a communist state in Malaysia Singapore, ultimately by “armed struggle”- widespread guerrilla/military action- and who have an estimated 1,800 to 2,000 terrorists in the Thai Malaysia border area. Of these some 300 are estimated to be within West Malaysia, with some 60, assumed to be armed with rifles, machine guns and explosives, in the Kulim and nearby forest areas approximately 15 to 25 miles from the base.¹⁶

¹⁴ Rowland, J.A., *Butterworth Base Security and Security of C130 Aircraft in South Vietnam*, 7 April 1975.

¹⁵ The Admiral specifies:

- The 1993 Committee of Inquiry into Defence Awards (CIDA)
- The 2000 Review of Service Entitlement Anomalies in Respect of South-East Asia Service 1955 -1975 (Mohr review)
- The 2011 Defence Force Administrative Appeals Tribunal *Inquiry into Recognition of Members of Rifle Company Butterworth for Service in Malaysia between 1970 and 1989, and*
- The NZ Government *Medallic Recognition Joint Working Group (JWG) on service in South-East Asia 1950-2011* published in 2013

In relation to these:

CIDA – A 2001 review conducted by defence (but now ignored by them) applied the CIDA principles to award RCB the Australian Service Medal, which *cannot* be awarded for *peacetime* service.

Mohr review – A minute from Air Commodore McLennan to the Chief of the Defence Force in relation to the 2001 review notes the limitations of Mohr’s TOR and states “Consequently, service at Butterworth between 1971 and 1989 was not considered”.

2011 Inquiry – This report states clearly that that body had NO authority to make nature of service determinations. It did however consider the ASM to be appropriate for RCB service, so NOT *peacetime* service.

¹⁶ *The Threat to Air Base Butterworth to the End of 1972*, (ANZUK Intelligence Group, 1971)

- [para 54 (e)] there is definitely a risk that one or more CTs or members of subversive groups known to be operating in the vicinity, could, regardless of CPM/CTO policy and/or acting on their own initiative, attempt an isolated attack on or within the base at any time.¹⁷
- [para 56] We assess that advanced warning of any form of attempted attack (other than by a large group of CTs which we assess as unlikely) would most probably not be received whether the attack be by CTs or members of subversive groups.¹⁸
- [para 46] Although we assume that Australian aircraft would not be deployed from Butterworth in an anti-terrorist role, the use of the Base by RMAF units for anti-terrorist air operations might prompt a CTO reaction.¹⁹
- [para 57] Mortar 'or other indirect weapon attack' by up to 10 men 'located in the surrounding ricefield/kampong areas' was considered 'likely if the CTs acquired a mortar capability'.²⁰
- [para 7] There has been a marked increase in recent months in the use of modern weapons by the CTO including M16 rifles, 7.62 SLR, 9 mm sub-machine guns, and M79 grenade launchers. There is also evidence of 81/82 mm mortars.²¹
- OC Butterworth had advised that rocket attacks have taken place at RMAF Base Sempang (Kuala Lumpur) and a military installation at Penang on 31 March and 1 April 1975. The RMAF has also advised of possible threats to Butterworth.²²
- [Para 2] The recent intelligence information concerning possible CTO intentions to launch rocket attacks on bases in Malaysia increases our concern regarding the security of areas around the base. Intelligence sources consider there is a possibility that CTs have or are able to obtain 81/82mm mortars to supplement their known supplies of 3.5 inch rockets. Mortars are crew served weapons which are accurate area weapons of considerable destructive force against targets at maximum ranges of 4,700 metres. The attached map shows that at a range of 3000 metres from the Butterworth Base, a perimeter of 16,000 metres is formed. To compound the problem of defence, the area within the perimeter includes a large number of Malaysian houses, a network of roads and several hectares of padi-fields, all of which offer CTO assembly and firing bases.²³
- Para 12 the obvious and immediate effects from rocket mortar and other forms of attack... [would be] the death and injury to personnel and families.²⁴
- [para 4] The split in Oct 74 of the CPM into three factions ... has resulted in some inter-factional conflict, but it seems also to encourage the groups to compete with each other for success against security forces. This is an important factor to be considered in assessing the likelihood of terrorist activity against military establishments such as Butterworth. Defence Adviser Kuala Lumpur reports that recent developments – including the upgrading in training and military status of the CTO – represents a significant diversification of, and increase in, the forces available with a capability of launching an attack against Air Base Butterworth. In

¹⁷ Ibid.

¹⁸ Ibid.

¹⁹ Joint Intelligence Organisation, *The Security of Air Base Butterworth*, October 1975.

²⁰ *The Threat to Air Base Butterworth to the End of 1972*, (ANZUK Intelligence Group, 1971). paraphrased.

²¹ JIO, 2 October 1975, *JIO Assessment of Threat and Likely Method of Attack*, 554/9/33(87), as Annex A to: Rowland, 7 October 1975, *Security of Butterworth*, addressed to 'Minister'

²² Rowland, J.A, AM, CAS, 3 April 1975, Department of Defence (Air Office) Minute 418/4/12, *Butterworth Base Security*

²³ Rowland, 7 October 1975, *Butterworth Base Security and Security of C130 Aircraft in South Vietnam*, addressed to 'Minister'

²⁴ Department of Air, *Brief for DCAS Concerning Security of Butterworth*, 564/8/28, October 1975.

the Kulim area, 20-30 kms from the Base, there are believed to be 62 members of the Assault Unit, with 15-20 of these considered to be 'hard-core' terrorists.²⁵

- [para 16] The CTO has demonstrated his capacity to mount operations against security forces during the past year. Based on these incidents, there is an increased likelihood of attack on Air Base Butterworth – probably by use of 3.5 inch rockets. There is a lesser probability of an attack using mortars.²⁶
- [Para 24] The threat of mortars and rockets presents a problem of providing adequate passive defence arrangements to prevent or mitigate the effects of attack by these weapons. In April 1975 following the rocket attack on Minden Barracks, Mirage aircraft were dispersed, but as this practise exacerbated the problems of patrolling and security lighting the aircraft lines, the practice ceased within a month.²⁷
- [para 25] The only real protection for aircraft against mortars and rockets is to provide hardened roofed over revetments at costs of about \$100,000 each. Open roofed revetments or dividing blast walls are reasonably effective against rockets, but less effective against the more accurate mortar.²⁸
- [Para 4] On-base security arrangements to protect against sabotage or to react quickly to any attempted incursions by CT groups are satisfactory. An ARA Company on three monthly rotation provides a quick reaction force against attacks on the base, but are currently prevented from operations off the base ...²⁹

As stated above this is just a sample of the available evidence. It is hard to understand how a reasonable, unbiased person could conclude from this that there was “definitely no expectation of casualties” by those in charge at the time.

Disregarding

Most of the evidence provided in this paper (and much more) has not been considered by Defence. This is evident by the fact that no publicly available paper, report, correspondence or minute addresses, comments on, or refers to said evidence, all of which has been provided to Defence by claimants. Even where Defence do include evidence provided by claimants in their papers they make no attempt to analyse it or discuss the implications of it for their stated position, instead letting it lie as though it were proof of their contention, this still constitutes a disregarding of evidence. An example is contained in a 2014 Background briefing under the heading 'The Threat' where Defence cite from a briefing paper for the Vice Chief of the General Staff's visit to Butterworth in 1973:

“The deployment of the company to Butterworth has in recent year assumed a real importance because of the somewhat increased concern about possible threat to base security. Although Malaysia may be expecting [sic] to have assumed that this is the case,

²⁵ JIO, 2 October 1975, *JIO Assessment of Threat and Likely Method of Attack*, 554/9/33(87), as Annex A to: Rowland, 7 October 1975, *Security of Butterworth*, addressed to 'Minister'

²⁶ Ibid.

²⁷ Department of Air, *Brief for DCAS Concerning Security of Butterworth*, 564/8/28 (undated but internal evidence verifies October 1975).

²⁸ Ibid. Open roofed revetments were installed at Butterworth by 1977.

²⁹ Rowland, 7 October 1975, *Butterworth Base Security and Security of C130 Aircraft in South Vietnam*, addressed to 'Minister'

*publicly and privately the position is maintained [on both sides] that the deployment is for exercise purpose [sic].*³⁰

Defence, for some reason, have omitted the part of the last sentence contained in square brackets.

Defence repeatedly cite high level documents, such as Plan Asbestos, that speak of the ‘training role’ that they maintain was the main reason for the deployment. Given this, the onus is on Defence to explain these sort of documents and how they impact on the claim of a primary role of training. An evidence-based, unbiased approach should consider what such documents as this, which pepper the official records, mean for the official position that RCB were mainly there for training. A reasonable person would question why both Malaysia and Australia need to dissimulate “publicly and privately” in this way if the genuine reason for the deployment was in fact training. Defence remains silent on this.

Taking account

Irrelevant matters

Defence repeatedly argue that it is significant that Butterworth Air Base was never attacked during the Communist Insurgency War, meaning that the period could not then be considered *warlike*. For instance they have argued that *“Notably, in the 19 years from 1970 to 1989, RCB was never required in an emergency ground defence capacity”*.³¹ Another similar recurring argument is that as *“...the GDOC [Ground Defence Operations Centre] was never activated due to a shared emergency, then the nature of service must have remained peace time subsequent to 8 Sep 71.”*³² The GDOC was part of the shared defence plan (between Australia and Malaysia) for Butterworth Air Base.³³ Defence also argue that *“Air Force has advised that no security emergency was ever declared at Butterworth” under the shared plan.*³⁴

What can be said about this general line of argumentation is best said by Justice Mohr:

*“Not only is this evidence an expression of hindsight, but it, presumably accurately, reveals what was most certainly not known at the time to senior Defence authorities. If this is correct, there is, in the minds of the Committee, a real question as to its relevance.”*³⁵

Clarke, reinforcing Mohr, says that:

“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

³⁰ Department of Defence, *Background Information Paper, Nature of Service Classification – ADF Service at RAAF Butterworth*, Nature of Service Branch, 14 October 2011, para 32.

³¹ Department of Defence, Nature of Service Branch, Report on Rifle Company Butterworth and ADF Nature of Service Classification, 14 October 2011, para 53; Chester, D., Parliamentary Secretary to the Minister for Defence, *Letter to Robert Cross*, 16 July 2014.

³² Department of Defence, *2011 Nature of Service Branch Review of ADF Service at Butterworth 1970-1989*, 14 October 2011, para 30.

³³ RMAF & RAAF, *Shared Defence of Air Base Butterworth, Operation Order No. 1/71*, 8 September 1971.

³⁴ Department of Defence, *Background Information Paper, Nature of Service Classification – ADF Service at RAAF Butterworth*, Nature of Service Branch, 14 October 2011, para 14.

³⁵ Clarke, J, *Report of the Review of Veteran’s Entitlements*, January 2003, para 11.53

*historian says he or she has learned since the war about the actual intention of the enemy is hardly relevant.*³⁶

It is unclear what Defence mean by a “shared” or “defence” “emergency” as they never clarify what they mean by these terms. If however we refer to the shared defence plan they mention³⁷ then we can see that it has three levels of activation, or “security states”:

1. Security Green (Cautionary): possibility of civil unrest or other trouble which may threaten the security of the air base.
2. Security Amber (Alert): when it is known that a shared defence situation at Air Base Butterworth is imminent.
3. Security Red (Emergency): when there is a severe threat to the security of the air base.³⁸

The Operation Order stipulates the impact on the GDOC of these various states of activation of the shared defence plan:

- Green: skeleton manned but not activated
- Amber: fully manned and activated
- Red: as for security Amber³⁹

Butterworth Base Squadron Commanding Officer reports for the period January 1976-September 1978 show repeated activation and manning of the GDOC due to “*possible ground threats to Air Base Butterworth*”.⁴⁰ This level of activation is commensurate with at least an Amber level of alert. So Defence may be *technically* correct (or not) in asserting there was no ‘emergency’ (Red) but it is clear there was at least an *imminent* threat to the base from enemy forces on a number of occasions. This insistence on an ‘emergency’ level of activation of the Op Order as being the only true indicator of the nature of service at Butterworth is at best obfuscating of the real threat to Butterworth indicated by imminent “ground threats” and the graded security states to meet anticipated threat levels.

Defence also contend that life at the base and in the surrounding areas went on as normal during the period, with free movement and no curfews or other restrictions.⁴¹ This contention not only smacks of hindsight and is irrelevant to the criteria for award of ‘warlike’ service, it is also demonstrably false, as a quick sample of the *Straits Times* for the period will demonstrate:

- **March 1971 – communist terrorists (CTs) dynamited the railway bridge spanning Sungei Jarak, two miles from the northern Province Wellesley village of Tasek Glugot (9 March 1971).**
- **April 1971 – two bombs exploded in Penang. Communist banners were found on the island and in Province Wellesley and arrests were made (24 April 1971).**

³⁶ Ibid., para 11.60

³⁷ RMAF & RAAF, *Shared Defence of Air Base Butterworth, Operation Order No. 1/71*, 8 September 1971.

³⁸ Ibid., para 3b

³⁹ Ibid, para 3c

⁴⁰ National Archives of Australia, A9435, 75, Commanding Officers’ reports – Monthly reports unit history sheets (A50) – Base Squadron, Butterworth, 1944 to 1988. NOTE: reports later than 1978 were still sealed at the time of the research.

⁴¹ For instance see: ⁴¹ Department of Defence, *2011 Nature of Service Branch Review of ADF Service at Butterworth 1970-1989*, 14 October 2011; Griggs, R.J., Vice Chief of the Defence Force, Letter to RCB veterans, April 2018

- June 1971 – Malaysia Prime Minister Tun Abdul Razak named Penang as one of five states where the communist threat was ‘very real’ (29 June 1971).
- October 1974 – communist flags and banners were found in five Penang villages (29 October 1971).
- May 1975 – CTs bombed two railway bridges at Berapit and Permatang Tinggi near Bukit Mertajam, Province Wellesley (11 May 1975).
- September 1975 - three districts of Butterworth were placed on a five hour curfew from midnight till 5 a.m. as a ‘direct consequence of the establishment of the Inter-state Security Committee’ (14 September 1975).
- September 1975 – suspected communist agents were held during a house-to-house search during curfew hours in Butterworth (16 September 1975).

An ANZUK security assessment also noted that Malaysian Security Forces had *“restricted road travel around the Gunong Bongsu Forest Reserve east of Kulim, and about 15 miles from the Base, an indication of official concern for the safety of military and civilian road traffic in an area of continuous CT presence”* in November of that year.⁴²

In his 1978 book *Malaysia and Singapore: The Building of New States*, at page 181 Stanley Bedlington notes of Essential Regulations promulgated in 1975:

“The Essential Regulations also provide for the establishment of a scheme called ‘Rukun Tetangga’ (“neighborhood association,” or community self-reliance groups wherein all males between the ages of eighteen and fifty-five are compelled to participate in local security controls) and the organization of a vigilante group known as ... the People’s Volunteer Corps. Other internal security measures instituted to meet the guerilla menace include strict press censorship, increasing the size of the police force, resettlement of squatters and relocation of villages in “insecure” rural areas, and house-to-house sweeps for arms in urban areas.”

These, and other instances, were not minor disturbances in an otherwise ‘life as normal’ Malaysia. A JIO report on a 1971 briefing from the Malaysian military advises that the Malaysians were asked whether they *“...were experiencing the same problems with squatters that existed during the First Emergency.”*⁴³ Lt. Col. Ahmad bin Haj Abdul Kadir responded that *“...the problem did exist and that every endeavour was being made to relocate the squatters.”*⁴⁴

In the face of such evidence, for Defence to repeatedly claim that “life went on as normal” is, at best, an untenable position.

Relevant matters

As indicated above, much evidence provided by claimants to Defence has not been considered by them. There are three significant pieces of evidence that question Defence’s repeated contention that the main role of RCB was training and that dealing with CT attacks or incursions only a secondary issue. These three pieces of evidence have been studiously avoided in all documents produced by Defence about RCB. Defence refers to some evidence to back its insistence on the

⁴² ANZUK Intelligence Group (Singapore), Note No. 1/1971, 30 November, 1971, *The Threat to Air Base Butterworth up to the End of 1972*, Singapore, 1971.

⁴³ JIO, *JIO Briefing for Assistant Services Adviser*, 8 November 1971.

⁴⁴ *Ibid.*

primacy of RCB's training role. One is an extract from a Chiefs of Staff Committee meeting of 22 August 1973 which says that deployment of the RCB was consistent with government policy of *"deploying troops overseas for training purposes. If required, the company was to be available to assist with Base security."* They also highlight 'Plan Asbestos', the plan under which RCBs were deployed to Malaysia supposedly for training and perhaps security duties. In doing so they overlook reports from the Australian High Commissioner and RAAF and Army officers advising that training with the Malaysian Armed Forces (MAF) was not possible due to their involvement in operations against the communists. For instance, a Memorandum from the Australian High Commission in Kuala Lumpur to the Secretary of the Department of Defence and others dated 18 September 1973 states:

"[Para 2] ... There has been absolutely no willingness on MINDEF's [Malaysian Ministry of Defence] to exercise Malaysian ground forces with ANZUK forces. However, the willingness to have our Company carrying out training with Malaysian ground forces on bi-lateral basis was most encouraging.

[Para 3] The only problem which emerged is the one which we have suspected for quite some time and have reported separately to another area in the Department of Defence. At present there is no regular program for battalion or parts thereof to engage in formal training exercises in the sense that we understand them in Australia. MINDEF officers lamented that notwithstanding their efforts to have at least one battalion continuously under training they as yet have been unable to achieve this objective. Furthermore, they were unable to foresee when such an objective was likely to be realised..."

These sorts of statements were repeated by the High Commissioner and by other senior personnel on the ground and should have been factored into Defence's consideration of the role of the RCB.

Of more significance though are three documents which Defence have not addressed which cast significant doubt on the assertion of the primacy of training for the company:

- Minutes of the Defence Committee dated 11 January 1973 state that *"when the Australian battalion is withdrawn, the requirement for a company for security duties at Butterworth will be met by providing the unit on rotation from Australia. This could be presented publicly as being for training purposes."* **It should be noted that 'Plan Asbestos', with its emphasis on 'training' came into being shortly after this Defence Committee meeting.** Members of the Defence Committee included service chiefs, and the secretaries of the Departments of Defence, Prime Minister and Cabinet, Foreign Affairs and Treasury. **The Chiefs of Staff Committee which Defence prefer to refer to is subordinate to the Defence Committee.**
- Letter from A. E. Tange, Secretary, Department of Defence, to the Secretary, Department of Air, regarding 'Security at Butterworth' and dated 2 March 1972 states *"... 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 or other security duties."*
- Minutes of the Chiefs of Staff Committee dated 17 October 1973 recorded that the Chief of Air Staff *"supported the CNS's [Chief of Naval Staff] comment that in moving away from Butterworth for the training, the Committee was losing sight of the primary task of the Company."*

Despite the official reasons given in such documents as Plan Asbestos and subordinate Chiefs of Staff Committee minutes a reasonable and unbiased review would need to take account of these statements made at the highest levels (**presented publicly as being for training purposes; ostensibly for training, flag-showing and a change of scene; losing sight of the primary task of the company). Defence has failed to do so.**

Failing

A major guiding principle for determining the nature of past service is the ‘incurred danger test’, if this test is satisfied then a veteran’s service should be classified as *warlike*. It is a test that has been applied at least since WWII and has been upheld by the Federal Court.⁴⁵ **This principle was upheld and used by both Mohr⁴⁶ and Clarke⁴⁷ in their major reviews into the nature of service of veterans.** Defence have not applied this test in any consideration of the service of RCB veterans. Before the ‘incurred danger test’ is triggered the veteran must have served in an area where operations against an enemy occurred. The Malaysian military were engaged in operations against CTs throughout northern Malaysia, including in close proximity to Air Base Butterworth. Australian forces at Butterworth were integral to these operations as they provided defence of what was the major operating air base for Malaysian actions against the CTs, and thereby releasing Malaysian troops from the task of airbase defence.

Over the years Defence has moved from denying that there was any danger at all (“no war or emergency existed”) to claiming that “...the level of threat was consistently assessed as LOW”.⁴⁸ Before discussing this adjective and its relevance to the ‘incurred danger’ test it is worth noting that various documents assessing the threat to Butterworth at the time employ adjectives ranging from ‘low’, to ‘increased likelihood’⁴⁹, to ‘definitely’⁵⁰, to ‘likely’⁵¹.

The “incurred danger” test is an objective test that is not reliant on an individual’s perception of danger, whether that be positive or negative. It was used by Mohr to recommend the upgrade of service at Ubon to *warlike* for the period 1965-1968.⁵² Mohr discussed the air defence role of the RAAF and the patrol activity of the air defence guards, noting that no combat or clashes with any enemy forces occurred. He also noted that the Defence Committee of the time assessed the threat of air attack on Thailand as “slight”.⁵³ Despite this, application of the “incurred danger” test resulted in an upgrade of service at Ubon.

As the “incurred danger” test is an objective one Mohr discussed how an ‘objective danger’ is to be established:

⁴⁵ Repatriation Commission v Thompson

⁴⁶ Major General R.F. Mohr, *REVIEW OF SERVICE ENTITLEMENT ANOMALIES IN RESPECT OF SOUTH-EAST ASIAN SERVICE 1955-75*, February 2000.

⁴⁷ Clarke, J, *Report of the Review of Veteran’s Entitlements*, January 2003.

⁴⁸ The latest instance of this assertion is contained in: Griggs, R.J., Vice Chief of the Defence Force, Letter to RCB veterans, April 2018; but is a common statement through many of the Defence documents.

⁴⁹ JIO, 2 October 1975, *JIO Assessment of Threat and Likely Method of Attack*, 554/9/33(87), as Annex A to: Rowland, 7 October 1975, *Security of Butterworth*, addressed to ‘Minister’, para 16.

⁵⁰ ANZUK Intelligence Group (Singapore), Note No. 1/1971, 30 November, 1971, *The Threat to Air Base Butterworth up to the End of 1972*, Singapore, 1971, para 54.

⁵¹ *Ibid.*, para 57.

⁵² Major General R.F. Mohr, *REVIEW OF SERVICE ENTITLEMENT ANOMALIES IN RESPECT OF SOUTH-EAST ASIAN SERVICE 1955-75*, February 2000, p. 73.

⁵³ *Ibid.*, p. 70.

“To establish whether or not an ‘objective danger’ existed at any given time, it is necessary to examine the facts as they existed at the time the danger was faced. Sometimes this will be a relatively simple question of fact. For example, where an armed enemy will be clearly proved to have been present.

[Defence has acknowledged the existence of an armed enemy in the shape of the CTs but resile from the implications of that as outlined here]

However, the matter cannot rest there.

On the assumption that we are dealing with rational people in a disciplined armed service (ie. both the person perceiving danger and those in authority at the time), then 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 eventuated.

All of the foregoing highlights the inherent difficulty with this concept of perceived and objective danger. It seems to me that proving that danger has been incurred is a matter to be undertaken irrespective of whether or not the danger is perceived at the time of the incident under consideration. The question must always be, did an objective danger exist? That question must be determined as an objective fact, existing at the relevant time, bearing in mind both the real state of affairs on the ground, and on the warnings given by those in authority when the task was assigned to the persons involved.”⁵⁴

Justice Clarke supported this approach:

“Because the term ‘danger’ connotes risk, or possibility, of harm or injury, there is necessarily an element of subjective belief involved. In a declared war, no one would doubt that to carry out operations against the enemy at a place under risk of attack exposes those in the operations to danger. Yet who at the time would actually know, rather than perceive, that the place is at risk? The enemy might have no intention of attacking there, but assessments have to be made, or beliefs formed, by military authorities as to whether the place is at risk and needs defence by armed forces.

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.”⁵⁵

⁵⁴ Ibid., p. 9.

⁵⁵ Clarke, J, *Report of the Review of Veteran’s Entitlements*, January 2003, paras 11.59 & 11.60.

Justice Clarke also cites Windeyer KC's advice to the government in 1944 in relation to action relating to the Emden. In particular he notes that Windeyer's opinion reflects closely the statutory test for incurred danger:

"If therefore at any time when a man was serving there was a real physical possibility of injury from enemy action and it was reasonable to regard it as possibly imminent at any moment – that, in my opinion, is the situation connoted by the word 'danger'..."

I am of the opinion that having proved a risk possible the onus would NOT lie in the claimant to prove that at a particular time the enemy was in a position to inflict injury, so that the risk was in that sense probable."⁵⁶

Yet Defence's entire position appears to be in conflict with this approach, requiring some level of 'threat' much higher than Mohr, Clarke and Windeyer regarded as necessary for an award of *warlike* service. Having proved that a risk was possible, Defence requires of RCB veterans further proof that that risk was probable.

This is why Defence continue to downplay the period as one of "LOW threat". In considering *Repatriation Commission v Thompson*, Justice Clarke noted that it clearly established two propositions – that the 'incurred danger' test is objective; and that 'incurs danger' is "synonymous with 'is exposed to or at risk of harm' from hostile forces of the enemy."⁵⁷ He goes on to note that:

"For its part, the Committee believes that it is helpful to focus on the question of whether the veteran was 'at risk or in peril of harm'. This raises an issue of fact that does not import notions of imminent or immediate harm. Indeed, in Repatriation Commission v Thompson, the Court criticised the use of adjectives by the AAT."⁵⁸

"What should be emphasised is that the practice of focusing on 'imminent' risk of harm has led to inconsistency between decisions and reliance on fine points of distinction to justify decisions in cases where the factual circumstances are almost identical to those in an earlier case but the result is different."⁵⁹

Defence's orchestrated insistence on the use of the adjective LOW is just such a "fine point of distinction" designed to "justify decisions" where the circumstances are "almost identical" to earlier cases (such as Ubon).

Lying

Defence have baldly stated in a number of documents including reports and 'background briefings' that there was no war or Emergency in Malaysia during the period of the RCB's deployment. The first instance of this claim was contained in a letter to Mr Robert Cross, 8/9 RAR Association, from the Department of Defence Army History Unit and dated 11 February 2004. The historian states at para 15 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 duty rifle company to BUTTERWORTH. Professor David Horner 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..."*⁶⁰ One would think that between them a military 'historian' and a professor at ANU could muster the wherewithal

⁵⁶ Windeyer KC, cited in Clarke, J, *Report of the Review of Veteran's Entitlements*, January 2003, para 11.55.

⁵⁷ Clarke, J, *Report of the Review of Veteran's Entitlements*, January 2003, para 11.48.

⁵⁸ *Ibid.*, para 11.50.

⁵⁹ *Ibid.*, para 11.52.

⁶⁰ Army History Unit, Letter to Robert Cross, 8/9 RAR Association, 11 February 2004.

to conduct research at least to the level of a first year undergraduate, so to come up with these assertions one can only assume that it is **'fake research'**. There is an abundance of evidence online that verifies the existence of what is variously known as the 'Communist Insurgency War' or 'Second Emergency', contained in academic papers, Malaysian government websites and Malaysian legislation and other sources. Three examples from a simple google search are:

- The Malaysian Archives <http://www.arkib.gov.my/en/web/guest/darurat-angkara-komunis> which states that *"This second armed rebellion forced a second state of Emergency in Malaysia from 1968 to 1978"*. This end date is incorrect as can be seen from other sources and from later in this document where it says that *"The guerrilla warfare triggered by CPM [Communist Party of Malaya] dragged on for 21 years."*
- The UNHCR's *refworld* <http://www.refworld.org/docid/3ae6b5604.html> which is one source of the Malaysian legislation titled *Ordinance No. 1 of 1969, Emergency (Essential Powers) Ordinance* which was proclaimed on 15 May 1969 and stated in part *"WHEREAS by reason of the existence of a grave emergency threatening the security of Malaysia, a Proclamation of Emergency has been issued by the Yang di-Pertuan Agong under Article 150 of the Constitution"*, it then goes on to give effect to a range of emergency powers.
- The 1969 Act was not allowed to simply tick along however but was renewed by the *Emergency (Essential Powers) Act 1979*, an example of which is at [<MY_Emergency_Essential_Powers_Act.pdf>](#) and states *"WHEREAS a Proclamation of Emergency has been issued by the Yang di-Pertuan Agong on 15 May 1969 under Article 150 of the Federal Constitution: AND WHEREAS Parliament by reason of the Emergency considers it necessary to enact as an Act of Parliament the Emergency (Essential Powers) Ordinance 1969, and to provide for the validation of all subsidiary legislation made or purporting to have been made under the said Ordinance on or after 20 February 1971, and for the validation of all acts and things done under the said Ordinance or under any subsidiary legislation made or purporting to have been made thereunder:"*

There are also books written by Malaysian government bodies about the war, the latest of which is *The Malaysian Army's battle against communist insurgency in Peninsula Malaysia, 1968-1989* by Sharom bin Hashim et al, published in 2001 by the Malaysian Ministry of Defence and available in the National Library of Australia:

<https://trove.nla.gov.au/work/16959056?selectedversion=NBD24193292>

An article by Ong Weichong (an academic and prolific writer on the Second Emergency) and Kumar Ramakrishna, a colleague, states:

"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 relaunched 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 countersubversion 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.”⁶¹

Defence has attempted to use this article to support their assertion that there was no war or emergency, or if there was it was low key. They have claimed that *“the Second Emergency ... has been described as: ... a low intensity campaign of subversion and counter-subversion in Singapore and sporadic jungle skirmishes in Malaysia.”⁶²* By omitting the first part of this sentence – *“The Second Emergency gradually developed into...”* and the descriptions that preceded and followed it Defence has demonstrated what can best be described as intellectual dishonesty.

Conclusion

I believe that the above has demonstrated that Defence has erred in a number of ways in examining the RCB claim for upgrade that has resulted in the Department coming to conclusions that no reasonable person could reach with an unbiased examination of all available evidence. The examples used do not constitute the entirety of evidence I have on hand and I undertake to provide you with all the evidence I have available to me should you require it.

The last words should go to General Mohr as Defence has failed in this regard also:

“I believe that in making retrospective examinations on the nature of service many years after the event, as is now the case, the concepts and principles involved should be applied with an open mind to the interests of fairness and equity, especially if written historical material is unavailable for examination or is not clear on the facts. This is the approach that I have taken in addressing the anomalies put forward and to me, it accords with the general Defence classification principles and the benevolent nature of the Veterans’ Entitlements Act, and the general principles promoted therein.”⁶³

Remedies

The following remedies are sought:

⁶¹ Weichong, O and Ramakrishna, K, *The Forgotten Insurgency that Failed*, <https://www.malaymail.com/s/542997/the-forgotten-insurgency-that-failed-ong-weichong-and-kumar-ramakrishna>; Defence cite their source for this article as <themalaysianinsider.com/sideviews/article/the-forgotten-insurgency-that-failed-ong-weichong-and-kumar-ramakrishna> but that link is no longer functioning.

⁶² Department of Defence, Nature of Service Branch, *Background Paper Parliamentary Petition Dated 3 March 2014 Rifle Company Butterworth 1970-1989*, para 19.

⁶³ Major General R.F. Mohr, *REVIEW OF SERVICE ENTITLEMENT ANOMALIES IN RESPECT OF SOUTH-EAST ASIAN SERVICE 1955-75*, February 2000, p. 10.

1. Defence reconsider its decision in light of all evidence.
2. Reconsideration of the decision to be in consultation with representatives of the Rifle Company Butterworth Review Group and include face to face meetings on contentious matters.
3. An acknowledgement from Defence that it has got this matter wrong and will review the procedures that led to this error.
4. An apology to the Rifle Company Butterworth Review Group on behalf of all veterans who served at Butterworth 1970-1989.



Robert Cross
Chair Rifle Company Butterworth Review Group

Ray Fulcher
RCB RG Researcher