

1. I have been requested, in a letter from DHAAT dated 12 June 2019, to provide additional information to the Tribunal in relation to my appeal dated 4 June 2019. I have been asked to "...establish for the Tribunal's attention any new evidence that was not available to the Tribunal in its earlier [2010] consideration of the matter of recognition for service with Rifle Company Butterworth". This task has been asked of me because "...the Chair of the Tribunal, may...dismiss an application ...for the defence award..." where the award "...has already been adequately reviewed...". This is said with "reference to the Tribunal's earlier consideration of the matter of service with Rifle Company Butterworth." It is a tall order when a government department, with all its resources and access to confidential information, asks an ordinary citizen to tell it what it didn't know nine years ago. However, I will endeavour to carry out this Herculean task as the outcome of a review based on my appeal has the potential to provide long awaited justice and recognition for thousands of neglected veterans.
2. I shall demonstrate that service at Butterworth between 1970 and 1989 has not been "*adequately* reviewed". There are two aspects to the adequacy of the review. First is the question of the adequacy of the evidence submitted to the Tribunal in 2010 which is linked to the question of evidence that was not submitted due to it not yet being available. I examined the following documents to determine what evidence had been previously omitted and the adequacy of the evidence relied upon:
 - Vice Chief of the Defence Force Submission to the 2010 Inquiry.
 - 2010 DHAAT Brisbane Hearing Recordings.
 - Inquiry into Recognition for Members of Rifle Company Butterworth for Service in Malaysia Between 1970 and 1989, DHAAT 2011.
 - Rifle Company Butterworth Review Group Database of primary documents. This database has been sent to you via post on a memory stick due to its size and forms part of this paper.
3. I will state at the outset that the overwhelming majority of the evidence provided in my appeal cannot be found in the first three of the above records. I am also forwarding by mail a copy of a database containing hundreds of primary and secondary documents relating to Rifle Company Butter (RCB) that has been accumulated since 2006 and which forms part of this submission. Much of the evidence contained in my appeal is a subset of the database and likewise the overwhelming majority of the evidence in that database was not seen by the 2010 inquiry. I will also highlight where the evidence cited by the 2010 inquiry in making its decision is inadequate and contradicted by evidence not available to the Tribunal at the time.
4. The second aspect of this paper will look at whether the Tribunal then constituted applied a fair and impartial approach to the evidence before it and its relevance to determining nature of service according to law.

The missing evidence

The VCDF's submission

5. The Vice Chief of the Defence Force (VCDF) provided no primary evidence to the Tribunal in his 2010 submission. He cites the *Committee of Inquiry into Defence Awards (CIDA)* and the *Review of Service Entitlement Anomalies in respect of South-East Asian Service, 1955-1975* (Mohr Review), the *Report of the Review of Veterans' Entitlements* (Clarke Review). Both CIDA and the Clarke Review found service at Butterworth to be *peacetime* service. This is contradicted by a Defence-initiated further review on S-E Asian Service after 31 October 1971. That review found sufficient evidence to award the ASM for *non-warlike* service at Butterworth 1971 to 1989. RCB veterans were consequently awarded the ASM for *non-warlike* service and this is where it stands today, with the VCDF's submission supporting that position. The VCDF's submission does not contain any of the primary or secondary evidence provided in my appeal.

Brisbane Hearing Recordings

6. I will take a selection from the statements made by individuals at the Brisbane DHAAT hearings of 20 July 2010 and present hard evidence that supports those statements. They can then be seen as more than the 'not substantial, but sincere, recollections of claimants' that the 2010 review report portrayed them as.¹

RCB's dedication to the base

7. Several of the testimonies spoke of the requirement for the company to maintain its presence at Butterworth and not be away on training. The 2010 Tribunal preferred the Prime Minister's statement to Parliament in 1969 to the evidence given by eyewitnesses from the 1970s and 1980s. According to the Tribunal, the Prime Minister's statement supposedly made it "...clear that it was not expected that the company would always be present at Butterworth..." and that this "...lends weight to the view that the RCB was not an integral part of the defence of the base..."² But the testimony of those 'claimants' is supported by a sample of contemporary documents that the Tribunal did not have:

"A further complication has been the company's operational contingency commitment at Butterworth. In view of OC RAAF Butterworth's policy, plans for training away from Butterworth have been limited to platoon-level deployments."³

"Since July 74 a minimum of two pls plus an elm of coy HQ is always at Air Base BUT. One pl may be away on exercises at any one time, incl exercises in Johore. This pl has rear link comms with BUT."⁴

"Emergency security measures for the protection of Australian assets and property is in the hands of the Australian Infantry Company, with at least two platoons on call."⁵

¹ DHAAT, *Inquiry into Recognition for Members of Rifle Company Butterworth for Service in Malaysia Between 1970 and 1989*, 18 February 2011, para 47.

² *Ibid.*, para 52.

³ Whitehand, J.A., Defence Advisor Australian High Commission Kuala Lumpur, *Training for Butterworth Company*, File No. 207/5/14, Memo No. Def. 189, 10 May 1974, para 3.

⁴ Brough, WgCmdr SRGD, *ARA Infantry Coy at BUT*, Minute Paper, 11 October, 1974, para 2.

⁵ Brough, WgCmdr SRGD, *Butterworth Brief for Ministerial Visit Dec 74*, Minute Paper, 3 December 1974.

8. So, whereas in 1969 it may not have been “expected” that the “company would always be present at Butterworth”, evidence shows that very quickly it became *reality* that the company could not be away from the Base.

Deception regarding the deployment

9. Eyewitnesses describe the secrecy surrounding the deployment, sometimes calling it a “deception”. Paras 15-18 of my appeal contain documentary evidence of this deception, including from the highest defence committee. Evidence of the reasons for this deception are outlined in paras 9-13 of my appeal and includes evidence from the current VCDF.

Training

10. Testimony is given of the non-event that training with the Malaysians was. Yet nothing has persisted more than the claim that RCB was just there for training. Why this training deception was implemented is clear from paras 9-13 and 71 of my appeal. The impossibility of training with Malaysian forces, due to their commitment to fighting their war, is made clear from evidence from the Australian High Commissioner in Kuala Lumpur, provided in para 72 of my appeal.

Contact with the enemy

11. Eyewitnesses cite contacts between RCB personnel and CTs, as well as higher levels of alert and standing patrols in response to enemy activity. That contact between RCB and the CTs was made was confirmed by the Secretary of the Department of Defence in 2000, see para 45 of my appeal. A background paper for a minute to Chief of Army and Chief of Air Force also confirms contact between RCB and the CT.⁶ Ground Defence Operations Centre (GDOC) was activated at security level Amber (shared defence situation imminent) of the Shared Defence Plan.⁷ 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”.⁸ Evidence of the use of standing patrols is contained in my appeal at paras 35-36.

Freedom of movement

12. Witnesses that opposed the upgrade to the AASM cited freedom of movement in the Butterworth area as a reason that the deployment was not *warlike*. Varying degrees of movement restrictions were in fact enforced in the Butterworth area by the Malaysians during the period, including curfews:

“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”⁹

⁶ Willis, S.V.L, *Recommendations of the Review of Service Entitlement in Respect of the Royal Australian Air Force and Army Rifle Company Butterworth Service 1971-1989*, Minute PE 2000-7307, 20 December 2000.

⁷ RMAF & RAAF, *Shared Defence of Air Base Butterworth, Operation Order No. 1/71*, 8 September 1971.

⁸ 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.

⁹ *Straits Times*, 14 September 1975.

“suspected communist agents were held during a house-to-house search during curfew hours in Butterworth”¹⁰

“Situation in immediate area remains unchanged, curfew remains in force in three districts of province Wellesley.”¹¹

13. Malaysian security forces “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 1971.¹²
14. This evidence, unavailable to the Tribunal in 2010, demonstrates that the witnesses’ testimony was not just “strongly put”¹³ but supportable by the evidence had it been available then.

DHAAT Inquiry Report 2011

15. The Tribunal states that it received “...30 written submissions...” from individuals, groups and the Department of Defence. None are included but I assume the Defence submission was that presented by the VCDF.¹⁴ I cannot therefore examine where any evidence contained in those submissions varies from that provided in my appeal. However, this is not an insurmountable problem as the inquiry report states that:

“The evidence presented to the Tribunal by and on behalf of the claimants is not substantial. It consists of recollections of those who served with RCB of the arduous training which they undertook both before deployment to Butterworth and while they were there as well as descriptions of the detailed preparations and operational plans which were developed in anticipation of possible emergency situations.”¹⁵

16. I may conclude from this that none of the primary and secondary documentary evidence contained in my appeal and database was made available to the inquiry in those written submissions.
17. The evidence primarily relied on by the DHAAT is contained in paras 51-54 of the report and constitutes 70% of the evidentiary discussion by the Tribunal. It consists of:
 1. Prime Minister’s Statement to Parliament dated 25 February 1969.¹⁶
 2. The Exchange of Notes between the Government of Australia and the Governments of Malaysia and Singapore in late 1971.¹⁷

¹⁰ *Straits Times*, 16 September 1975.

¹¹ Secret FARLEY, Sitrep Butterworth and North Peninsular Malaysia, A107, 24 September 1975.

¹² 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.

¹³ DHAAT, *Inquiry into Recognition for Members of Rifle Company Butterworth for Service in Malaysia Between 1970 and 1989*, 18 February 2011., para 49.

¹⁴ *Ibid.*, para 10.

¹⁵ *Ibid.*, para 47.

¹⁶ *Ibid.*, para 52.

¹⁷ *Ibid.*, para 51.

3. Letter from the Secretary, Department of the Army to the Secretary, Department of Defence, dated 19 May 1969, AWM200 R579/1/17G PART 1.¹⁸
 4. A letter from the Chief of the General Staff to the commander of Far East Land Forces dated 23 May 1969.¹⁹
 5. A staff instruction titled 'Infantry Company to Butterworth' issued by 28 Commonwealth Brigade on 22 October 1970.²⁰
18. So, the Tribunal relied primarily on **five** documents dated between 1969-1971 to determine the nature of service of RCB between 1970-1989 and *none* of those documents examine the situation *on the ground* during those years. My appeal contains around **sixty** primary and secondary sources dating between 1969 and the early 1980s, both high level official documents and assessments of the situation faced at Butterworth. And as I said earlier, the primary and secondary evidence in my appeal is a subset of that contained in the document database that forms part of this paper. Five documents over two years to assess the nature of service of troops deployed over 19 years hardly seems 'adequate'.
19. The DHAAT identified the inadequacy of relying exclusively on such high level 'official documents' in a later case²¹ – they do not necessarily reflect the reality of the situation on the ground, and that is what is required to be established for the purposes of determining past nature of service. The Tribunal said:
- “Whatever might have been said in the formal decisions relating to the retention of No. 79 Squadron in Ubon, it is clear that the real purpose of its posting was to assist the USAF air campaign against North Vietnam.”²²
20. In the VCDF's submission to the Tribunal he notes that:
- “...NOSB found that formal responsibility for security at Butterworth was transferred from the Royal Air Force Regiment to Malaysian authorities on 31 March 1970...”²³
21. He goes on to say that “Accordingly” non-warlike service was recommended for service at Butterworth “...with a commencement date of 31 March 1970.”²⁴
22. Had Defence researched beyond the high-level documents that transferred “responsibility for security” to the Malaysians they would have found documents repeatedly expressing Australian concerns about the Malaysians' ability to *actually* provide that security to Butterworth. I have referenced three such documents in my appeal at paragraph 14. Had Defence known of these documents, and provided them to the Tribunal, they may not have placed such emphasis on the formal handover that led

¹⁸ Ibid., paras 52 and 53.

¹⁹ Ibid., para 54.

²⁰ Ibid.

²¹ DHAAT, *Inquiry into Unresolved Recognition Issues for Royal Australian Air Force personnel who served at Ubon between 1965 and 1968*, 18 February 2011.

²² Ibid., para 63.

²³ VCDF, *Submission to the Defence Honours and Awards Tribunal Inquiry into the Recognition of Members of Rifle Company Butterworth for Service in Malaysia between 1970 and 1989*, 23 June 2010, para 44.

²⁴ Ibid.

them to the conclusion of *non-warlike* status. The significance of this Malaysian incapacity to provide for defence of its own facility is highlighted in a fourth Australian document criticizing the Malaysians' abilities.

23. A secret FARLEY report from 1971²⁵ sets out the reason for the paper:

“To combat the risk of an attack on Air Base Butterworth, Commander ANZUK Air Headquarters...directed the Officer Commanding Air Base Butterworth to set up a committee to assess what counter measures would be required to provide Air Base Butterworth with a capability to meet any threat to the Base.”²⁶

24. The report advised that:

“...establishments do not provide for measures to fully counter the assessed threat to ANZUK installations and equipment arising from the resurgence of communist activity in West Malaysia.”²⁷

25. It also advised that:

“...there is a significant deficiency in the capability at Air Base Butterworth to oppose or even contain, any attack or attempted sabotage.”²⁸

26. The Malaysians are commended for their co-operation in preparation of the Shared Defence Plan but:

“...their capability to implement the Plan is unproven. It is known that they are untrained in weapon handling and have only limited stocks of weapons and no ground radio communications. The effectiveness of the RMAF to assist in the shared defence of Air Base Butterworth is therefore suspect.”²⁹

and

“The Malaysian lack of capacity to effectively provide for their role in the security of Air Base Butterworth is a cause of serious concern...”³⁰:

27. The report concluded that:

“Current security arrangements provide for a Shared Defence Plan...which is adequate to meet the threat, if the Base receives advance warning. On the other hand, arrangements are inadequate to meet a surprise attack...”³¹

28. To guard against this surprise attack which, according to various intelligence assessments throughout the period, was the most likely form of attack, Butterworth required an:

²⁵ Parker, I.S., *Counter Measures to Security Threat to Air Base Butterworth Until End 1972*, 24 December 1971.

²⁶ *Ibid.*, para 3.

²⁷ *Ibid.*, para 22.

²⁸ *Ibid.*, para 26.

²⁹ *Ibid.*, para 40.

³⁰ *Ibid.*, para 41.

³¹ *Ibid.*, para 46.

“...essential permanent quick reaction force needed to meet a surprise attack, or the personnel to guard against sabotage.”³²

29. That quick reaction force (QRF) was provided by the RCB and the report warned that:

“unless an Army presence can be guaranteed at all times, two flights of ADGs would be required to sustain a Quick Reaction Force.”³³

30. These documents demonstrate that RCB was not only an integral part of the defence of Butterworth but was considered by Australian authorities to be *the most crucial*, and only reliable, aspect of Butterworth’s defence against communist insurgents.

31. Had the Tribunal had access to these documents in 2010 it may not have placed such import on the Secretary of the Department of the Army’s letter of May 1969,³⁴ which said that if an emergency occurred and the Army needed to assist with defence they “would be placed at the disposal of AOC Butterworth”.³⁵ Nor could the Tribunal have asserted with such certainty that the letter demonstrated that “...assistance with local defence would only be provided in an emergency and would not be a primary role of the company”.³⁶

32. In making this finding the Tribunal was clearly unaware that RCB was *permanently* at the disposal of AOC Butterworth and that local defence was its *primary* responsibility:

“CAS considered that the AOC should have appropriate authority to control the use of the Company for the protection of the RAAF Base, as this was the primary task of the Company.”³⁷

“The operational command and certain aspects of administrative control of the Australian Infantry Company at Butterworth will be under the OC RAAF Butterworth and for all other matters will be under AHQ Australia”.³⁸

33. A staff instruction in 1979 replaced AHQ Australia with HQ Field Force Command for control of “all other matters” whilst leaving operational command of the company with OC RAAF Butterworth.³⁹

34. The 2010 DHAAT references a limited set of official documents to argue that the main purpose of the RCB deployment was simply to provide “...an Australian...Army presence in Malaysia...”.⁴⁰ However, documents not previously seen by the Tribunal

³² Ibid., para 23.

³³ Ibid., para 47c.

³⁴ Letter from the Secretary, Department of the Army to the Secretary, Department of Defence, dated 19 May 1969, AWM200 R579/1/17G PART 1.

³⁵ DHAAT, *Inquiry into Recognition for Members of Rifle Company Butterworth for Service in Malaysia Between 1970 and 1989*, 18 February 2011, para 53.

³⁶ Ibid.

³⁷ Chiefs of Staff Committee, *Minute of Meeting held on 28th June, 1973, Australian Contribution to the ANZUK Force in Singapore, Command and Control*, Minute No 38/1973, 3 July 1973, para 2.

³⁸ Signal COMD ANZUK Force, Butterworth Infantry Company, DEF2435, 21 August 1973.

³⁹ Field Force Comd, *Staff Instruction No 2/79, General Instructions for the Australian Rifle Company at Air Base Butterworth*, 6 July 1979, para 36.

⁴⁰ DHAAT, *Inquiry into Recognition for Members of Rifle Company Butterworth for Service in Malaysia Between 1970 and 1989*, 18 February 2011, paras 52 and 54.

paint a very clear and very different picture of the purpose of RCB. As well as the CAS' statement above that the primary role of the company was protection of the base I refer the Tribunal to paras 15-17 of my appeal. The evidence there demonstrates that the real purpose of RCB was not "flag-showing"⁴¹ but instead providing a force actually capable of defending Butterworth from the very real threat of communist terrorists.

An impartial hearing

35. Second, is the question of the impartiality of the Tribunal constituted for the 2010 inquiry and how this may bring the "adequacy" of that inquiry into question. This is raised due to a number of things said by Tribunal members at the hearings and recorded on an audio disc not meant for release. Also, throughout the testimony of witnesses opposed to an upgrade of service the panel displays an unprofessional and biased response with supportive laughter when any such witness said things like "we were living next to paradise" or "we took drives up north, this isn't warlike" or anything else that denigrated the deployment. Of more concern however was the response to testimony given by Mr David Moles, an opponent of an upgrade. He said that he never saw an angry man there but did see a man in a tree outside the wire and hovered over him (he was a helicopter pilot) until the man was arrested by the Security Police. The chair of the panel responded with "Did you spot a weapon or birdwatching binoculars?" at which the Tribunal again broke out in derisive laughter. This exchange demonstrates the Tribunal's lack of seriousness in dealing with the review and a tendency to make the claims of those supporting an upgrade appear ridiculous.
36. Later in Mr Moles' testimony he says "You've gotta draw the bloody line somewhere". To which the chair of the Tribunal responds "I agree the line has to be drawn. Currently it is drawn, and we're being asked if it should be shifted." This indicates that the chair of the Tribunal had pre-determined that RCB service fell below the line and in being asked to determine RCB eligibility for the AASM he was being asked to alter the eligibility criteria. As the tape ends another Tribunal member says "I think we've got to draw the bloody line somewhere". This indicates that the Tribunal intended to refuse the upgrade, regardless of the evidence, to those who met the criteria but whom the Tribunal considered less deserving in order to limit access to the AASM. That is what *drawing the line* means in this situation according to the definition in the Macquarie Dictionary.⁴²
37. These comments and responses by the Tribunal indicate that the panel was not impartial in its assessment of evidence and already preferred a particular outcome. How then can their report be considered an "adequate review".
38. Nor did the Tribunal question the contradictions in the evidence given by Mr Dave Webster on behalf of the Department of Defence. In discussing how Defence determines past service Mr Webster said that veteran entitlements law was used because it is very clear:

"In terms of incurred danger, the courts have said that what is needed is only more than a mere fanciful danger and when it comes to possibility versus

⁴¹ Tange, A.H., *Security at Butterworth*, Ref. 71/3160, 2 March 1972.

⁴² Macquarie Dictionary, "draw the line": a. to fix a limit, b. to refuse.

probability it only needs to be possible, not imminent. That incurred danger test is just about expressed in the non-warlike definition. In 93 we said OK we're going to raise the bar. So now what happens because that has been there since 93, we tend to look at what happened before that in terms of having a gun in your face or dodging bullets."

39. The Tribunal does not question how Mr Webster can claim that the law is clear and only possible not imminent danger is required but then go on to say that a gun in the face or dodging bullets (which sounds pretty imminent) is what they look for in making a determination. Nor is his claim that the incurred danger test is "just about expressed" in the *non-warlike* definition from 1993 challenged by the panel. All cases dealing with incurred danger relate to determining whether the applicant qualified for the equivalent of *warlike* service and where they met that test were granted the equivalent of *warlike* service. The fact that the Tribunal uncritically accepts Mr Webster's testimony on this point raises the question of whether the Tribunal had any knowledge of the law relating to the determination they were being asked to make. In turn this raises the question of the adequacy of the Tribunal's review.

Conclusion

40. I have established that the DHAAT review of RCB service conducted in 2010 relied on five documents from 1969-1971 as the basis of its decision. It received 30 written submissions and some oral submissions, but these are barely referred to in its report. My appeal of 4 June 2019 alone contains around 60 primary and secondary documents not previously considered by the Tribunal. This paper adds a further ten primary and secondary documents. The impartiality of the Tribunal in 2010 is brought into question by comments and actions recorded on an audio disc of proceedings of the Brisbane hearings in 2010. For these reasons the 2010 DHAAT inquiry cannot be considered to have "adequately reviewed" the service of RCB 1970-1989.

41. I have also attached a document from the Rifle Company Butterworth Review Group which gives a good overview of the strategic situation into which RCB was inserted.⁴³

42. I appreciate that the Tribunal may not be able to grant my appeal to be issued the AASM. However, it is within the power of the Tribunal to recommend to the Minister an upgrade of service on the basis of the evidence provided. This could be either a recommendation for retrospective allotment under the Repatriation (Special Overseas Service) Act or a declaration of *warlike* service.

Ray Fulcher

4 July 2019

⁴³ RIFLE COMPANY BUTTERWORTH (RCB), THE BASIS FOR THE RCBRG'S CLAIM FOR WARLIKE SERVICE, OVERVIEW.