



Australian Government

Defence Honours and Awards Appeals Tribunal

DHAAT/OUT/2022/486

Mr Ray Fulcher

Chair

RCB Review Group

Dear Mr Fulcher

I am writing to you about the *Inquiry into Medallion Recognition for Service with Rifle Company Butterworth* currently being undertaken by the Defence Honours and Awards Appeals Tribunal.

The inquiry is being undertaken by a panel of three members – the Chair of the Tribunal, Mr Stephen Skehill, and two members, Rear Admiral Allan Du Toit AM RAN (Retd) and Air Commodore Anthony Grady AM (Retd).

This subject has of course been the subject of a number of prior independent inquiries. The present inquiry is however being undertaken at a time when far more official information is publicly and readily available than was previously the case. The Tribunal is thus keen to ensure that this inquiry is as thorough and comprehensive as possible and has regard to all relevant considerations, thereby allowing the Government to take final decisions on the issues in question.

The time for lodging submissions with the Tribunal has now passed. However, rather than proceeding straight to public hearings, the panel intends to take a number of preliminary steps with the aim of ensuring that such hearings are as productive and informative as possible.

First, the Tribunal has published on its website all submissions where consent to publication has been given by the author, and has advised all submitters of the availability of those submissions. This will allow all submitters an opportunity not only to be informed of what has been said to the Tribunal, but also to make supplementary submissions if they so wish.

Secondly, it has decided that, to the greatest extent possible consistent with individual privacy or other considerations such as national security, the hearings when held will not only be open to the public but will also be live-streamed on the internet so that all interested parties have an opportunity to observe what is said at those hearings even though they may, for whatever reason, be unable to attend in person. After viewing the hearings, interested parties will be given a further opportunity to make any supplementary submission they may wish.

Third, it has decided to invite participation at hearings by several individual submitters who, in its opinion, appear on the basis of their submissions to be representative of those who have made submissions to the inquiry or to otherwise have a particularly important perspective to offer.

Fourth, it has decided to provide to the principal organisational submitters a list of the questions that it currently believes are raised by the terms of reference issued by the Minister and the submissions received and that will, therefore, need to be addressed by the Tribunal at the public hearings and in its report to the Government.

The organisational submitters in question are the RCB Review Group, the Australian Rifle Coy Group Veterans 1970-1982 and the Department of Defence. The Tribunal trusts that advance notice of these questions will allow those parties to better prepare for and assist the Tribunal at the hearings to which they will be invited.

And, finally, the Tribunal has decided to invite each of those principal organisational submitters to come together at a pre-hearing meeting for the purpose of discussing with the panel a number of issues that may further optimise the benefits to be gained through the public hearings when held. It is particularly important to note that such a meeting would not be for the purpose of seeking or receiving evidence, or to answer the questions referred to above and attached to this letter, but would consider only such matters as:

- whether there are further preliminary steps that might be taken to optimise the benefit to be gained from hearings;
- whether there are further questions that should be added to the list referred to above;
- how and by whom any research required to answer each relevant question should best be undertaken;
- how long organisational submitters might require to prepare for hearings at which they can expect to be asked their views on those questions;
- how long they anticipate they may require to give their intended evidence at hearing;
- where and how public hearings should best be held; and
- whether, in addition to those that might be identified by the Tribunal, there are particular individual submitters or other persons that organisations believe should be invited to give evidence at a public hearing.

To assist your organisation in preparing for that pre-hearing meeting, I attach a copy of the current version of the list of questions referred to above. The panel has asked me to contact you in about two weeks with a view to arranging a time at which that pre-hearing meeting might conveniently be held. I anticipate that the meeting will be held virtually, rather than in person.

Thank you for your attention to this advice. Should you have any questions regarding it, please feel free to contact me directly on (02) 5131 6933.

Yours sincerely



Jay Kopplemann
Executive Officer
Defence Honours and Awards Appeals Tribunal
18 August 2022

Attachment: Preliminary list of questions raised by Inquiry terms of reference

INQUIRY INTO MEDALLIC RECOGNITION WITH RIFLE COMPANY BUTTERWORTH

Preliminary list of questions

Service classifications for ADF management purposes

During the period of RCB deployments, what terms were used by the ADF to classify the nature of different types of ADF service (e.g., warlike, non-warlike, peacetime, other) for ADF management purposes?

- What was the definition of each such term?
- What was the statutory, Government, Ministerial, ADF or other authority for each such definition?
- If these terms changed during the period of RCB deployments, or retrospectively, when did this occur?

Following the period of RCB deployments, what terms have been or are now used to classify the nature of different types of ADF service (e.g. warlike, non-warlike, peacetime, other) for ADF management purposes?

- What was/is the definition of each such term?
- What was/is the statutory, Government, Ministerial, ADF or other authority for each such definition?

Since 1970, what overseas ADF service has been declared as warlike for ADF management purposes?

Service classifications for Defence honours and awards purposes

Do the definitions of “non-warlike”, “warlike” and “peacetime” service used for ADF management purposes equally apply when those terms are used in Regulations relating to Defence honours and awards?

Has any service classified as “warlike” for ADF management purposes not been recognised as “warlike” for the purposes of Defence honours and awards?

Has any service classified as “non-warlike” for ADF management purposes not been recognised as “non-warlike” for the purposes of Defence honours and awards?

Has any service classified as “peacetime” for ADF management purposes been classified as “non-warlike” or “warlike” for the purposes of Defence honours and awards?

When was medallic recognition extended to RCB service? What was the basis for this decision? Was there an associated nature of service review? If so, please provide a copy.

Service classifications for DVA purposes

Has any service classified as “warlike” for ADF management purposes not been declared as “warlike” for DVA purposes?

Has any service classified as “non-warlike” for ADF management purposes not been declared as “non-warlike” for DVA purposes?

Has any ADF service not declared as “warlike” for ADF management purposes or for defence honours and awards eligibility purposes ever been declared as “warlike” for DVA purposes?

Has service on RCB deployments been declared as “non-warlike” for DVA purposes?

On 4 October 2007 then Minister Billson advised the RCB Review Group that he was prepared to declare RCB service as “hazardous” under section 120 of the *Veterans Entitlements Act 1986*. Was that declaration made? If not, why not?

Does Defence disagree with any statement made by DVA about service classifications at the following links:

<https://clik.dva.gov.au/service-eligibility-assistant/additional-information/understanding-service-eligibility-instruments>

<https://www.dva.gov.au/sites/default/files/files/health%20and%20wellbeing/rehabilitation/rhandbook.pdf>

Legal basis of Australian presence on Air Base Butterworth (ABB)

During the period of RCB deployments, was ABB:

- an Australian air base;
- a Malaysian air base; or
- a joint Malaysian/Australian air base?

During the period of RCB deployments, what was the legal basis under which RAAF assets and personnel were based at ABB? – please provide relevant documents

During the period of RCB deployments, what were the legal rights and obligations of the ADF to protect RAAF assets and personnel based at ABB? – please provide relevant documents, such as the Joint Defence Plan, OPORD 1/71. Annex A to ABB OPORD 1/71 (Sep 71) *Legal aspects of a shared defence situation in the defence of ABB*, or similar

Purpose of RCB deployments

Does Defence now contend that the sole or primary purpose of RCB deployments was training:

- for RCB personnel;
- for Malaysian defence personnel; or
- jointly with Malaysian defence personnel?

Does Defence agree that the sole or primary purpose of RCB deployments was the protection of Australian personnel and assets based at ABB? If not, what does Defence say was the sole or primary purpose?

In what overseas countries other than Malaysia did the RAAF have assets and personnel based during the period of RCB deployments?

- In each such case, were Australian Army assets and personnel deployed for the protection of those RAAF assets and personnel?
- What was the status at each relevant time of Air Force's Airfield Defence Guard mustering? Why was infantry deployed for the defence of an airbase *in lieu* of the Air Force mustering who (now) are responsible for air base security?

Following the period of RCB deployments, in what overseas countries other than Malaysia has the RAAF had assets and personnel based?

- In each such case, were Australian Army assets and personnel deployed for the protection of those RAAF assets and personnel?

Apart from major exercises, at any RAAF base in Australia, from 1970 to date, has the Australian Army provided protection for RAAF assets and personnel?

- If yes, which bases, when and for what reason?
- In each such case, were the rostering of Army personnel the same as those for RCB personnel during the period of RCB deployments?

Threat to ABB security

From time to time during the period of RCB deployments:

- Was there an operative declaration of a state of emergency or similar by the Malaysian Government?
- Did the Malaysian Government enact or authorise the use of special security powers?

During the period of RCB deployments:

- What from time to time was the assessed security risk to Australian assets and personnel at ABB?
- What from time to time was the assessed consequence of an attack on Australian assets and personnel at ABB?

In each case, please provide copies of the risk and consequence assessments.

Preparation of RCB personnel

What instructions were issued from time to time for the content of briefing to be provided to RCB personnel before deployment to ABB from either Singapore or Australia?

What pre-conditions had to be met by Army personnel before deployment with RCB?

- Additional training?
- Physical fitness?
- Provisioning and equipment standards?
- Consent to posting?
- Current will (or acknowledgment of decision not to complete)?
- Numbers of medically qualified or trained personnel?

Did these pre-conditions, or any of them, differ from the pre-conditions for deployment on peacetime service in Australia? If so, in what respects?

Why were RCB personnel required to undergo jungle training before deployment, given that their RCB responsibility was confined within the boundary of ABB?

What pre-conditions must be met by Army personnel assigned to garrison duty within Australia?

Situation on RCB deployment

What instructions were issued from time to time for the content of briefing to be provided to RCB personnel upon arrival at ABB?

What instructions were issued from time to time for the content of briefing to be subsequently provided to RCB personnel during their period at ABB?

Was the application of military discipline during RCB deployments the same as that for peacetime service in Australia?

- If not, what was the nature and reason for any difference?

While on RCB deployment:

- Could RCB personnel be accompanied by spouses or children?
- Were RCB personnel required to live on base?
- Were RCB personnel permitted to leave ABB while not on duty?
 - If yes, on what conditions?

During the period of RCB deployments:

- Were some RAAF personnel required to live on base?
- Were some RAAF personnel permitted or allowed to live off base?
- Were RAAF personnel living on base permitted to leave ABB while not on duty?
 - If yes, on what conditions?

What security arrangements were provided for RAAF personnel who did not live on base?

What plans were in place for the extraction of families from Malaysia in the event that it was required?

- Who was responsible for the maintenance of this plan?
- Was this plan updated regularly, rehearsed, trialed or enacted?
- What ‘trip-wires’ would likely have generated a decision to evacuate families from Malaysia?
- On balance, and noting the numbers of dependents involved (approx. 2800), how long might this operation have taken, and what sort of lead time would have been required to prevent families from being exposed to unacceptable levels of risk?

During the period of RCB deployments:

- Are there any records of hostile intrusions onto or attacks on ABB?
- Are there any records of RCB personnel being injured or killed during deployment?

Were RCB personnel issued with weapons any different to those issued to Army personnel on duty in Australia?

- If yes, what were those differences and why did they occur?

Did the service records of any RCB personnel contain a form AABS3 (or any other form) annotated “WOWS” or “whilst on War Service” or similar?

Is there a nexus between a disciplinary environment (*Whilst on War Service*) and the physical environment to the extent that WOWS disciplinary standards apply exclusively to warlike situations?

What records are there of RCB personnel:

- conducting training of Malaysian military personnel;
- engaging in joint training with Malaysian military personnel;
- engaging in training away from ABB separately from Malaysian military personnel; and
- undertaking duty other than training away from ABB? – please provide details

What Rules of Engagement were issued to RCB personnel from time to time?

- How did such ROE differ from those issued to Army personnel in Vietnam or other conflicts?
- Are ROE issued to Army personnel on garrison duty in Australia?
 - How do such ROE differ from those issued to RCB personnel?

In the C2 arrangements of the day, how would ROE REQUESTs or equivalent have likely been handled/processed?

Who within the ADF “owned” the RCB ROE/OFOF; who was accountable for processing ROE REQUESTs or equivalent?

Noting that the RCB OFOF limited the ability to engage beyond the base perimeter, is there any evidence that off-base operations, such as guarding the Mirage crash site approx. 5km North of ABB in Apr 1974, any of the detachments to Paluda, or transits to and from the range, generated an ROE REQUEST for amended ROE?

Are Australian ROE seen as guidance or as direction to Commanders?

Is the inherent right of self-defence (including the ability to employ lethal force) an artefact of ROE/LOAC/National/International/Other Law?

- Is an Australian civilian, for example, able to employ lethal force in self-defence (subject to similar provisos/limitations) just as the RCB could?

Under the December 1978 OFOF, what level of force was available to the RCB to protect the base and its personnel (i.e. distinguishing between individual/unit self-defence and the right to protect others; and removing the inherent right of self-defence from consideration)?

In other words, did the RCB ROE provide for the use of lethal force in the defence of others?

Where do the RCB ROE (OFOF) sit on the 'spectrum' of OFOF options?

Noting that the M60 GPMG was routinely deployed as part of the QRF, how likely is it that the weapon could have been confidently employed in accordance with the ROE, particularly with respect to the requirement to 'shoot to wound'?

What should the Tribunal make of the size and nature of the RCB weapons holdings (including HEAT and Anti-Armour weapons and ammunition), particularly as it relates to the ROE?

Throughout the duration of the deployment, how often was the RCB executive briefed/re-briefed on relevant changes to tactical environment?

- How and when were these briefs conducted?

Were there any MAF Liaison Officers assigned to the RCB on a standing basis?

Did the RCB have any Liaison Officer positions embedded within the MAF?

What was the mandated degree of weapons readiness for RCB personnel while on duty?

What was the degree of weapons readiness as it applied to live rounds?

Was QRF temporal and tactical performance assessed by RCB staff (observers)?

Were there routinely observers on the ground at Key Points throughout QRF drills?

When were weapons issued (e.g., 0800 daily for the duration of QRF duty vs continuous access)?

How often, given normal scheduling limitations, might any given RCB member have performed QRF duties, perimeter patrols or any other armed activity (not including training)?

On average, what proportion of the three month tour would have been dedicated to other tasks/events including other individual or collective training, administration or leave?

Were only those on QRF/Perimeter patrolling duties at any given time armed?

- How were Lines Piquets armed?

Noting the above, how many days of a tour on average would an RCB member have carried a firearm?

Is the extent to which the RCB was (permanently) armed a fair indication of the direct threat to the base? If not, why not?

Noting that the ROE version attached to several submissions (Annex C Appendix 3 to AS RIFLE COY USOs) is dated December 1978, please provide copies of all versions of the ROE issued during the period of RCB deployments.

Was every member of the RCB required to read and sign the USOs regularly?

Are there any indications that the Mirage accident (A3-18) in Apr 74 was the result of CT activity having regard to:

- Mission profile;
- Failure modes/indications;
- Likelihood of damage being sustained on departure?

What is the view of the Defence Force Safety Bureau in relation to bullet holes in the aircraft as reported in Submission 49 by Mr Les Ray?