



Australian Government

Defence Honours and Awards Appeals Tribunal

**INQUIRY INTO RECOGNITION FOR MEMBERS OF RIFLE
COMPANY BUTTERWORTH FOR SERVICE IN MALAYSIA
BETWEEN 1970 AND 1989**

LETTER OF TRANSMISSION

Inquiry into recognition for members of Rifle Company Butterworth for service in Malaysia between 1970 and 1989

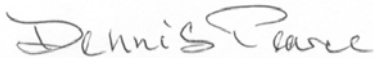
Senator the Hon David Feeney
Parliamentary Secretary for Defence
Parliament House
Canberra ACT 2600

Dear Parliamentary Secretary,

I am pleased to present the report of the Defence Honours and Awards Appeals Tribunal on the Inquiry into recognition for members of Rifle Company Butterworth for service in Malaysia between 1970 and 1989.

The inquiry was conducted in accordance with the Terms of Reference. The panel of the Tribunal that conducted the inquiry arrived unanimously at the findings and recommendations set out in its report.

Yours sincerely



Professor Dennis Pearce AO
Chair

18 February 2011

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TERMS OF REFERENCE

The Defence Honours and Awards Tribunal shall inquire into and report on recognition for members of Rifle Company Butterworth (RCB) for service in Malaysia between 1970 and 1989.

In conducting its inquiry the Tribunal shall:

- (a) have regard to the terms and objectives of the *Australian Active Service Medal (AASM) Regulations 1945-1975*, *Australian Active Service Medal Regulations*, the *Australian Service Medal (ASM) Regulations 1945-75*; the *Australian Service Medal Regulations* and declarations and determinations for the Clasps 'MALAYSIA' and 'SE ASIA' and the *General Service Medal 1962 Royal Warrant*.
- (b) consider the claims of members of RCB for recognition of their service in Malaysia between 1970 and 1989;
- (c) consider any other material relevant to these claims;
- (d) consider the possible impact of recognition for Australian Defence Force service on the recognition of other Australian Government service, such as members of the Royal Australian Air Force at Royal Malaysian Air Force Base Butterworth and 4th Battalion Royal Australian Regiment at Terendak during the period; and
- (e) make findings and recommendations as to the eligibility of members of the RCB for the AASM 1945-75 or AASM or the granting of any other form of recognition for their service.

The Tribunal is to determine its own procedures, in accordance with the general principles of procedural fairness, when conducting its inquiry as set out in these Terms of Reference. In this regard, the Tribunal may interview such persons as it considers appropriate and consider material provided to it that is relevant to these terms of reference.

The Tribunal is to report, in writing, to the Parliamentary Secretary for Defence Support on its findings and recommendations that arise from the inquiry.

In making its findings and formulating its recommendations the Tribunal is to arrive at a fair and sustainable response to current and future claims for recognition and also maintain the integrity of the Australian honours system and identify any consequential impact any finding or recommendation may have on that system.

EXECUTIVE SUMMARY

1. The Defence Force Honours and Awards Appeals Tribunal (the Tribunal) is established under the Defence Act 1903. Its functions are set out in s 110UA of the Act. The Minister may direct the Tribunal to hold an inquiry into a specified matter concerning honours or awards and the Tribunal must hold an inquiry and report, with recommendations, to the Minister.

2. On 11 March 2010, the former Parliamentary Secretary for Defence Support, the Hon Dr Mike Kelly AM MP, referred the matter of recognition for members of Rifle Company Butterworth (RCB) for service in Malaysia between 1970 and 1989 to the Tribunal. The terms of reference for this inquiry are set out in full at the commencement of this report.

3. This reference was undertaken by the following members of the Tribunal:
Mr John Jones (Chair)
Dr Jane Harte

4. The principal applicant was the RCB Review Group on behalf of individuals who served with the RCB in the period 1970 to 1989.

5. In its written submission and at its appearance before the Tribunal, the RCB Review Group sought the following entitlements:

- a. Qualifying service for veterans' entitlements;
- b. Clasp 'MALAYSIA' to the Australian Active Service Medal (AASM);
- c. Returned from Active Service Badge (RASB); and
- d. Clasp 'MALAYSIA' to the General Service Medal 1962 for those who served in RCB until 14 February 1975.

6. The Tribunal also received 29 other written submissions, including one from an ex-service organisation and one from the Department of Defence. Of the individual submitters, 15 were in favour of upgrading the Australian Service Medal (ASM) with Clasp 'SE ASIA' to AASM with Clasp 'MALAYSIA' or 'SE ASIA' and three against. Three ex-Royal Australian Air Force members sought inclusion of members who served at the Royal Malaysian Air Force Base Butterworth in any consideration of the RCB. One submitter requested consideration of post 1989 service and five simply provided a statement to the Tribunal without specifying what they sought.

7. The Tribunal heard oral evidence from five individuals, as well as a group representing the RCB Review Group and two representatives of the Department of Defence. The claimants contended that they are, or should be made, eligible for the AASM and the associated benefits because the service they rendered was 'warlike service'.

8. The RCB came into being in 1970 after the Australian Government decided to station a company of infantry at Butterworth Air Base on a rotational basis, following the withdrawal of British forces from the region and the relocation of the Australian and New Zealand infantry battalions from Terendak in Malaysia to Singapore. Butterworth Air Base is located on the Malayan Peninsula. Confrontation with Indonesia had ended in 1966 and there was no stated conflict between Malaysia and any other nation at that time. There was some internal unrest in Malaysia led by the Communist Party of Malaya (CPM), whose leader was Chin

Peng. The level of this unrest varied over the years and between locations within Malaysia. Chin Peng signed a peace treaty with the Malaysian Government in 1989.

9. The RCB companies were initially provided from Singapore for about one month each. In 1973 rotation from Australia began with each company spending about three months at Butterworth. No enemy attack ever took place at Butterworth Air Base.

10. In considering all the material before it, including relevant official records, the terms of relevant awards and entitlements and the material and oral evidence provided by the submitters the substantive findings of the Tribunal are:

- a The service rendered by members of the RCB in the period 1970 to 1989 is properly recognised by the award of the Australian Service Medal (ASM) 1945-75 with Clasp 'SE ASIA' or the ASM with Clasp 'SE ASIA';
- b The Tribunal has no jurisdiction in matters of veterans entitlements and has no power to declare service as 'qualifying service' for the purposes of the VEA;
- c The Tribunal has no power to bestow eligibility for the RASB which is awarded automatically with the AASM 1945-75 and with the current AASM;
- d The end date for eligibility for the General Service Medal 1962 with Clasp 'MALAY PENINSULA' is 12 June 1965. No Clasp 'MALAYSIA' exists for this award. The Tribunal finds no justification to recommend the extension of the end date or the creation of a new clasp; and
- e There is no justification for extending the eligibility period for the Australian Service Medal with Clasp 'SE ASIA' beyond the current end date of 31 December 1989, which was requested in one submission.

RECOMMENDATIONS

11. The Tribunal makes the following recommendations:

Recommendation 1: No change be made to the medallic entitlements which currently attach to service with Rifle Company Butterworth in the period 1970 to 1989; and

Recommendation 2: No change be made to the medallic entitlements which currently attach to service with any other unit of the Australian Defence Force at Butterworth in the period 1970 to 1989 or since 1989.

REPORT OF THE TRIBUNAL

CONDUCT OF THE INQUIRY

Introduction

1. The Defence Force Honours and Awards Appeals Tribunal (the Tribunal) is established under the Defence Act 1903. Its functions are set out in s 110UA of the Act. The Minister may direct the Tribunal to hold an inquiry into a specified matter concerning honours or awards and the Tribunal must hold an inquiry and report, with recommendations, to the Minister.

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3. The principal applicant was the RCB Review Group on behalf of individuals who served with the RCB in the period 1970 to 1989.

4. In its written submission and at its appearance before the Tribunal, the RCB Review Group sought the following entitlements:

- a. Qualifying service for veterans' entitlements;
- b. Clasp 'MALAYSIA' to the Australian Active Service Medal (AASM);
- c. Returned from Active Service Badge (RASB); and
- d. Clasp 'MALAYSIA' to the General Service Medal 1962 for those who served in RCB until 14 February 1975.

Members of Tribunal and Declaration of a Conflict of Interest

5. The inquiry was initially undertaken by the following members of the Tribunal:
Mr John Jones, AM (Chair)
Dr Jane Harte
Air Commodore Mark Lax, OAM, CSM (Retd)

6. Following the second meeting of the Panel, the Tribunal accepted the withdrawal of Air Commodore Lax from the inquiry given the involvement of Air Force in conjunction with the activities of the RCB. The inquiry was then completed by Mr Jones and Dr Harte.

Steps taken in the inquiry

7. The Tribunal first met informally on 21 December 2009 when it considered the draft Terms of Reference, the nature of the relevant awards, the strategic setting and previous deliberations.

8. Advertisements were placed in the major newspapers nationally on 1 May 2010 giving notice of the inquiry and the calling for submissions. Submissions closed on 7 June 2010.

9. On 3 May 2010 the Tribunal wrote to key organisations, and the Department of Defence, advising them of the inquiry and inviting them to make submissions. The Tribunal also wrote to individuals who had previously made representations to the Minister and the Directorate of Honours and Awards, Department of Defence about the denial of the award of the Australian Active Service Medal (AASM) with the Clasp 'SE ASIA' and various other medals and awards to the members of the RCB.

10. The Tribunal received 30 written submissions from individuals and groups as well as from the Department of Defence. Attached at Appendix 1 is a list (confidential) of the individuals who made written submissions. Of the individual submitters, 13 were in favour of upgrading the Australian Service Medal (ASM) with Clasp 'SE ASIA' to an AASM with the Clasp 'SE ASIA' and three against. Three ex-Royal Australian Air Force (RAAF) members sought inclusion of members who served at Royal Malaysian Air Force (RMAF) Base Butterworth to be included in any consideration of the RCB. One submitter requested consideration of post 1989 service and five simply provided a statement to the Tribunal without specifying what they sought. A summary of their arguments and what was sought is set out below.

11. The meetings of the Tribunal are set out in Appendix 2.

12. At its meetings on 20 July 2010 in Brisbane and 21 July 2010 in Canberra, the Tribunal heard oral submissions from five individuals and one representative group as well as two representatives of the Department of Defence. Appendix 2 lists these presenters.

Historical background and the circumstances in which members of the Rifle Company Butterworth rendered service in Malaysia between 1970 and 1989.

13. In February 1969, the Prime Minister of Australia, the Rt Hon John Gorton MP, made a statement in the House of Representatives to 'inform the House of what the Australian Government is prepared to do militarily in Malaysia-Singapore after the British withdrawal from those areas and to set this in the context of our general interest in, involvement in and thinking concerning the region'.¹ In his statement, the Prime Minister described the current situation and the Government's plans to continue to contribute to the security and stability of the region in the circumstances of the planned withdrawal of all British forces by the end of 1971.

14. Two squadrons of Mirage aircraft were to be located at Butterworth (except for one section of 8 aircraft which would be stationed in Singapore), and Australia and New Zealand would each maintain a naval ship in the area. The Prime Minister announced that the Australian infantry battalion then stationed in Terendak, in Malaysia, would be relocated to Singapore, as would the New Zealand battalion.

15. The plan included no ground forces to be stationed in Malaysia. The Prime Minister further stated that 'one company will be detached in rotation to Butterworth except on occasions when the whole force is training either at the Jungle Warfare School or elsewhere in Malaysia.'² The Prime Minister explained that the forces deployed in Malaysia and

¹ Prime Minister's Statement to Parliament dated 25 February 1969.

² *ibid.*

Singapore would be stationed there under the then existing arrangements of the Anglo-Malayan Defence Agreement³.

16. The Prime Minister's statement specified that '...they are not intended for use, and will not be used for the maintenance of internal civil law and order ...' This appears to be a clear reference to the insurgency campaign which was then being waged by the Communist Party of Malaya (CPM) under the leadership of Chin Peng.

17. The Prime Minister continued that, 'Their presence, and their military co-operation with Malaysia and Singapore, are not directed against any other country in the region, and this we believe is well understood and accepted'. In the context of the cessation of Confrontation, through the treaty which was signed with Indonesia in 1966, it is evident that Malaysia was not engaged in armed conflict with any external power when the decision to rotate troops through Butterworth was announced.

18. Rotation of Australian companies to Butterworth Air Base began in 1970 and continued until 1973 when the first company was sent from Australia.

19. Companies from Australia have continued the rotational presence at Butterworth since 1973. At all times, their role has been defensive, limited to within the Butterworth Air Base, and their rules of engagement have been restrictive. After 1970, Chin Peng's insurgency campaign waxed and waned until he signed a peace treaty with the Malaysian Government in 1989, but no attack on the Butterworth Air Base ever eventuated.

20. Australian Defence Force personnel have been stationed at Butterworth Air Base continuously since 1970. RAAF personnel, and some attached personnel from the other defence services, have served at the base for lengthy postings while the RCB has operated on a rotational basis. In the period 1970 to 1973, when the RCB was provided by the battalion stationed in Singapore, the length of the rotation was usually one month. Since August 1973, when the first RCB was provided by a battalion based in Australia, the tour of duty has usually been three months.

21. Throughout the period 1970 to 1989, and since 1989, RAAF personnel were able to be accompanied by their families, who lived both on the base and nearby. Australian personnel and families have always been permitted to take leave and to travel in the local area, although travel to the northern area of Malaysia near the border with Thailand was prohibited at times, when the Malaysian operational tempo against the CPM was high in that area.

³ The Anglo-Malayan Defence Agreement (AMDA), a bilateral defence agreement, was initiated in 1957 to provide a security umbrella for the newly independent Malaya. When Malaysia was created in 1963, the AMDA was renamed the Anglo-Malaysian Defence Agreement, which in turn was later replaced by the Five Power Defence Arrangement (FPDA).

SUMMARY OF THE ARGUMENTS OF THE CLAIMANTS AND THE SUBMITTERS

Arguments submitted by the RCB Review Group

22. The principal argument of the RCB Review Group⁴ is that the conclusion reached by previous reviews - that the service rendered was peacetime service - is incorrect. The Review Group's argument is that the threat, to which the RCB was exposed, created an expectation that casualties would result from that service.

23. The RCB Review Group contends in its submissions that the Government's stated purpose in authorising the deployment of the RCB 'for training purposes' was not its real purpose. The RCB Review Group says that the Government did not declare its real intent or the operational nature of the deployment because of 'political sensitivities for both Australia and Malaysia'.

24. The RCB Review Group goes on to cite the existence of 'contingency plans for the RCB to be used in the evacuation of Australians and the RAAF assets and to be used in any action required arising from hi-jacked aircraft landing at Butterworth' as justification for the granting of an entitlement to the AASM.

25. Further argument presented by the RCB Review Group refer to contemporary intelligence reports and briefings which detailed the capabilities and potential threats of the CPM and the Communist Terrorist Organisation (CTO) which were opposed to the Malaysian Government, as well as referring to incidents which occurred in the areas external to the Butterworth Base.

26. The RCB Review Group argument includes the assertion that 'the fact that no attack occurred on the BAB⁵ can be attributed to the RCB's presence as a deterrent on the enemy'.⁶

Other Submitters Supporting the RCB Review Group Argument

27. Most submitters who supported the RCB Review Group submission provided accounts of their own experience while serving with the RCB. These accounts detailed the preparation which members of the RCB undertook before deployment, including training and briefings as well as their perception of the danger to which they were exposed and the fact that they carried live ammunition at times during their deployment.

28. One submitter who served with the RCB sought extension of the period of eligibility for the medallic recognition of service with the RCB beyond 1989. No argument was advanced for such extension.

29. Several individuals who served at Butterworth as members of the RAAF made submissions arguing that any change in entitlement to medallic recognition for members of

⁴ The RCB Review Group is a group of former RCB members who have been lobbying for an upgrade of the ASM to the AASM.

⁵ BAB is used in the RCB submission as the abbreviation for Butterworth Air Base.

⁶ Rifle Company Butterworth Review Group Submission to the Minister of Defence – "Review of Australian Army Rifle Company's Military Service as Warlike 1970 – 1989 Butterworth (RCB)" dated 18 August 2006 and forwarded to the Tribunal August 2008, p 6, para 17.

the RCB should be extended to RAAF members who served at Butterworth, but none of these actually supported such change being made.

30. One submission, received from an individual who served in Malaysia with the 4th Battalion, Royal Australian Regiment (4RAR) in 1966 and 1967, argued that any change in entitlement to medallic recognition for members of the RCB should be extended to members of 4RAR.

Arguments against any change to entitlement

31. A number of individuals made submissions arguing that service with the RCB did not justify the award of an AASM particularly when compared to other areas and periods of service which they had undertaken. This line of argument was that there have been many other situations which were more threatening and perceived to be more deserving of the award of an AASM than service with the RCB.

32. Two senior officers who had served at Butterworth presented evidence to the Tribunal based on their experience. Both officers clearly expressed the view that the role of the RCB and the nature of service experienced at Butterworth in their times at the Base did not provide any justification for the award of the AASM.

Department of Defence position

33. The Department of Defence has consistently argued that there is no justification for any further award entitlement in respect of service with the RCB. This conclusion is based on advice in 2009 provided by the Nature of Service Review⁷ team which was tasked to examine the submission of the RCB Review Group when it was previously submitted to the Minister of Defence in 2006. The crux of the Department's position is that service with the RCB cannot be characterised as 'warlike' service, which is defined as a state of declared war, combat operations against an armed adversary and/or peace enforcement operations under Chapter VII of the United Nations (UN) Charter. The submission cites support for this position from the earlier findings of the 2003 Clarke Review of Veteran's Entitlements.

34. In its submission, the Department of Defence argues that:

The Governor-General cannot declare an operation or Defence activity to be warlike for the purpose of the [AASM] or [ASM] Regulations...without the Government first agreeing that the service is or was warlike in nature and the Minister has declared this to be the case under the [VEA] Act 1986.

(Ref Defence submission)

35. Defence does not support the upgrade of service with the RCB to warlike status and therefore does not support the award of an AASM.

⁷ Defence Submission to the Defence Honours and Awards Tribunal - VCDF/OUT/2010 dated 23 June 2010, para 46.

MEDAL REGULATIONS

Australian Service Medal with Clasp 'SE ASIA'

36. The ASM was approved in 1988, and may be awarded for service in, or in connection with a prescribed non-warlike operation. Requirements for eligibility for the ASM 1945-75 with Clasp 'SE ASIA' are determined in Commonwealth of Australia Gazette No. S 230 of 29 June 2001.

37. Requirements for eligibility for the ASM with Clasp 'SE ASIA' are determined in Commonwealth of Australia Gazette No. S 64 of 28 February 2002.

38. The relevant prescribed operations for the purpose of this inquiry were declared to be:

- 1) In respect of the ASM 1945-75, 'Defence Force activities on land in Malaysia, except those warlike operations prescribed from time-to-time by the Governor-General that occurred on the Thailand-Malaysia border, during the following periods:
 - a) that commenced on 1 August 1960 and ended on 16 August 1964,
 - b) that commenced on 12 August 1966 and ended on 14 March 1975';
and
- 2) In the case of the ASM, 'Defence Force activities on land in Malaysia during the period that commenced on 14 February 1975 and ended on 31 December 1989'.

39. The determinations in both Gazettes provided 'that the Medal with clasp SE ASIA may be awarded to a member of the Australian Defence Force who rendered service as such a member while posted to or serving as a member of the Australian element of the declared operation for a period of 30 days, or for periods amounting in the aggregate to 30 days'.

Clasp 'SE ASIA' to the Australian Active Service Medal

40. The AASM, created by Letters Patent dated 13 September 1988, is an award made under the Australian system of honours and awards. The AASM was instituted 'for the purpose of according recognition to members of the Defence Force and other certain persons **who render service in certain warlike operations**' (emphasis added). A copy of the Letters Patent is at Appendix 4.

41. Clause 4(1) of the Regulations that govern the AASM provided that the medal may be awarded for services in connection with a 'prescribed operation'. Clause 3 of the Regulations gave the Governor-General, on the recommendation of the Minister for Defence, the power to declare a 'warlike operation' in which members of the Australian Defence Forces were involved on or after 14 February 1975 as a 'prescribed operation' for the purposes of Regulations.

42. The eligibility dates for the award of the AASM 1974-75 with Clasp 'MALAYSIA' have been declared to be 17 August 1964 to 11 August 1966 per Commonwealth of Australia Gazette No. S 141 of 10 July 2010. There is no Clasp 'MALAYSIA' to the award of the AASM.

General Service Medal 1962

43. The eligibility criteria for the General Service Medal 1962 are set out as follows: for Army personnel, service for 30 days in the Malay Peninsula/Singapore during the period 17 August 1964 to 12 June 1965 or until 11 August 1966 for service in Sabah, Sarawak or Brunei. This is an Imperial award and the terms for its eligibility are determined by the United Kingdom Government.

VETERANS' ENTITLEMENTS

44. In their appearance at the Tribunal hearing held in Brisbane on 20 July 2010, the representatives of the RCB Review Group expressed surprise and disappointment on being advised that the Tribunal has no powers, nor any role, in the determination of eligibility for repatriation benefits for veterans.

45. In its 2008 inquiry into service with 4RAR in Malaysia in 1966 and 1967, the Tribunal encountered similar misunderstanding of its role. In the report of that inquiry, the Tribunal described at length the relationship between honours and awards and repatriation benefits. For the benefit of the current and any future interested parties that description is repeated here:

Relationship between honours and awards and repatriation benefits

35. Eligibility for repatriation benefits is governed by the *Veterans' Entitlements Act 1986* (Cth) (VEA). There is no formal legal connection between eligibility for the award of medals and repatriation benefits: see *Re Eastman and Repatriation Commission* (1992) 28 ALD 253; *Re Revill and Repatriation Commission* [2001] AATA 385 [47]. In those cases, the fact that the applicants for repatriation benefits had received active service medals did not also qualify them for such benefits.

36. It has been recognised that, in any case, it is undesirable for eligibility for medals and benefits to be seen as interdependent. This has been acknowledged in previous inquiries. For example, Principle 10 of the Report of the Committee of Inquiry into Defence and Defence-related Awards, 1994 (CIDA Report) states:

Matters relating to honours and awards should be considered on their merits...and these considerations should not be influenced by the possible impact, real or perceived, on veterans' entitlements.

37. Likewise in the Review of Service Entitlement Anomalies in respect of South-East Asian Service 1955-75, 2000 (Mohr Report), Preface p xxxii, it is said:

I hasten to confirm the generally expressed view that the receipt of medals does not necessarily mean that repatriation benefits would flow as a natural consequence or vice versa. The two areas of benefits are really unconnected and for good reasons...It is my opinion that for the future a policy should be clearly laid down that the recommendation for the award of a campaign medal and the subsequent award of such a medal does not carry with it any entitlement to repatriation benefits.

38. However, there can be a practical connection flowing from the nature of the service rendered by a member. The service can be such that it warrants recognition through the award of a medal and that same service can be of a kind that is appropriate to qualify the member for assistance by way of repatriation benefits. Service against a hostile enemy exemplifies this situation. None the less, it must be recognised that the award of medals starts from a different premise than eligibility for repatriation benefits.

39. In 1944, the Minister for External Affairs and Attorney-General, Dr H V Evatt, described the *Australian Soldiers Repatriation Act 1920* (the then legislation relating to repatriation benefits) as legislation that ‘represents the desire of the Australian people, through their National Parliament, to ensure that members of Australia’s gallant fighting forces who have become wounded or sick as a result of their service shall be properly cared for, and that they and their dependants, and the dependants of deceased members, shall be provided for by a war pension and otherwise assisted in the economic struggle of life’.⁸

40. The courts have often reiterated that repatriation legislation is beneficial in content and is to be interpreted broadly with this in mind.

41. Medals on the other hand are awarded to mark a member’s service. There are strict rules governing eligibility. A member must demonstrate entitlement. The Tribunal understands that it is the policy of the Department of Defence that, if eligibility for the award of a medal is to be extended, the onus falls on the proponents of the change to make out a case. The Tribunal accepts this approach⁹

46. The submission from the RCB Review Group is based on the assertion that service with the RCB constituted warlike service. The terminology relating to eligibility for the AASM suggests a ‘prescribed operation’. The terms ‘warlike’ and ‘non-warlike’ are not defined in the medal regulations and determination of warlike or non-warlike service is at the discretion of the Minister of Defence. However, the Tribunal has previously been informed of the definitions of warlike and non-warlike operations that are used by Government for the purposes of determining eligibility for benefits for members. Although these definitions have not been given legal standing in relation to entitlements to medals, they do provide a basis for assessing the warlike nature of an operation. The definitions are as follows:

Warlike operations

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

- a state of declared war;
- conventional combat operations against an armed adversary;
- Peace Enforcement operations which are military operations in support of diplomatic efforts to restore peace between belligerents who may not be consenting to intervention and may be engaged in combat activities.

⁸ Robin Creyke and Peter Sutherland, *Veterans’ Entitlements Law* 2nd ed, Federation Press, Sydney, 2008, p. 3.

⁹ Defence Honours and Awards Tribunal Report: *Inquiry into Recognition for Australian military personnel who served with 4th Battalion, Royal Australian Regiment in Malaysia in 1966 and 1967*, February 2009.

Normally, but not necessarily always, these operations will be conducted under Chapter VII of the UN Charter, where the application of all necessary force is authorised to restore peace and security or other like tasks.

The eligibility criteria for the award of a service medal for warlike service is generally one day or more on the posted strength of a unit or formation allotted (or assigned) to and serving in the operational area, or one operational sortie into or over the operational area from a unit allotted for such service. Visits or occurrences of a temporary nature usually attract a 30 day qualifying period.

Non-Warlike operations

Non-warlike operations are defined as those military activities short of warlike operations where there is risk associated with the assigned task(s) and where the application of force is limited to self defence. Casualties could occur but are not expected. These operations encompass but are not limited to:

- Hazardous. Activities exposing individuals or units to a degree of hazard above and beyond that of normal peacetime duty such as mine avoidance and clearance, weapons inspections and destruction, Defence Force Aid to the Civil Authority, Service protected or assisted evacuations and other operations requiring the application of minimum force to effect the protection of personnel or property, or other like activities.
 - Peacekeeping. Peacekeeping is an operation involving military personnel, without powers of enforcement, to help restore and maintain peace in an area of conflict with the consent of all parties. These operations can encompass but are not limited to:
 - activities short of Peace Enforcement where the authorisation of the application of force is normally limited to minimum force necessary for self defence- activities, such as the enforcement of sanctions in a relatively benign environment which expose individuals or units to 'hazards' as described above under hazardous;
 - military observer activities with the tasks of monitoring ceasefires, re-directing and alleviating ceasefire tensions, providing 'good offices' for negotiations and the impartial verification of assistance or ceasefire agreements, and other like activities; or
 - activities that would normally involve the provision of humanitarian relief.

The eligibility criteria for the award of a service medal for non-warlike service is generally 30 days or more in the operational area, or 30 or more sorties into or over the operational area. Visits or occurrences of a temporary nature also usually attract a 30 day qualifying period.

Notes:

- 1) Humanitarian relief in the above context does not include normal peacetime operations such as cyclone or earthquake relief flights or assistance.
- 2) Peacemaking is frequently used colloquially in place of peace enforcement. However, in the developing doctrine of peace operations, peacemaking is considered

the diplomatic process of seeking a solution to a dispute through negotiation, inquiry, mediation, conciliation or other peaceful means.

3) Peacetime is routine operations short of warlike or non-warlike.

THE EVIDENCE

47. 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. Many of the witnesses who appeared and some of those who provided written submissions cited the readiness requirements which they met during their deployment. The Tribunal was impressed with the sincerity of these recollections.

48. The RCB Review Group's evidence included a claim that soldiers were required to sign a form volunteering for service at Butterworth but neither they nor the Tribunal's research officer were able to locate such a form.

49. Arguments were presented about the level of threat provided by Chin Peng's forces and the attendant danger to which the members of the RCB were exposed. These arguments were strongly put.

50. The evidence of the two senior officers contrasted with that of the claimants. Both spoke at length about the security situation which existed at Butterworth during their service at the base and the activities of the RCB. Both concluded that service at the base, while arduous, did not include any actions or activities which they would describe as warlike.

51. In late 1971 an exchange of notes between the Government of Australia and the Governments of Malaysia and Singapore took place under the Five Power Defence Arrangement which was then current. In the exchange with the Government of Malaysia, Australia and Malaysia agreed that the 'Australian Force stationed at Butterworth, composed of two squadrons of fighter aircraft and their supporting units *and from time to time an infantry company* (emphasis added) ... in accordance with the purposes expressed in the Five-Power Communiqué of the 16 April 1971'.¹⁰

52. This note reinforced the Prime Minister's statement of 25 February 1969 (referred to earlier in this report) in as much as it was clear that it was not expected that the company would always be present at Butterworth. The Prime Minister's statement had specified that training and exercises, involving the whole battalion elsewhere, would require the company to be taken away from Butterworth. This lends weight to the view that the RCB was not an integral part of the defence of the base and the purpose of the deployment was to provide an Australia military presence in Malaysia after the British withdrawal from the region and the Australian and New Zealand redeployment from Terendak to Singapore. This perceived need for 'presence' was articulated by the Secretary of the Department of Army in a letter to the

¹⁰ Australian Treaty Series 1971 No 21 para 1 (1) (c) at <http://www.austlii.edu.au/au/other/dfat/treaties/1971/21.html>

Secretary of the Department of Defence dated 19 May 1969¹¹. The letter begins, 'I refer to your letter of 11 Apr 69 and accept that the general Government intention underlying the detachment of a company to Butterworth is to provide a real sense of ground force presence in Malaysia for most of the year'.

53. In paragraph 9 of the same letter, the Secretary outlines the command arrangements for the RCB. He explains that each company will remain under command of Commander 28 Commonwealth Brigade, which remained based in Singapore. Significantly he goes on to say that 'Should an emergency arise and Army assistance for local ground defence be required the company would be placed at the disposal of AOC Butterworth in accordance with agreed arrangements'. This is an important statement because it makes clear that assistance with local defence would only be provided in an emergency and would not be a primary role for the company. It is noted that such an emergency did not arise at any time.

54. That the purpose of the RCB was to demonstrate ground force presence, as expressed by the Secretary, is reinforced by the Chief of the General Staff in a letter to the commander of Far East Land Force (FARELF) dated 23 May 1969. In the staff instruction which was titled 'Infantry Company to Butterworth' and issued by 28 Commonwealth Brigade on 22 October 1970, the purpose of the detachment of a company to Butterworth was expressed as: 'to provide an Australian (or New Zealand) Army presence in Malaysia additional to the normal training activities carried out in the State of Johore'. The statement of purpose went on to say that the company might be used to supplement the protective security or assist in the protection of RAAF families in an emergency.

The Tribunal's Findings

55. The Tribunal could find no convincing evidence from the material submitted to it that the service of the RCB was warlike.

56. Happily, no battle casualties resulted from service with the RCB and no armed encounter with any enemy force occurred. The documentation provided to the Tribunal by the Department of Defence and its own research officer indicates persuasively that there was no expectation of casualties when the decision to position a company at Butterworth was made, nor subsequently.

57. In considering all the material before it, including relevant official records, the terms of relevant awards and entitlements and the material and oral evidence provided by the submitters the substantive findings of the Tribunal are:

- a The service rendered by members of the RCB in the period 1970 to 1989 is properly recognised by the award of the Australian Service Medal with Clasp 'SE ASIA';
- b The Tribunal has no jurisdiction in matters of veterans entitlements and has no power to declare service as 'qualifying service' for the purposes of the VEA;
- c The Tribunal has no power to bestow eligibility for the RASB which is awarded automatically with the AASM 1945-75 and with the current AASM;

¹¹ Letter from the Secretary, Department of the Army to the Secretary, Department of Defence, dated 19 May 1969, AWM200 R579/1/17G PART 1

- d The end date for eligibility for the General Service Medal 1962 with Clasp 'Malay Peninsula' is 12 June 1965. No Clasp 'MALAYSIA' exists for this award. The Tribunal finds no justification to recommend the extension of the end date or the creation of a new clasp; and
- e There is no justification for extending the eligibility period for the Australian Service Medal with Clasp 'SE ASIA' beyond the current end date of 31 December 1989, which was requested in one submission.

58. In making its findings the Tribunal does not wish it to be inferred that the valuable contribution that was made by members of the RCB in Malaysia between 1970 and 1989 is in any way diminished.

RECOMMENDATIONS

59. In conclusion and in light of its findings the Tribunal makes the following recommendations:

Recommendation 1: No change should be made to the medallic entitlements which currently attach to service with Rifle Company Butterworth in the period 1970 to 1989; and

Recommendation 2: No change should be made to the medallic entitlements which currently attach to service with any other unit of the ADF at Butterworth in the period 1970 to 1989 or since 1989.

APPENDICES

APPENDIX 1 – Submissions

The Tribunal received submissions from the following people and organisations:

[Note: Names have been omitted as submissions are received in confidence]

APPENDIX 2 – Tribunal Hearings

21 December 2009

Tribunal Members

Chair: Mr John Jones

Members: Dr Jane Harte
Air Commodore Mark Lax, OAM, CSM (Retd)

15 June 2010

Tribunal Members

Chair: Mr John Jones

Members: Dr Jane Harte
Air Commodore Mark Lax, OAM, CSM (Retd)

20 July 2010 – Brisbane

Tribunal Members

Chair: Mr John Jones

Member: Dr Jane Harte

Witnesses

Lieutenant Colonel Guy Bagot LVO

RCB Group

Lieutenant Colonel Ted Chitham MC (Retd)

Mr Greg Decker

Mr Robert Cross

Mr Stan Hannaford

Wing Commander Joe Piers (Retd)

20 July 2010 – Canberra

Tribunal Members

Chair: Mr John Jones

Member: Dr Jane Harte

Witnesses

Department of Defence:

Nature of Service Review Team

Brigadier David Webster AM, CSC (Retd)

Directorate of Honours and Awards
Pat Clarke, Director

David Moles DFM (Teleconference)

MAJ David Siggers (Teleconference)

Lieutenant Colonel P M (Mike) Dennis MBE (Retd) (Teleconference)

24 August 2010

Tribunal Members

Chair: Mr John Jones

Member: Dr Jane Harte

APPENDIX 3 – Other material reviewed by the Tribunal during the course of the inquiry

Published Sources

Robin Creyke and Peter Sutherland, *Veterans' Entitlements Law* 2nd ed, Sydney: Federation Press, 2008

Reports

Defence Honours and Awards Tribunal

Inquiry into Recognition for Australian military personnel who served with 4th Battalion, Royal Australian Regiment in Malaysia in 1966 and 1967, February 2009

Department of Defence

Review of Service Entitlement Anomalies in Respect of South East Asian Service 1955-1975 2000 (Mohr Report)

Department of Veterans' Affairs

Review of Veterans' Entitlements 2003 (Clarke Report)

Internet Sources

<http://www.austlii.edu.au/au/other/dfat/treaties/1971/21.html>

Archival Sources

Australian War Memorial

Series AWM200

R579/1/17G PART 1 Headquarters, Far East Land Forces [FARELF]. Infantry coy
Butterworth

Series AWM207

587/F3/1 PART 1 Headquarters ANZUK Force, Infantry coy to Butterworth (Including Policy)

587/F3/1 PART 2 Headquarters ANZUK Force, Infantry coy to Butterworth

APPENDIX 4 – Letters Patent for the Australian Active Service Medal



Elizabeth R



ELIZABETH THE SECOND, by the Grace of God Queen of Australia
and Her other Realms and Territories, Head of the Commonwealth:

TO ALL to whom these Presents shall come,

GREETING:

WHEREAS it is desirable that there be instituted an Australian medal for the purpose of according recognition to members of the Defence Force and certain other persons who render service in certain warlike operations:

KNOW YOU that We do by these Presents institute a medal to be designated and styled the Australian Active Service Medal:

AND WE DO ordain that the award of the Australian Active Service Medal shall be governed by the Regulations set out in the Schedule.

IN WITNESS whereof We have caused these Our Letters to be made Patent.

GIVEN under the Great Seal of Australia at Our Court at St James's on 13 September 1988.

By Her Majesty's Command,



Bob Hawke
Prime Minister

SCHEDULE

AUSTRALIAN ACTIVE SERVICE MEDAL REGULATIONS

Short title

1. These Regulations may be cited as the Australian Active Service Medal Regulations.

Interpretation

2. In these Regulations—

“clasp” means a device to denote a prescribed operation;

“Defence Force” has the same meaning as in the *Defence Act 1903*;

“Medal” means the Australian Active Service Medal;

“Minister” means the Minister of State for Defence;

“prescribed operation” means an operation in respect of which a declaration has been made under regulation 3.

Declaration of prescribed operations

3. The Governor-General, on the recommendation of the Minister, may declare a warlike operation in which members of the Defence Force are, or have been on or after 14 February 1975, engaged, to be a prescribed operation for the purposes of these Regulations.

Conditions for award of the Medal

4. (1) The Medal may be awarded for service in or in connection with a prescribed operation.

(2) The conditions for the award of the Medal are the conditions determined by the Governor-General on the recommendation of the Minister.

(3) Any subsequent award of the Medal to the same person shall be made in the form of a further clasp to the Medal.

(4) The persons to whom the Medal may be awarded are—

(a) persons who served in a prescribed operation as members of the Defence Force; and

(b) persons included in a class of persons determined by the Minister, for the purposes of this regulation.

(5) The Medal may not be awarded except to a person who fulfils the conditions for the award of the Medal.

Making of awards

5. Awards of the Medal shall be made by the Governor-General on the recommendation of the Chief of the Defence Force or his delegate.

Design of the Medal

6. The design of the Medal shall be as prescribed.

Wearing of the Medal

7. The manner of wearing the Medal shall be as determined by the Governor-General.

Registrar of Awards

8. (1) There shall be a Registrar of Awards who shall be appointed by the Governor-General and who shall maintain a Register of the names of persons to whom the Medal has been awarded.

(2) The Registrar shall keep such other records relating to the award of the Medal as the Governor-General directs.

Cancellation and reinstatement

9. (1) The Governor-General may cancel an award of the Medal and may reinstate an award so cancelled.

(2) Where an award of the Medal is cancelled, the name of the person to whom the award was made shall be erased from the Register and the person shall return the Medal to the Registrar.

(3) Where an award that has been cancelled pursuant to sub-regulation (1) is reinstated, the Registrar shall restore the entry or entries in the Register that had been erased.