



ROYAL AUSTRALIAN REGIMENT ASSOCIATION SOUTH AUSTRALIA

13 Beatty Street, LINDEN PARK SA 5065

General DJ Hurley AC, DSC
Chief of the Defence Force
R1-5-B CDF Suite
Department of Defence
Canberra ACT 2600

Mr Pat Clarke
Director Honours
Directorate of Honours and Awards
T-4-08
205 Anketell Street
Tuggeranong
ACT 2900

Dear Gentlemen,

FOI Report VCDF/OUT/2010/492 Submission to the Defence Honours and Awards Tribunal (DHAT) Inquiry into the Recognition of Members of Rifle Company Butterworth for Service in Malaysia between 1970 and 1989 dated 23 June 2010.

Reference A: The above report.

Reference B: DHAT Report of the Inquiry into recognition for members of Rifle Company Butterworth for service in Malaysia between 1970 and 1989.

1. My name is LtCol Mike Dennis, MBE (Rtd) and I have been appointed by the Board of the Royal Australian Regiment Corporation Inc to investigate and report on anomalies in the Defence Honours and Awards system on how members past and present of The Regiment are disadvantaged in non-recognition of service. The most pressing and blatant of these is service with Rifle Company Butterworth.
2. Mr Pat Clarke thank you for approving release of the document under FOI.
3. General Hurley, I know Mr Clarke prepared the document but it was endorsed and approved by you and you are the only one who can correct this anomaly.

4. The Defence submission is an interesting document in what it says and what it doesn't say. It highlights in detail the confused and confusing history of the Honours and Awards system but it does not highlight the many occasions in which the Gratiation Report Statement of Principles have been ignored, manipulated or misrepresented. This subject on Defence Honours and Awards Policy is a much broader topic which needs investigation, clarification and to reflect modern and legally just policies which I do not intend to address here.
5. What the document does not say in any detail is the factual background to the deployment of RCB, the rules it operated under, command and control, the Nature of Service (NOS) of RCB compared with RAAF service in the same area, history of the Second Communist Uprising in Malaysia and most importantly the definitions of danger as determined in law by The Hon Justice Mohr and expanded on by The Hon J Clarke QC.
6. The historical detail in the DHAT Report (ref B) para's 13,14,15,16,17 and 18 are correct only as at Feb 1969 when PM Gorton was in power. These troops were provided by 28 ANZUK Bde, but their performance in their duties was not acceptable to the RAAF, as they were absent from the base on many occasions.

7. Fast forward to 11 Jan 1973, SECRET AUSTEO Minutes of Defence Committee Meeting 11 Jan 1973. Para 25 "Opportunities for exercising with Malaysian and Singaporean ground forces on a significant scale do not at present exist. Exercise by visiting small Australian ground units could take place (Provided Malaysia continued to make facilities available) on an Australian-only basis or in conjunction with UK and NZ units if available. But the international political value would be questionable.

Para 28 (e) of the same reference stated "when the Australian battalion is withdrawn the requirement for a company for security duties at Butterworth will be met by providing the unit, on rotation, from Australia. This could be presented publically as being for training purposes".

Those in attendance at that meeting Sir Arthur Tange CBE, Secretary Department of Defence, Admiral Sir Victor Smith KBE, CB, DSC Chairman Chiefs of Staff Committee, Vice Admiral Sir Richard Peak, KBE, CB, DSC Chief of Naval Staff, Lieutenant-General Sir Mervyn Brogan, KBE, CB Chief of General Staff, Air Marshall C F Read CB, CBE, DFC, AFC Chief of Air Staff, Sir John Bunting, CBE Secretary Department of Prime Minister and Cabinet, Sir Keith Waller, CBE Secretary, department of Foreign Affairs and Dr R S Craik, OBE Representing Secretary of the Treasury.

8. **Comment:** What is not known was the opinion of PM Gough Whitlam at that time, but I would suggest that the training excuse would have been used by officials to brush the topic under the carpet and one need's to look at Whitlam's reaction to the 1975 airlift from Saigon when he found members of the RCB on the first flight to gauge his real feelings on the issue.
9. "**Security Duties**" A dictionary quotes "freedom from danger, something that secures or makes safe, and something given as a pledge that a person will fulfill some duty or promise".
10. Further documents that prove training was not the real reason for deployment and that the Communist threat was real include The CONFIDENTIAL document VCGS Visit Report Dated Nov 73 stated "The deployment of this company to Butterworth has in recent years assumed a real importance because of somewhat increased concern about possible threats to base security.

Although the Malaysians may be expected to have assumed that this is the case, publically and privately the position is maintained on both sides that the deployment is for exercise purposes”.

11. CONFIDENTIAL document Minutes of the Chief of Staff Committee Meeting held on 17 Oct 1973 discussion centered around the difficulties in finding training areas and MAF elements to train with. Discussion centered around the proposal to train in Johor whereupon the Chief of Air Staff (CAS) supported the Chief of Naval Staff (CNS) commented “that in moving away from Butterworth for training, the Committee was losing sight of the primary task of the company”.
12. A further CONFIDENTIAL document Minutes of the Chief of Staff Committee of 24 Oct 1973 in discussing the previous document that if training did occur in Johor, Plan Asbestos may need to be revised. The CGS undertook to look into this aspect, adding that some qualification on remaining remote from CT areas might be necessary. A hand written side note stated “recognizing that CT areas existed”. Further in the document a hand written note in regards to the primary task of the company stated “Yes a telling point”. Further on in regards to being able to deploy overseas stated “an added benefit of training to the primary task – security”.
13. Letter from the Office of the Minister for Veterans Affairs and Minister Assisting the Minister of Defence dated 21 Jan 2003. “The RCB was established in 1970 as a quick-reaction force to provide protection for Australian assets within the perimeter of RMAF Base Butterworth, due to the continued threat of Communist terrorism within Malaysia. Besides securing protection for the two fighter squadrons within the perimeter of the RMAF base Butterworth , the role of the RCB was to a quick reaction force to meet the Communist threat, and be responsible for internal security within the Air Base”
14. Email communications between Mr C J Duffield on the 11 Aug 2000 and response from Dr Allan Hawke Secretary Department Defence on 4 Sep 2000. Mr Duffield asked questions in regard to RCB. Dr Hawke responded to most questions by deferring to current reviews being undertaken at the time, but to two direct questions, he answered as follows:
 - a) Is it true land forces carried live ammunition due to the threat of Communist Terrorist (CT) attack during this period? Answer – YES
 - b) Is it true that land forces were issued rules of engagement during this period? Answer – YES
15. Restricted Minute 801 of 207/5/14 to the Secretary of Defence and Army on the 4 October 1973 by Group Captain Hoare RAAF Services Advisor recounts a conversations with Brig Gen Mohd Abdullah Samsuddin 6 MIB at Sungei Patani, in regard to joint training that “ he did not see much prospect at present of engaging in combined exercises”. He further stated his forces are committed to operational tasks and have little time for training”

He also warned in para 5 in regard to the Gurun Range training area, that it had been declared an operational area and many restrictions existed in the area. Not of least was his troops had been cleared to open fire on-sight on anyone found in the area and not wearing the appropriate MAF uniforms”. He also stated there was no room for two sets of rules and accordingly discounted the thought of the Company carrying out jungle training the area”

16. The ability to train in Malaysia was limited to Section Size (10 men) up to Platoon Size (30 men) and was limited by available training ranges and safe available close training areas to BAB as well as the CO RAAF BASE BUTTERWORTH giving permission for elements of the RCB being absent from the base and neglecting their prime role.
17. The first training with the Malaysian Armed Forces (MAF) was conducted by A Coy 3 RAR in 1977 which required the company to move to Malaysia one month prior to taking up RCB duties, as it was clear it could not conduct effective training and fulfill RCB Security Duties at the same time. Therefore the lie about training being the prime role was already being exposed and acknowledged by Army. In later years any training with the MAF was undertaken prior to taking up RCB duties. It should be noted that this exercise converted into a MAF operation which the A Coy 3 RAR participated in.
18. Also documentary evidence shows that OC RAAF Butterworth consistently refused limited training options by RCB based on security concerns at the base. A much more cost effective method of training would be to conduct training in Australia where more expansive facilities and environments were available for a fraction of the cost.
19. A major telling point was that RCB activities were commanded and funded by HQ Field Force Command (Operations) not Training Command as they would have been if they were had it been a training activity.
20. In a document recommended by the CDF ADML C Barrie RAN and approved by the Minister Assisting the Minister for Defence B Scott MP:
RECOMMENDATION OF THE REVIEW OF SERVICE ENTITLEMENT IN RESPECT OF THE ROYAL AUSTRALIAN AIR FORCE BASE AND ARMY RIFLE COMPANY BUTTERWORTH SERVICE 1971-1989 dated 18th April 2001 stated:

“The RCB was established in 1970 as a quick reaction force to provide protection for Australian assets within the perimeter of the Royal Malaysian Air Force Base Butterworth due to the continued threat of armed Communist terrorism within its borders. It was initially provided from the ANZUK Australian Force and was formally under operational command of the Commander ANZUK Forces. Besides securing protection for the two jet squadrons within the perimeter of the Air Base, the role of the RCB was to provide a quick-reaction force to meet the communist threat, and be responsible for internal security within Air Base Butterworth. The RCB was not to be involved in local civil disturbances or to be employed in operations outside the gazette area of the Air Base. Rules of Engagement (ROE) for the RCB were specific on “Orders to Open Fire” if threatened and security was breached, but were applied within Air Base Butterworth only, regardless of curfew, periods of increased security, air defence exercises or time of day or night. Although it may have involved patrolling, its ROE was defensive only, not unlike those during UN Peacekeeping operations.

Comment: No mention of training here.

21. Statements by former RCB participants provide evidence of armed communist terrorism close to Air Base Butterworth, including:

- Blowing a bridge seven kilometers north of the Base;
- The ambush of a Malaysian Army convoy at Alor Setar; and
- Daily minor skirmishes with local military and police forces.

Added to the hazards involved for the RCB were the Malaysian Air Force Defence Guards (Handau). These were conscripts who were also employed to provide security to the Air Force Base. Advice from the Army Historical Unit is that they were an additional hazard as they had various levels of training (not particularly good) and it was not unusual for the Handau to overreact when surprised and shoot at the unknown. Such incidents are known to have occurred during RCB quick-reaction response training in which the RCB members came under fire. There is also a known incident in the early 1970's that during such training, a contact was made with Malay terrorists, however this resulted in a "stand-off" situation and although tense, did not result in any exchange of fire or casualties.

22. It should be noted that 6 members of the RAR died on service in performing RCB duties between 1970 and 1989.

23. It is also worth noting on the Army Official Website

http://www.army.gov.au/2_30trggp/RCB1.asp states in the History of RCB. "In December 1973 The Australian Infantry Battalion was redeployed from Singapore to Australia, leaving the Australian Rifle Company Butterworth to continue its tasking as an independent company organization. At this time this was the only operational posting for the Australian Infantry Corp within the South East Asian region. The Australian Rifle Company Butterworth (later known as Rifle Company Butterworth) tasking began to change during the middle to late 1980's from an operational deployment to reflect a training orientated deployment. This finally changed to a non-operational deployment at the end of 1989 when the Royal Australian Air Force down sized its presence within the region. From that time all security arrangements for Butterworth became the responsibility of the Malaysian Defence Force."

24. Reference A the DHAT Report states the AASM cannot be awarded because no defined state of war has been declared. This is partially true, precedence has shown like service in Ubon, a "warlike operation" can be declared in retrospect, to achieve the same objective then providing equality and achieving the spirit of CIDA SOP 3.

25. DHAT and Defence have continually pushed the training role, which then allowed it to dismiss the claims under CIDA Principle 1 and intentionally ignored the operational role therefore hiding RCB's true role from the Australian and Malaysian public.

26. CIDA commonly known as the Gratton Report was written in 1994. The most important parts are the 10 Statement of Principles. Unfortunately the Gratton Report has been prostituted by Defence and DHAT so many times as they selectively use The Statement of Principles to negate claims whilst on other occasions they completely ignore the SOP's and approve on personal whim. The Gratton Report has been rendered impotent and should not be used as an authority on medallic issues.

27. **Statement of Principles.** I have only included the SOP's 1, 3, 8 and 10 which I think are appropriate to the RCB issue.
28. **Principle 1.** Recognition of service by medals (other than medals for long service or special occasions such as a coronation) should only occur when that service has been rendered beyond the normal requirements of peacetime. Normal duties such as training and garrison duties should not be recognized by the award of a medal, even though they may be demanding, hazardous and uncomfortable, and may be undertaken in countries other than Australia. As a general rule, medals should be reserved for the recognition of service in military campaigns, peacekeeping or other military activities clearly and markedly more demanding than normal peacetime service.
29. **Comment.** *The often quoted term GARRISON was first introduced by Gratton. It is not an Australian term. The dictionary quotes it as (n) troops stationed in a fortress or town to defend it. I checked with over 30 ex officers and they said they have never heard it used in an Australian context. We have Barracks, Depots, Bases, Air Bases, Ships and Shore Establishments. The nearest in an Australian context, is Tarin Kowt in Afghanistan. If something needs to be defended it is then not a normal peacetime activity.*
30. **Principle 3.** To maintain the inherent fairness and integrity of the Australian system of honours and awards care must be taken that, in recognizing service by some, the comparable service of others is not overlooked or degraded.
31. **Principle 8.** Recognizing that its work requires viewing past service through the eyes of 1994, the Committee believes that an appropriate benchmark in considering hitherto unrecognized service between 1945 and 1975 is the terms and conditions that are currently attached to an award of the Australian Active Service and Australian Service Medals. Service rendered during this period which generally meets those terms and conditions should receive retrospective and comparable recognition.
32. **Principle 10.** Matters relating to honours and awards should be considered on their merits in accordance with these principles, and these considerations should not be influenced by the possible impact, real or perceived, on veterans' entitlements.
33. **Comment:** *Taking into account this document was published in 1994 the nature of service (NOS), in operations and training have changed dramatically in the last 17 years. No one has been able to explain to me why Defence Cooperation Program (DCP) activities are exempt from recognition as it is only a funding mechanism and many DCP activities deserve recognition in achieving Australia Strategic Policy objectives in the region.*
34. Next DHAT has consistently used SOP 1 to refuse claims, but in its successful Inquiry into SAS CT and Recovery (Training) it did not even address or test the claims of proponents against CIDA SOP 1 which would have rendered to claim in the NEGATIVE. ASM's have been awarded for DCP funded activities as Survey Operations, DCP Training in Solomon's Islands and Timor Leste. Again selective use of references is consistent by DHAT to gain Defence's preferred position.
- Comment:** *Consistently Defence and DHAT do not address CIDA SOP 3 (The fairness test).*
35. **BUTTERWORTH AIR BASE (BAB) NATURE OF SERVICE (NOS)** BAB was a large facility approx. 2 km long and 1 km wide. It had a main airstrip running in a North/South direction. A smaller airstrip crossed the main strip about the 2/3rd mark from the South. Parallel on the Western side was the main Kuala Lumpur to Alor Star Highway in the North. On the Western side of the

Highway to the sea side approx. 500m were some Married Quarters for key RAAF and MAF personnel, the Officers Mess, Sergeants Mess and OR Quarters. MAF Military Police and other MAF elements. To the North of this area was the RAAF Hospital. MAF Military Police were responsible for security on the highway and in the other facilities outside the air base perimeter fence.

36. Within the base starting from the bottom left corner inside the perimeter fence was the RCB area, next to it was the MAF Fighter Flight line which was generally not protected due to its close proximity to RCB. Next was the front gate manned by RAAF Police and MAF MP's. In that central area was also BAB HQ, 3 SQN HQ and 75 SQN HQ. North of this was some other admin areas. On the Eastern side of the base IADS the Joint Force Air Defence area adjacent to the East/West strip.
37. The RCB was the only troops who lived on the base in somewhat basic accommodation. Essentially 4 open tin huts with each soldier having a bed, a side cupboard, a metal trunk at the end of his bed and a mosquito net frame. 30 men to each hut with shared basic ablutions. There was a HQ building, Q Store and Armory and the Storeman slept in the Q Store for quick reaction. Meals were served in the main kitchen and Platoons would march there and back.
38. Also in the area was the Quick Reaction Force Hut which had 12 beds, 3 trucks with searchlights, communications systems and a small kitchenette as well as limited ablutions. Meals were by hot box delivered from the main kitchen. The QRF on base level security levels was a highly armed and ammunition based around a 10 man section that would react instantly to any threat within the base perimeter with clear Rules of Engagement up "Shoot to Kill Level". The performed these duties 24 hours a day. Not "night only" as stated by some reports by Defence.
39. Security Levels would increase to having a Platoon on QRF then to the highest level having the full company on 24 hour standby. The company would deploy a platoon to the Northern end of BAB to prepared defensive positions and to the East side of BAB to similar prepared positions. These increases in standby rates were issued by the BAB Intelligence Officer. It also should be noted that the ammunition holdings for RCB were greater than any Battalion in Australia with MG Ammo, M79 Ammo, M72's Claymore Mines and enough other general ammunition to be able to conduct a small war for over 4 days without requiring resupply from Australia.
40. The main areas of threat were to the North and East of the Base which was surrounded by large open paddy fields where movement was hard to detect. Once week a section would clear the external fence to small arms range and this where mortar base plates were found leading up to a possible attack on the Base.
41. Service by RAAF personnel was totally different to RCB other than the RAAF Police and dog handlers. Most RCB units never came across any RAAF ADG's and if they were there I don't know what they did. RAAF personnel mainly lived on Penang Island where the schools and recreation facilities for families were situated. Members of the RAAF were not armed, they did not do QRF duties, they did not have ROE that allowed them "To Shoot to Kill". In times of serious danger they would congregate in the Area Theatre to be protected by RCB. Much is made about having house staff by Defence and DHAT as reason for not awarding medals. But in

my experience they are a form of local welfare support, most house staff are useless, damage your personal effects, but if you do not have them you will continually be robbed until you employ one.

42. **COMMAND AND CONTROL OF RCB.** RCB was placed under Operational Command of the Officer Commanding RAAF Butterworth by authority of HQ Field Force Command 722/K11/11 from 1973. Various CO RAAF Butterworth would then issue their directive as detailed in the directive of 1978.

- **Command** You are under my operational command in all matters concerning security duties for the protection of Australian assets, property and personnel at Butterworth.
- **Tasks** your company is to be capable of conducting the following tasks in relation to security duties at Air Base Butterworth and training in these tasks is to be completed to my satisfaction before the company participates in other external activities:
 - Cordon and Search;
 - Internal base patrolling;
 - Protection of RAAF Service Police/SSP at established road blocks;
 - Protection of Key Points;
 - Crowd dispersal;
 - Providing a quick reaction force (QRF) a section strength (on immediate standby on a 24 hour a day basis;
 - Providing a reserve force to be activated on deployment of the QRF;
 - Operating mobile tactical lights on likely penetration points;
 - Manning of listening posts and standing patrols by night, including the use of image intensifiers; and
 - Operating Tobias Intruder Detection equipment.

43. These instructions were also issued with the detailed Rules of Engagement.

44. **Comment:** *Both Defence and DHAT have said this was normal peacetime training as in Australia. This is totally incorrect and untrue. In the late 70's and 80' the Army had moved to a Conventional Warfare Training Policy. Many of these training activities in BAB were from the Internal Security Manual which was restricted Training in Australia. Some of the equipment used was particular to RAAF and was not used by Army so to say this was normal Infantry Training is a blatant lie.*

45. Moreover Defence and DHAT have suggested that having an armed section on standby with ROE within a military establishment, is a normal peacetime occurrence. Again I canvassed my 30 ex officers and none of them knew of any bases or barracks in Australia that armed soldiers with ROE patrolled the perimeter. This included those with experience in SAS Swanbourne, SF Swan Island and Signal Intelligence establishments being the most sensitive. What they did highlight in some larger barracks in the 70's and 80's, like a Battalion, a quarter guard mounted at 1600 hours each day and some roving piquet's were armed with a pick handle as they roved through the barracks during the night as a basic form of security. The pick handle was to protect themselves against harassment from drunken soldiers or from the illusive drop bears who were known to habitat the area.

46. Again blatant misrepresentation of facts and evidence.
47. **The Second Communist War in Malaysia** Before anyone in Defence or DHAT comments on the CT situation in Malaysia they should read the Malaysian Army's Battle against Communist Insurgency in Peninsular Malaysia 1968- 1989 published in 2001. Statements have been made by Defence and DHAT that the communist situation was only in the North. Well Butterworth is in the North only 50km from the Betong Salient (Thailand), which was the main access route to the South for the CT's. The 8th Assault Unit was based close to BAB. See the attached maps and details of CT units and there areas of operations. Some within Defence and DHAT say the conflict was low level. Ask the 212 CT's KIA, 150 CT's Captured, 117 Ct's who surrendered or the 155 MAF KIA or 854 MAF WIA if they thought it was low level.
48. Numerous accounts have been acknowledged by Defence (CDF) and DHAD of having CT incidents occurring in and around Butterworth. DHAT have commented somewhat facetiously that the claim that BAB was not attacked was due to the RCB being there. I and many others disagree with that notion. What I do know is I have a Statutory Declaration from a CPL serving in 8/9 RAR on the 28th of August 1973 that they were ambushed by gunfire whilst returning from Selambang Rifle Range.
49. Statements by RCB personnel stating on the 15 Dec 1975 at an introduction briefing for service at Air Base Butterworth for all incoming RAAF and Army personnel given at the Base Theatre, an Australian Army Officer briefed them on the Communist Terrorist (CT) situation around Butterworth area, stating that several "alarming incidents had occurred locally and the CT's were building up for an attack in our immediate area. They had entered the Airbase and carried out several reconnaissance's and "our intelligence" estimates that Air Base Butterworth will be attacked within the next six months. The CT's had taken heart from the recent fall of Saigon/Vietnam and were going to attack the Airbase to "create an International incident.
50. **Comment:** This should be noted in relation to Mohr and Clarke's legal opinion on danger and the precedence set by the awarding of the AASM for very similar service at Ubon.
51. At this 15 Dec 1975 introduction briefing, it was also stated that the CT's had fired two rockets at the pump house on Penang Island but both had failed to detonate.
52. In approximately Mar/Apr 1976, civilian grass cutters who manually cut the grass by hand, using scythes, discovered two unexploded motor shells buried in the grass and soft mud at the northern end of the main runway, inside the perimeter fence. Apparently they had failed to detonate due to incorrect fuse settings or the soft ground but obviously had been fired by the CT's from outside the Airbase perimeter. Also it was recorded in an "End of Tour Report" by a 1975 RCB Company that they had found a mortar base plate outside the Airbase perimeter fence whilst conducting a clearing patrol. The base plate did not belong to the MAF so it was assumed it belonged to the CT's. As a result of these incidents the RAAF built revetment bunkers for aircraft protection for their Mirage aircraft.
53. The Malaysian Armed Forces were requested to provide a status under which they were serving during the said period. Was it active or non-active service? The response from the Malaysian Legal Department of the Ministry of Defence on the 11 Oct 2004 stated that they did not use

those terms but they classified their service at that time was **“as engaged in operations against an enemy”**.

54. It is often commented that women and children accompanied RAAF service persons to BAB. This is true, but it says more about the callous attitude of the Australian Government, Defence and the RAAF by potentially putting women and children's lives in danger, than any effect on the RCB claim for recognition.

55. JUSTICE MOHR'S LEGAL OPINION ON 'INCURRED DANGER', 'PERCEIVED DANGER' AND 'OBJECTIVE DANGER'

In essence, Section 7A of the VEA 1986 requires that a veteran must have 'incurred danger from hostile forces of an enemy' before such service becomes 'qualifying service'.

In *Repatriation Commission v Thompson*, the Full Federal Court decision carried the matter a step further in stating that a 'perceived danger' had to be contemporaneous with an 'objective danger'.

The judgment in that case was clearly correct in defining the distinction between 'perceived' and 'objective' danger on the facts proved in that case. Although *Thompson* genuinely 'perceived' danger, on a review of the facts no danger of any sort existed. The facts clearly showed that no hostile forces capable of being a danger to him were within hundreds of kilometers of the incident in which he 'perceived' danger. In that case, there was plainly no 'objective danger'.

In other words the danger he 'perceived' arose from his own fear that he was in danger, but this fear was a delusion in his mind. A serviceman incurs danger when he encounters danger, is in danger or is endangered. A serviceman incurs danger from hostile forces when he is at risk or in peril of harm from hostile forces. A serviceman does not incur danger by merely perceiving or fearing that he may be in danger. Although the outcome in the *Thompson* case is clear on the facts provided, it still leaves open the question of how an 'objective danger' is to be established.

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

On the assumption that we are dealing with rational people in a disciplined armed service (ie both the person perceiving danger and those in authority at the time), then if a serviceman is told there is an enemy and that he will be in danger, then that member will not only perceive danger, but to him or her it will be an objective danger on rational and reasonable grounds. If called upon, the member will face that objective danger. The member's experience of the objective danger at the time will not be removed by 'hindsight' showing that no actual enemy operations eventuated.

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

57. During discussion at the Public Hearing in Canberra with representatives of the Departments of Defence and Veterans' Affairs, it appeared that in deciding the question of whether or not an objective danger existed at any given time, the issue turned on the question of whether or not the service was 'warlike' or 'non warlike' in nature. It was agreed that there might well be 'grey' areas that do not fall clearly on one side of the line or another. Similarly, there may be circumstances in which perhaps, for a short period, a 'non warlike' operation can become very 'warlike'.
59. It would seem that there is no difficulty when deployments are declared, prospectively, to be 'warlike'. In that case all those who subsequently served in the prescribed area would be covered by the 'warlike' declaration irrespective of the actual nature of the duties carried out by the personnel of the Service or Services involved. However, even in this case the authorities would know that some personnel within the deployment would not, on examination, incur danger from hostile forces of the enemy and therefore, technically, would not have 'qualifying service' for the service pension. Yet all personnel who form part of the deployment are covered automatically by the prospective declaration that service is 'warlike'.
60. This outcome is not new. I understand that in the two world wars, involvement was such that in principle, 'qualifying service' for the service pension was not solely related to those in combat service. It had to include a measure of general service which was not service in direct combat, but which was continuous, subject to general service conditions and in respect of which, no satisfactory line of demarcation could be fixed to divide it from combat service.
61. With respect, I believe that a similar set of circumstances to the world wars and in the current 'warlike' classification existed in those areas now under review and where anomalies are alleged to have occurred. With the prospective declaration of 'warlike', it is inevitable that some personnel would have qualifying service for fairly remote participation, and there may not have been any likelihood of their incurring danger from hostile forces of the enemy given the nature of their support services. Within those ADF deployments, there were areas of direct participation in fighting, areas of service involving operational risks but not involved in fighting, and areas of service in support of those undertaking operations.
62. It is understandable that these variations of service within an operational area can not be entirely avoided when decisions are taken, prospectively, to declare service as 'non warlike' or 'warlike'. Given this uncertainty, it seems to me then to be quite indefensible to require later on more demanding criteria to be met when examining the nature of service not covered by the original declaration process. This is especially so when this latter service was conducted in the same period and in the same operational area and equates more than favorably with that of most personnel or units covered by the prospective declarations.
63. I believe that in making retrospective examinations on the nature of service many years after the event, as is now the case, the concepts and principles involved should be applied with an open mind to the interests of fairness and equity, especially if written historical material is unavailable for examination or is not clear on the facts. This is the approach that I have taken in addressing the anomalies put forward and to me, it accords with the general Defence classification principles and the benevolent nature of the Veterans' Entitlements Act, and the general principles promoted therein.

64. The foregoing remarks are made to point out the many shades of grey and difficulties that arise from the concepts of 'incurred danger', 'perceived danger' and 'objective danger' and in the application of these concepts when considering the nature of service of past overseas deployments of ADF personnel.
65. **Mohr's decision on Danger led to the Air Defence Guards at Ubon being awarded the AASM**
In regard to base security this fell into two distinct areas. First, there was security within the base itself. The Review heard from a number of those who have been at Ubon. It is clear from what was said that within the base itself the RAAF contingent had prepared defensive protection and arms had been issued for use if needs be. Second, the ADG's patrolled both day and night outside the perimeter of the base and in so doing saw evidence of terrorist activity. So far as is known they were never engaged in an exchange of fire, but the danger of terrorist activity in the general area was known and precautions taken. These patrols were armed and authorized to fire if the situation called for fire.
66. The Rules of Engagement for the RAAF contingent from 1965 onwards signified that contact with hostile forces of an enemy should be expected and that these hostile forces were to be engaged in armed combat with the aim of destroying them. In these circumstances there was an expectation of casualties.
67. **Conclusion**
It is my opinion that, in the final analysis, the period of service at Ubon in the period 1965-1968 was warlike in nature. Their service, most certainly comparable with many other groups of all three services in other similar limited conflicts, should properly be rewarded with the appropriate repatriation and medal entitlements.
68. **Clarke Review 2003.** Justice Clarke QC reinforced Mohr's opinion in Volume 2 Chapter 11 para 11.60 with the following statement: If then, the military authorities consider that a particular area is vulnerable to attack and dispatch armed forces there; they are sending forces into harm's way, or danger. This was the second point made by Mohr- that veterans ordered to proceed to an area where they endangered by the enemy will not only perceive danger, but to them the danger will be an objective one based on rational and reasonable grounds. In these circumstances, what the historian says he or she has learned since the war about the actual intention of the enemy was hardly relevant.
69. **CDF's POLICY ON MEDALS 2001** The CDF Admiral Barrie RAN tasked the Director of Defence Honours and Awards Mr Pat Clarke to write a Policy Paper on the current situation on medals particularly in regards to the ASM in 2000. The paper was written and endorsed by the CDF and Approved by the Minister responsible The Hon Bruce Scott in June 2001. A copy of the Policy was gained under the Freedom of Information Act in 2010. A significant point as highlighted by Clarke in his report and endorsed by the CDF and Minister is as below.

70. 19. One very significant principle established by MAJGEN Mohr, during his deliberations on service in South East Asia, was that if ADF personnel are placed- in circumstances where they may be used to react to an assessed threat made by Australian Government Intelligence agencies, it has to be considered operational service. This is regardless of whether that threat is realized or not. MAJGEN Mohr based this principle on opinion made in his capacity as a South Australian State High Court Justice.
71. **COMMENT** One could question why this very significant statement Mr Pat Clarke was not included in the NOS submission on RCB?
72. One very interesting document provided in the FOI package was the Instrument signed by Bruce Billson in 2007 declaring service in RCB from 6 December 1972 to 31 December 1989 as hazardous service under Section 120 of the VEA 1986. This document is not well known by RCB supporters and one wonders how Defence and DHAT continue push the line that RCB was normal peacetime training when Veterans Affairs consider it Hazardous Service.
73. **Comment:** *There appears to be a very clear logic disconnect here!*
74. **DEFENCE HONOURS AND AWARDS TRIBUNAL**
We have very serious concerns about the DHAT and its performance. Firstly it is a Canberra centric quango staffed with various people with their own vested and conflict of interests. When one looks at their body of work in total there are marked differences in investigating and reporting on Inquiry's. They have serious deficiencies in investigating facts and coherent report writings. There is no sign of following legal necessities or elements of natural justice. Most reports are clearly the case of "situating the appreciation".
75. I have complained to the DHAT on the many deficient aspects of the PNG Service Inquiry. They refused to communicate with me. I have complained to your predecessor AVM Houston who appointed Maj Gen Cosson to investigate my comments. The only response I received eventually was the CDF would not comment on DHAT matters.
76. I have complained to the Minister responsible Senator Feeney with detailed submissions he refuses to respond. The Chairman RAR Corporation wrote to Senator Feeney and received a supercilious response. The Peacekeepers tell me he won't talk to them either on medallic issues. Clearly Senator Feeney is not up to the demands of the portfolio.
77. The final insult was when the DHAT Inquiry credits un-named senior officer's opinions that hide behind the cloak of anonymity so they cannot be identified, questioned on their opinions or confirm in what period they served in RCB or even if they really exist.
78. Detailed submissions made by reputable retired officers and men who put together detailed and complex submissions including a 3 inch high envelope containing documentary evidence (which I have used here) and has previously been given to DHAD , to not even being mentioned in the report is un Australian in conduct and breaches the laws of natural justice

79. **Conclusion** General Hurley we both have a problem here, in that you have inherited a Honours and Awards system which needs urgent attention. The RAR Corporation is a responsible Regimental Association who does not like to make any public criticism of the ADF. We also take seriously the responsibilities we have in looking out for the interests of current and past members of the Regiment. At the recent RA INF Corps Conference the RAR C raised the issue of how, recognition of members of the RAR, service is being neglected. Unanimous support was given by all the Battalion Commanders present who share the same feelings. I attach the said document separately for your personal perusal.
80. I also suggest your staff consider the following legal situation (in regard to the performance of DHAT) in the Administrative Decisions (Judicial Review) ACT 1977 Sect 5 in particular para's (1) a, b, (2) a, b. We and competent legal opinion believes that DHAT has breached this section of the ACT.
81. **Recommendations** The following is recommended :
- **That the CDF invokes the belief that Defence decides on what is active service as stated in Reference A and he declares Service at RCB in the period 1970 to 1989 as being "warlike in nature" quoting service at RAAF Ubon as the precedent.**
 - **Undertake to do a complete review of the many facets of the Honours and Awards System, with particular emphasis on the AASM and ASM. The aim is to come up with simple and clear guidelines that provide clarity and to extract key parts of previous studies to modernize and update the policy to prevent all the current dissention on the subject and the perception of double standards.**
 - **It is also recommended that some individuals from respected ESO's join this review team to provide assistance, expertise and the dimension of representing past members interests.**

Yours Faithfully
DUTY FIRST

LtCol M Dennis, MBE (Rtd)

14 Aug 2011

Attached: Map A showing CT Groups mainland Malaysia
: Map B showing location 8th Assault Gp (CT) Area of Operations

Enclosed separately document: WHY SERVICE BY MEMBERS OF THE RAR IS BEING DISCRIMINATED AGAINST BY THE AUSTRALIAN HONOURS AND AWARDS SYSTEM.

Contacts; Personal address: 46 Woodend Rd, Sheidow Park, SA 5158
Phone 08 8387 7726, Mob 0422235356, email mikedennis@internode.on.net

