



RIFLE COMPANY BUTTERWORTH SUPPORTERS GROUP

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PART TWO

COMPLAINT TWO

1. We contend that DHAT (at the time of issuing TOR and collecting evidence was administered under the Defence Act, although at the time of publication of the report was administered by the DHAAT Act) are guilty of offences under the Administrative Decisions (Judicial Review) Act 1977-Sect 5. 1, which states:

- (a) that a breach of the rules of natural justice occurred in connection with making the decision:
- (b) that procedures required by law to be observed in connection with the making of the decision were not observed:

5. 2 (a) taking an irrelevant consideration into account in the exercise in power

- (c) failing to take a relevant consideration into account in the exercise of power;

2. We also contend that the Inquiry Report was fatally flawed because it did consider evidence and report on evidence supplied to it by the RCB Supporters Review Group. Major evidence countering the report conclusions should discussed.

CONCLUSIONS

3. The following conclusions can be made from the evidence supplied to the Defence Honours and Awards Appeal Tribunal by several persons.

- a. Service in RCB was “Warlike Service” due to firstly its role was to “Protect Australian Assets” from Communist Terrorist elements in Malaysia between 1970 and 1989.
- b. There was a threat from an armed adversary.
- c. Members of RCB were governed by aggressive ROE (similar to SEC DET Iraq) not personal protection like Peacekeeping Operations
- d. Intelligence briefings supported the “Threat Assessment”.
- e. Training in “Casualty Evacuation” and “Combat First Aid” was conducted.
- f. Policy decisions of Mohr and Clarke support the findings.

- g. Opinions from some senior officers support the “War Like” assertion.
- h. Opinions should be based on 1973 scenarios not 2011 as stated by Mohr and Clarke.
- i. Senior officers in the approval process and DHAAT have intentionally ignored written evidence and lastly,
- j. The precedent of awarding the AASM for “War Like” service was not tested against similar service at RAAF Base Ubon.

Specific Discrepancies in DHAAT RCB Inquiry Report

4. We concur with **Attachment 2.4 Para’s 13 to 17** on the initial background to RCB deployments prior to 1973. We contend that DHAAT intentionally did not test, report or consider evidence provided as per **Part Two of the Complaint Para’s 11 to 17**, which directly counter the approach DHAAT were pursuing.

POLICY STATEMENTS ABOUT THE CIRCUMSTANCES SURROUNDING THE DEPLOYMENT OF RCB TO MALAYSIA

5. Fast-forward to 11 Jan 1973, SECRET AUSTEO Minutes of Defence Committee Meeting 11 Jan 1973. Para 25 Attached as **Ref 2.1. Flag 2** “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.

6. **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”.**

Comment: *First evidence of the deceptive behavior in the deployment of RCB.*

7. 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.

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.*

“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”.*

8. 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 **Reference 2.1 Flag 3**, as attached 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”.

Comment: *Again evidence to prove continuation of deceptive behavior in the deployment of RCB at a high level*

9. CONFIDENTIAL document Minutes of the Chief of Staff Committee Meeting held on 17 Oct 1973 attached as Reference 2.1 Flag 4, discussion centered around the difficulties in finding training areas and MAF elements to train with. Discussion centered on 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”.

Comment: *Again confirmation at a senior level of what the RCB true role at BAB.*

10. A further CONFIDENTIAL document Minutes of the Chief of Staff Committee of 24 Oct 1973 attached as Reference 2.1 Flag 5, 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”.

Comment: *Again confirming “Security” was the prime role of RCB not training.*

11. Letter from the Office of the Minister for Veterans Affairs and Minister Assisting the Minister of Defence dated 21 Jan 2003 attach as Reference 2.1 Flag 6, “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”

Comment: *A straightforward statement from the Minister of Veteran Affairs confirming RCB operational role.* Further Evidence Ref 2.6 in Para’s 18 to 24 was also not considered.

12. 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 attached as Ref 2.1. Flag 7, 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

13. 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 attached as Reference 2.1 Flag 8, 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"

Comment: *The Malaysians saw no opportunity for joint training and warned on the hazards of training in close proximity to BAB.*

14. 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.

15. A Coy 3 RAR conducted the first training with the Malaysian Armed Forces (MAF) 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 live MAF operation, which A Coy 3 RAR participated in. [See Att Ref 2.2.](#)

16. 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.

17. 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.

18. 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 SERVE 1971-1989 dated 18th April 2001 attached as [Reference 2.5. Flag 1](#) 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.*

19. In the document Implementation of the Recommendations of the Review of Service Entitlement Anomalies in Respect of South East Asian 1955-75 included in [Ref Part 1 B](#) and highlighted in this document as para 58 to 67 2.1 and noted in [Ref 2.5 Flag 2](#). Signed by A/CDF Lt Gen D Mueller and endorsed by minister B Scott MP on the 9 Aug 2000 stated: Butterworth will no doubt continue as an issue, particularly for the Rifle Company (RCB). This should be investigated further, with the possibility of an extension to 1989 when the terrorist threat from The Malaysian Communist Party finally concluded with the signing of the Peace Accord with its leader, Chin Peng. RCB service was to protect the base against terrorist insurgency and it may therefore be difficult to argue that this service was not non-warlike for medal purposes.

20. **Comment:** *The A/CDF saw the service as potentially "War Like"*

It should also be noted in minute CMP/FB 107/01 as attached [Ref 2.5 Flag 3](#) the conversations between CDF and DGCMP on consideration of Mohr's policy decision.

21. The Nature of Service (NOS) of RCB was not discussed in any way by the Inquiry preferring to use the evidence of two so called senior officers who hid their identity. Giving no indication of whether they served in RCB and what years they were there.

26. 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 seaside 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.

27. 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.

28. The RCB were 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, and 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 Store man slept in the Q Store for quick reaction. Meals were served in the main kitchen and Platoons would march there and back.

29. 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 hotbox 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.

30. 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. The BAB Intelligence Officer issued these increases in standby rates. 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.

31. 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.

32. 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, and 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.

33. Command and Control issues were not discussed in the Inquiry Report but are detailed in [Submission Para’s 25 to 36](#).

34. 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. [See Attachment 2.1 Flag 9](#). 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.

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

36. 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.*

37. 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, which were known to inhabit the area.

38. Comment: *Again blatant misrepresentation of facts and evidence*

39. *In para 19 of the Inquiry Report Attachment 2.4* a sarcastic negative comment was made on the ROE. Of note RCB was heavily armed, had aggressive ROE and are similar to what was currently used in SEC DET Iraq. In Attachment Part Two Complaint One, pases 37 to 41 give a more technically correct reporting of ROE.

40. RULES OF ENGAGEMENT (ROE) AT RCB

Reference 2.5. Flag 4, states "Rules of Engagement for the RCB were specific on "Orders to Open Fire" 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 involved patrolling, *its ROE was defensive only, not unlike those during UN peacekeeping operations*".

Comment: *Defence is a phase of war.*

Comment: *The comment regarding UN Peacekeeping Operations is somewhat gratuitous, denoting Peacekeeping as second-class service. The Australian Active Service Medal (AASM) has been awarded 21 times for peacekeeping operations (13 minor operations) so therefore this comment by Defence is irrelevant. Next most Peacekeeping Operations other than the 8 major operations (not included in the 13 minor operations), personnel are equipped with pistols and small arms for self-protection. RCB was equipped for war with General Purpose Machine Guns M60, Self Loading Rifles 7.62, Automatic*

Rifles M16, 66mm Rocket Launchers M72, 40mm Grenade Launchers M79, Claymore Mines and Hand Grenades. Hardly self-protection!

41. **Reference 2.1. Flag 10** as attached The Chief of General Staff directive to Officer Commanding Butterworth Company dated 20 Aug 73 stated:

42. **Gazetted Protected Areas or Places**

- These are areas or places, which have been, clearly defined boundaries with warning signs printed in the appropriate local language. Once gazetted, special powers are given to sentries under the Protected Areas and Protected Places Ordinance.
- Sentries on duty in a Protected Area or Place may use force to arrest intruders even to the extent of causing death. However, a sentry may only fire:
 1. If the intruder fails to halt after being challenged three times and there is no other effective way of stopping him. The sentry must not fire if the intruder is running away from the Protected Area or Place;
 2. If the intruder is in the act of destroying or removing part of the property to be guarded, and there is no time to challenge three times;
 3. A sentry may fire without challenging if he has reason to fear that he or any other person present is in immediate danger of death or grave bodily injury;
 4. He must fire the minimum number of rounds.

43. **Butterworth Air Base was gazetted a Protected Place.**

44. The Officer Commanding RAAF Butterworth Directive to Officer Commanding Australian Rifle company Butterworth dated 4 Apr 1978 attached as **Reference 2.2. Flag 11 stated:**

Orders for Opening Fire You may open fire at a person or persons only in the following circumstances:

- If you are ordered to guard any building, vehicle, aircraft, tent being used as a dwelling or a place of storage, or you are ordered to guard the occupants of, or any property contained in such building, vehicle, aircraft or tent, you may open fire at any person who is in the act of destroying or damaging by fire or explosives the building, vehicle, aircraft or tent, or the property contained therein PROVIDED THAT THERE IS NO OTHER MEANS OF PREVENTING THE PERSON FROM CARRYING OUT THE ACT OF DESTRUCTION OR DAMAGE.
- If you or any other person is illegally attacked in such a way as to give you reason to fear that death or grave bodily injury will result, you may open fire on the person carrying out the attack PROVIDED THAT THERE IS NO OTHER MEANS OF PREVENTING THE PERSON FROM CARRYING OUT THE ATTACK.
- Before opening fire you are to warn the person whom you intend to shoot of your intention to open fire unless he ceases his illegal act. You should use the challenge 'HALT OR I FIRE-BERHENTI ATAU SAYA TEMBAK' repeated three times.

- At all times, before opening fire you must remember:
 1. If in doubt do not shoot
 2. You must not fire unless this is the least force necessary to enable you to carry out the orders you have been given.
 3. Shoot to wound and not to kill.
 4. Use the minimum number of rounds necessary.
 5. Your right to shoot ceases as soon as the necessity for protection has passed, i.e., if your first round wounds the person so that he can no longer continue the act which caused you to open fire, you are not to shoot him again.
- You are to take careful note of the fact that you're right to shoot ceases at the Air Base boundary fence. You are not to shoot at a person on the other side of the fence.

Comment: *These ROE are clearly more aggressive than the standard Peacekeeping Self Protection ROE.*

45. The Inquiry report made the staggering comment in its Report consisting of four lines in a very general sense of a 20-year war that raged in and around Butterworth. A more comprehensive summary is contained in **Part Two of the Submission Para's, 42 to 50** including maps and Statutory Declarations of CT activities on the BAB perimeter fence line.

BUTTERWORTH AIR BASE (BAB) NATURE OF SERVICE (NOS) FOR RCB

BUTTERWORTH AIRFORCE BASE MALAYSIA



“To protect Australian assets at the Butterworth Air Base.”

46. The Second Communist War in Malaysia Before anyone in Defence or DHAT comments on the CT situation in Malaysia they should have read the Malaysian Army's Battle against Communist Insurgency in Peninsular Malaysia 1968- 1989 published in 2001 (**Excerpts were provided in Evidence attached in Attachment 2.1**). 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.

47. MAF OPERATIONAL RESULTS

YEAR	CTs			TOTAL	SECURITY FORCES		TOTAL
	KIA	Captured	Surrendered		KIA	WIA	
1969			1	1	6	22	28
1970	9	2	5	16	13	28	41
71	9	1	3	13	9	35	44
72	1	1	2	4	4	17	21
73	8	0	1	9	4	19	23
74	41	8	10	59	3	38	41
75	7	1	5	13	33	150	183
76	16	10	19	45	3	6	9
77	23	28	27	78	13	85	98
78	15	5	8	28	14	124	138
79	26	7	9	42	15	80	95
80	17	0	1	18	12	27	39
81	6	3	18	27	9	34	43
82	4	0	1	5	2	38	40
83	10	0	3	13	5	23	28
84	5	0	1	6	5	40	45
85	0	0	0	0	3	23	26

86	6	0	2	8	1	28	29
87	7	2	0	9	1	28	29
88	2	82	1	85	0	8	8
89	0	0	0	0	0	1	1
TOTAL	212	150	117	479	155	854	1009

YEAR	ACTIVITIES				FINDINGS			TOTAL
	Clashes	Incidents	Movement	TOTAL	Camps	Rest Places	Caches	
1969	0	5	83	88	0	18	0	18
1970	11	18	192	221	6	25	2	33
71	17	13	316	346	7	46	12	65
72	8	11	18	37	14	34	37	85
73	16	22	181	219	17	50	76	143
74	34	63	377	474	25	86	48	159
75	22	76	323	421	34	117	35	186
76	41	168	571	780	25	83	53	161
77	31	35	285	351	17	58	32	107
78	60	116	396	572	89	84	36	209
79	54	64	449	567	58	102	52	212
80	36	33	362	431	53	81	32	166
81	16	32	314	362	18	28	11	57
82	36	42	249	327	19	32	9	60
83	15	34	171	220	22	43	20	85
84	18	32	105	155	18	36	11	65
85	3	14	142	159	18	45	10	73
86	9	3	136	148	38	56	68	162
87	10	6	35	51	40	73	40	153
88	2	7	55	64	12	34	13	59

89	0	2	8	10	10	21	4	35
TOTAL	439	796	4768	6003	540	1152	601	2293

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. Many others and I disagree with that notion. What I do know is I have a Statutory Declarations from two noted ex-servicemen detailing enemy action on the Southern and Eastern edges of the BAB security fence. MAF shot them dead. **Why were CT's on the perimeter fence of BAB?** Statutory Declarations attached as [Ref 2.2. Flag 12 and 13.](#)

49. Statements by RCB personnel stating on the 15 Dec 1975 Attached as [Reference 2.2. Flag 14](#) 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 attached as [Reference 2.2. Flag 16](#) 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. There was no consideration in the Inquiry Report Ref 2.4 on Justice Mohr and Justice Clarke's landmark policy decisions, which were accepted by government and resulted in awarding the AASM to RAAF Ubon. See Para's 58 to 66 in Submission Part 2 and Reference 1 B and 1 C.

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 (i.e. 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.

58. 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'.

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'.

59. 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.

60. 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.

61. It is understandable that these variations of service within an operational area cannot 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.

62. 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.

Comment: This statement is one of the most relevant on the RCB issue and is totally disregarded by Defence and DHAAT.

63. 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.

64. **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.

65. 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.

66. **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. [As per Reference 1 B.](#)

67. **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. [As per Reference 1 C.](#)

68. The remainder of the Inquiry Report consisted of verbiage and smokescreens, which did not address the critical issues. It was pre positioned to give a negative response.

69. In all the cases mentioned above detailed written evidence was given to the RCB Inquiry. Why weren't they considered and reported on in the final report?