Submission on the Defence Honours and Awards System

DHAAT operations

Introduction

This personal submission focuses on this Term of Reference:

e) the operation of the Defence Honours and Awards Appeals Tribunal, including any potential improvements.

There are significant problems with some of the processes and decision making by the DHAAT itself leading to recommendations made to the Minister that are either wrong or inadequate, resulting in failed and/or unfair outcomes for deserving veterans. My submission addresses this assertion with reference to a recent case study. It also recommends improvements to address these alleged deficiencies.

The detail of how the DHAAT is meant to work within the Defence apparatus is told elsewhere and is not elaborated upon any further in this submission.

Case Study

The case study in hand is the ***Inquiry into medallic recognition for service with Rifle Company Butterworth (2023-RCB-Inquiry-report).*** The claimants are seeking recognition of their service in Malaysia during the Communist Insurgency in Malaysia 1968-1989 as *warlike*, which involves an upgrade from the present classification. In that Report, found at chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://defence-honours-tribunal.gov.au/wp-content/uploads/2023/09/2023-RCB-Inquiry-report.pdf the DHAAT, after an exhaustive process, made recommendations to the Minister that serve to show how DHAAT procedures might need review and improvement. Otherwise, many deserving cases who seek 'a fair go' will continue to be denied their rights as veterans.

Defence officials have been advising both sides of Government since 2006 that RCB service at Air Base Butterworth in Malaysia was *peacetime* in nature The overwhelming evidence shows that it met the criteria for *warlike* service. It is now confirmed that as a result of three DHAATs' examinations of the RCB claim, many years of stonewalling, denial and obfuscation by Defence and DVA officials have been uncovered in the latest Inquiry. That is a positive. Indeed, the latest DHAAT found that contrary to Defences' assertion of *peacetime* service, service with RCB during that war was indeed worthy of a higher level of classification as *hazardous,* but not *warlike* which is what the RCB claimants seek.

Why is this so? There were problems identified during that Inquiry with respect to the DHAAT's way of doing business. A massive evidence base totalling 6.62GB (not including further photographic evidence) supported by many detailed written and verbal arguments from groups and individuals was provided to the DHAAT. Some verbal testimony was also taken from veterans under oath in-camera. The evidence tendered by the lead advocacy RCB Review Group comprised over 1,700 primary, secondary and tertiary evidence including **20 TOP SECRET**, and **227 SECRET** classifications. Documents of that nature are hardly the

grist of anything other than *warlike* service. Yet the DHAAT in question saw fit to recommend a lesser level of recognition as hazardous service to the Minister. And therein lies part of the problem which the Senate enquiry might focus regarding DHAAT processes. How could this have happened?

DHAAT's handling of the RCB Service case

General. Although the overall approach taken by DHAAT was the fairest hearing of this case study, it demonstrated some systemic measures of unfairness which are asserted to be to the detriment of the veteran claimants, but rarely Defence. Elements of the DHAAT's process were inherently unfair, and this placed the claimant veterans at a considerable disadvantage relative to Defence which has huge resources, including time, at its disposal. There is the possibility that the operation of DHAAT assigned to consider other cases might also face the same issues, and this needs to be at least considered in this overall review of Defence Honours and Awards.

Lack of knowledge/experience. This particular DHAAT comprised a civilian chair, a retired naval officer and a retired RAAF officer: all lacking the necessary tactical knowledge or experience in land combat counter- insurgency operations conducted by RCB in the defence of Air Base Butterworth. This was a serious deficiency. RCB's defence of Air Base Butterworth was an Army counter insurgency operation involving the employment of all infantry combat weapons and live ammunition issued to a rifle company in war. Every soldier carried a semi-automatic weapon including many working on crew-served machine guns. This is reflective of a combat role that was stated specifically in many of the classified documents, but seemingly not understood by the Tribunal members, despite on-the-ground veterans (including RCB commanders) pointing this out.

The DHAAT demonstrated difficulty understanding that the Rules of Engagement (ROE) governing when to shoot while defending the base as a Quick Reaction Force and themselves when outside the base were problematic. This matter pre-occupied it in a manner which seemed to reflect a pre-disposition to find a reason why RCB service was NOT *warlike*. The ROE were written initially by a junior RAAF officer intended for use by RAAF personnel with pistols and rifles (including the unfortunate statement 'shoot to wound if possible'), had their origin in a RAAF directive dated 1968 before the war started. Yet those ROE remained largely unchanged or unchallenged including by Army when it deployed combat troops direct from Australia. The DHAAT spent disproportionate time using the ROE to develop a view that the RCB's service could not have been *warlike* even though the DHAAT found it WAS more than *peacetime* in nature. These ROE, tactics and weapons used to defend the airbase by RCB were carried out by combat soldiers on one minute's notice to move, with specialist knowledge, training and experience of ground combat. That the enemy did not directly attack the base is not the issue. The threat was always there, and the deterrence provided by all successive RCBs worked. In Army combat preparations we hope for the best but plan for the worst.

The DHAAT also spent disproportionate time debating the issue of '*expectation of casualties'* and in the process, demonstrated what every Army combat veteran saw as an inability to understand how land operations are conducted, whether casualties occur or not. The lack of casualties is not a definition of *warlike* service; the expectation of them is, and ample evidence demonstrated that. Despite much veteran effort to spell it out, the lack of

DHAAT members' understanding limited the DHAAT's capacity to analyse the massive evidence to assess of the operational combat nature of RCB service. This, in my view, contributed to their wrong recommendation.

Unfair process – what Act? RCB veterans submitted that reclassification of their service should be considered in the context of the Repatriation (Special Overseas Service) Act 1962, the legislation in place at the time in 1970 and for the duration of the war. The DHAAT decided instead, for some spurious reason, to review the RCB service using definitions of *warlike* and others only introduced by Defence and approved for use in 1993; these are not retrospective. The war was over by then, the last day being deemed by the Malaysian Government as 2 December 1989. The RCB veterans' service has been wrongly judged as a result.

Unfair process – Report a *fait d'accompli*. The DHAAT did not give the prime advocacy groups any opportunity to review their conclusions and recommendations before publishing the Report. This must surely be a failure of due process, or at best, an oversight, given the mountain of evidence and the time taken to conduct hearings and generate a definitive was seemingly put aside. Defence, on the other hand, were not forced, as the DHAAT can actually require, to provide certain evidence or comment on what the advocacy groups and large numbers of individual veterans presented. This was manifestly unfair. Had the advocates been provided with any reasoning behind DHAAT's conclusions it would have identified the flaws before their publication and allow possible revision. Indeed, one of the advocate veterans is on record as having offered his professional research and data retrieval expertise to the DHAAT to assist them find their way through the mountain of primary, secondary and tertiary evidence. This offer was not taken up and the DHAAT reached their final position without any further assistance from or reference to the prime advocacy groups and their data.

Unfair process – perceived pressure on an expert witness. One serving Army officer, an expert in his field of ROE and giving evidence about the veterans' case, was placed by Defence in a position whereby he felt obligated to withdraw from the process on the grounds of allege conflict of interest. It is believed that this was detrimental to the claimants and within the power of the DHAAT to prevent or call out as improper behaviour.

Conclusions

In the context of this case study, and possibly in other instances, it is possible that DHAAT members may not have collectively had the skill/experience necessary to derive an optimum finding. This must be factored in to panel selection. If a collective Army issue is at stake for example, it is reasonable that an Army specialist in the field be included.

The right legislation and policy in place at the time must be applied.

It is wrong to apply definitions retrospectively. In this case, the definitions for *warlike, non-warlike* and *peacetime* service introduced in 1993 should not have been applied when reviewing veterans' requests for service prior to that date.

The draft of a DHAAT report should have been offered to the claimant and respondents as a procedural fair process. This would help identify areas that are in contention or plain wrong.

Further, DHAAT's capacity to conduct reviews will be bolstered by a determination to ensure that Defence cooperates with it when requested. In this case study, DHAAT failed to use its statutory power to compel Defence cooperation to the veteran claimant's disadvantage with respect to vital evidence especially comparative data. It can be argued that this failure amounts to discrimination, albeit unintended by the actual DHAAT in question.

Defence, and often DVA, almost invariably adopt an adversarial position in the way they deal with veterans and their claims. This beggars belief when surely their job is to assist the reaching of a fair and transparent outcome. Defence honours and awards, including the methodology and criteria used to classify the nature of defence service or any other matter must be transparent, fair and compliant with the Government's Codes of Ethics and Conduct.

Recommendations

Recommendations are:

1. DHAAT panel selection include subject matter experts, or at least include documented evidence in the report that such specialist support has been used.

2. Only the right legislation be applied and verified as such.

3. DHAAT Reports at the final draft stage be open to claimant review so that assurance can be had that evidence has been properly considered.

4. No party be permitted to apply any form of pressure on witnesses, such prerogative remaining with the DHAAT and consistent with its statutory powers.

Russell Linwood, ASM
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