



Submission by the Rifle Company Butterworth Review Group.

The Rifle Company Butterworth Review Group represents 9000 Army and 15000 Airforce veterans and requests the opportunity to give evidence to the Inquiry concerning the Defence Amendment (Defence Honours and Awards Appeals Tribunal) Bill 2025.

We are opposed to the Bill and this submission addresses the reasons why we are opposed to it.

The importance of having a body independent of Defence to hear appeals of Defence decisions concerning the recognition of service and consequent medallic awards that relate to that service cannot be understated.

The Importance of Recognition of Service. Recognition of their service is of vital importance to serving and ex-serving defence members and their families.

Defence decisions that relate to recognition of service are the foundation of service by members that are serving and have served in the Australian Defence Force (ADF).

Those decisions may relate to recognition by the award of medals for acts of valour, bravery and service when deployed on operations as well as conspicuous service and long service.

The Foundation of the Military Culture. When Australians join the ADF they are inculcated with a culture that has at its forefront commitment to their fellow trainees as members of a team. Simply put they are mates and they know that at all costs that must not let their mates or the team down. This is reinforced throughout a person's career.

Decisions concerning recognition of service by Defence are of psychological, social, and institutional importance that resonate deeply within the military culture and underpin:

- A shared commitment to serve the nation.
- The motivation of those that serve in the ADF by reinforcing their pride and that which they share with others in their team, of serving the nation.
- Acknowledgement that military service is valued by the nation.
- The respect of fellow members of their team, their unit and commanders.

- Unit camaraderie and unity of purpose, which is critical to success in battle.
- Acknowledgement of ex-serving member's past service, which is important to their families and the wider community.

If this Bill is passed the credibility of the Department of Defence will be exposed to the risk of being ridiculed by current and former members with the potential to affect morale of the very personnel Defence is charged with caring for.

Just how many decisions taken by Defence concerning the recognition of the service Army, Airforce and Navy personnel that have been found by the Tribunal to be wrong is unclear. However, the Rifle Company Butterworth Review Group, which represents the 9000 Army and 15000 Airforce veterans who served in Malaysia from 1970 to 1989 when a communist insurgency was underway, has been fighting for more than twenty years to right a decision by Defence made in 1973 concerning the recognition of our service. Defence has at all time steadfastly maintained that our service was peacetime in nature.

After more than twenty years and countless submissions and requests of Defence by the Rifle Company Butterworth Review Group to reclassify our service in Malaysia, Defence refused to concede it had made the wrong decision. Instead Defence obfuscated the veterans' approaches at every opportunity.

The Tribunal was a turning point for those of us that served in Malaysia from 1970 to 1989. In 2023 the Tribunal heard oral and documentary evidence provided by representatives of our Group, other veterans and Defence. The Tribunal identified significant errors in Defence decision-making and found that on the evidence presented the Defence decision to reclassify our service as peacetime was wrong and recommended that our service should be reclassified as non-warlike.

Defence Decision Making. The Tribunal in its report to the Minister was critical of the Defence approach to decision-making. Some of its comments include:

- *"Defence advice provided to Minister Billson has subsequently been shown to be inadequate and misleading".¹*
- *"Defence itself that had a flawed understanding of the relevant legislation and the policies laid down by Cabinet and various Ministers".²*
- *"Defence made multiple errors in its analysis and decisions."³*
- The Tribunal was particularly critical of a submission from Defence where, in its Report the Tribunal stated *"It seemed to the Tribunal that, colloquially speaking, Defence had been 'making it up as it goes'".⁴*

¹ Defence Honours and Awards Appeals Tribunal, Inquiry into the Medallic Recognition for Service with Rifle Company Butterworth, Australian Government, 23 August 2023, p.87, sub para 700 a).

² Op. cit. p.89, para 7.106

³ Op cit. p. 100., para 8.22

⁴ Op cit. p.84

Defence Mistakes and the Need for Fairness. That Defence has made mistakes in the past is undeniable. However, Defence, as is often the case with large bureaucracies, is also unwilling to admit its mistakes and change its decision.

This Bill will permit Defence, as a decision-maker to decide what appeals against its decisions should be heard. More often than not these decisions have been made by the Service Chiefs. If this Bill is passed it will give the Service Chiefs the power to decide what appeals against their own decisions should proceed. How can this Bill be described as fair in any meaning of the term?

How many wrong decisions have been made by Defence in past years is unclear. However, even if only one decision was made incorrectly that would be one too many as that decision can affect a person or, as was the case with those of us who served in Malaysia, an incorrect decision affected a very large number of veterans, many of whom had passed away before the Tribunal's decision that the Defence decision affecting us was wrong. That wrong decision also denied the veterans affected by it to access to repatriation benefits they should have been entitled to.

If the legislation as detailed in the Bill is enacted a veteran that served in Malaysia from 1970 to 1989 would not have been able to appeal the 1973 Defence decision.

The Minister's desire to reform the Tribunal in order to modernise it and make it more contemporary relevant overlooks the vital importance of having a body independent of Defence to review its decisions. Further, the system the Bill proposes to put in place risks undermining Defence at a time when it is already confronted with very serious challenges to its credibility.

If this Bill passes it will effectively emasculate the Tribunal by denying serving and ex-serving members and their families the right to appeal Defence decisions concerning recognition of their service, which will also have implications in respect of access to repatriation benefits and to have their appeals heard by a body independent of Defence.

The Royal Commission into Defence and Veteran Suicide. The recent Royal Commission into Defence and Veteran Suicide heard much evidence of poor decision making by Defence and acknowledged that recognition of service was very important to those that are serving and those that have served.

The Committee will also be aware that the Prime Minister, Defence Minister and Minister Keogh publicly stated their unequivocal commitment to support the implementation of the recommendations of the Royal Commission.

Concerns Expressed by the Chair of the Tribunal. The Chair of the Tribunal has sent a letter to ex-service organisations in which he has addressed the Tribunal's role in hearing appeals and in some cases recommended that some Defence decisions be changed.

It is apparent the Chair of the Tribunal is sufficiently concerned with the implications of this Bill to take the step to write to the ex-service organisations.

We agree with the sentiments expressed by the Tribunal Chair in his letter and we commend it to the Committee for its attention.

A copy of the Tribunal Chair's letter is available if the Committee wishes to receive it.

Conclusion. This Bill is a cynical attempt by Defence to further limit the transparency of how it operates by permitting the Department to sit in judgement of appeals against its own decisions.

It begs the question if this Bill is permitted to progress then why have the Tribunal at all?

I served our nation in the Army for 47 years and I can assure you that this Bill is seen by serving and ex-serving veterans and the wider community as a betrayal and a disgraceful attempt by the Department of Defence to put themselves before the people our nation depends on to protect Australia.

Appendix to Submission.

As a result of discussions with serving, ex-serving veterans, their family members and members of the public we have compiled the following observations and questions concerning this Bill:

- Besides the Defence Department, what other body, group or ex-service organisation is calling for these changes?
- Other than the Minister's stated desire to modernise the Tribunal, what other circumstances brought about the changes proposed in this Bill?
- How is this not a Departmental takeover of an investigative review process, when Defence is normally a contributor to the work undertaken by the Tribunal?
- If the changes proposed in this Bill are in the name of efficiency, surely closing down of the only avenue a veteran has to appeal a Defence decision by an independent Tribunal is a breach of natural justice?
- The secrecy provisions of classified documentation will mean that relevant documents can be hidden for decades. How will this not impact upon veteran justice?
- The Tribunal process of hearing appeals against Defence decisions has been recognised as the only way a fair and impartial review of veteran appeals might be addressed.
- This Bill will permit Defence, as a decision maker to decide what appeals against its decisions should be heard. More often than not these decisions have been made by the Service Chiefs. If this Bill is passed it will give the Service Chiefs the power to decide what appeals against their own decisions should proceed. How can this Bill be described as fair in any meaning of the term?

- The Defence Department has on many occasions been criticised by the Tribunal as being obstructive and unhelpful during its proceedings. How can this Bill not be viewed as a calculated step by Defence to ensure its decisions are even less transparent than they are now?
- The Department has no process whereby veterans can quickly access critically important documents.
- This Bill is completely contrary to the values of the Australian Defence Veterans Covenant, which purports to support veterans and their families.
- The historical record of the Tribunal is replete with judgements of veteran's appeals, concerning their service which in some cases have dated back to World War 2 and Vietnam. These appeals and the Tribunal's judgements would not have been possible if the changes proposed in this Bill were in place.
- Under this Bill the shortened review period will affect veterans who require longer time frames in starting and completing their claims. Some veterans need time to address a complicated search and review.
- The Bill takes no account of the fact that on enlistment recruits forego their human rights and that military service can be fatal or cause for some lasting psychological damage and denies the importance they, their mates and families place on correct recognition of their service by the nation. This was highlighted by the recent Royal Commission.
- The Minister's justification of this Bill gives priority to administrative convenience for the Defence Department. However, the Minister's speech gave no attention to the adverse effects of this Bill on the morale of ADF members. who are regularly deployed on operations by the Government and to the morale of those that have given so much of their lives in the service of our nation.

Yours sincerely,

Graeme Mickelberg
Representative
Rifle Company Butterworth Review Group

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