



VIETNAM VETERANS' FEDERATION

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Incorporating

Vietnam Veterans Peacekeepers and Peacemakers Association NSW Branch
Vietnam Veterans Federation Queensland Branch
Vietnam Veterans Federation ACT Branch
Vietnam Veterans Federation Victorian Branch
Vietnam Veterans Federation South Australian Branch
Vietnam Peacekeepers Peacemakers Federation of Tasmania
Vietnam Veterans, Peacekeepers and Peacemakers Federation of Australia WA
Branch

Dr Peter Edwards
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14 March 2012

Dear Peter,

You are aware of our view that FB Smith misrepresented of the findings of the Evatt Royal Commission. We enclose the paper, *The Official History's Agent Orange Account: The veterans' perspective*ⁱⁱ which states our reasons for this view.

We understand you have accepted, despite our objections, the task of writing a summary volume of nine volumes of *The Official History of Australia's Involvement in Southeast Asian Conflicts 1948-1975*. We feel it necessary, therefore, to challenge claims made by you in your essay 'A Tangle of Decency and Folly, Courage and Chicanery, but above All, Waste': The Case of Agent Orange and Australia's Vietnam Veteransⁱⁱⁱ.

You say in that essay:

"But behind that political story, there is a sub-text that warrants the overworked word 'tragedy'. Whatever their motives, the attention that a certain group of Vietnam veterans and their families and supporters gave to Agent Orange, from the 1970s to the 1990s, did a major disservice to other veterans of Vietnam and of other conflicts. The focus on Agent Orange served not to assist but to delay and to obstruct constructive action towards remedying, or paying compensation for, a wide range of diseases suffered by veterans and their families, to which war service might have contributed. The most important was probably post-traumatic stress disorder, but as the Evatt Royal Commission pointed out, smoking and alcohol played a major role in many of the ailments."^{iv}

This was certainly the Repatriation Commission's line, but it does not stand scrutiny.

The same veterans campaigning for recognition of the possible harmfulness of Agent Orange, were also campaigning for a counselling service to be set up.

It was this group, led by Phill Thompson, that, in 1980 opened its own Counselling Service at its Parramatta office employing three qualified volunteer counsellors. One of the counsellors, Lianne Grearson (later to join the VVCS) wrote up case studies that formed a telling part of a submission by the VVAA to the government. This submission, as well as the general campaigning of the veterans, convince the government to establish the Vietnam Veterans Counselling Service (VVCS)(see attached *Vietnam Veterans Counselling Service – Summary of Background and Current Events*, July 2001, page 2).

Between January 1981 and January 1982, Repatriation Commissioner Major General Morrison and Phill Thompson toured Australia conducting interviews to recruit staff. In January 1982, Phill Thompson, in recognition of his group's part in its establishment, gave a speech in Adelaide at the first Counselling Centre opening.

In other words, the campaigning veterans, far from causing a delay and obstruction to remedying the problem of post-traumatic stress, alcoholism and smoking, expedited the availability of treatment and compensation.

And you put the blame on the campaigning veterans for the 'prolonged arguments over the possible link between cancer and Agent Orange'.

This again was the Repatriation Commission's line.

The Evatt Royal Commission, on the other hand, pointed out that Repatriation Commission had 'for a number of years, refused to concede that benevolent judicial interpretations of the application of ... [the law] were consistent with parliamentary intention'.^v And, its report said, the Department was guilty of 'finding a method whereby the Repatriation Commission may restrict benefits which have flowed from a generous – though proper – interpretation of the legislation'.^{vi} The Evatt enquiry went so far as to accuse the Repatriation Commission of training Determining Officers 'to find ways around Court statements of what the law was'^{vii} and of emphasising 'ways in which a claim could be "knocked-out"'.^{viii}

It was this shameful refusal to obey the law that resulted in the waste of so much time and energy, forcing the veterans to demand a Royal Commission and to turn to the law-abiding appeals tribunals for justice.

You also say:

"...the Government has accepted the Australian doctors' recommendation that war veterans be given the benefit of the doubt."^{ix}

The context in which you make this statement suggests that because the veterans were given the 'benefit of the doubt' the acceptance of their claims was somehow less legitimate.

Once again, this was the Repatriation Commission's line at the time and it continued to be so into the 1990s. Indeed the Repatriation Commission was conducting a campaign to restrict the application of the 'benefit of the doubt'.

But the ‘benefit of the doubt’ had been the centrepiece of Repatriation legislation since 1943. During the parliamentary debate on the *Australian Soldier’s Repatriation Bill 1943* the Attorney General explained the standards thus:

“The whole purpose of this provision is to reverse completely the method of proof and put the burden of proof upon the authorities to negative any connection between war service and the disability.”^{xv} “In other words, if any question which is material to the case before any of these tribunals cannot be placed beyond reasonable doubt, the question must be determined in favour of the member of the forces^{xi}.”

In 1977, the Minister for Veterans Affairs, Senator Durack, introduced legislation into Parliament which clarified some ambiguity in the wording of the 1943 Act. Later Senator Durack gave the assurance that his legislation meant what it said.

“In redrafting the legislation, we gave the right of proof beyond reasonable doubt, which is now enshrined in the Act, to veterans.^{xiii}”

The Evatt Royal Commission recognised that giving the veterans the ‘benefit of the doubt’ was the intention of the Federal Parliament. It censured the Repatriation Commission for not obeying that aspect of the law. It found that the Repatriation Commission had ‘for a number of years, refused to concede that benevolent judicial interpretations of the application of ... [the law] were consistent with parliamentary intention’.^{xiii} And, its report said, the Department was guilty of ‘finding a method whereby the Repatriation Commission may restrict benefits which have flowed from a generous – though proper – interpretation of the legislation’.^{xiv} The Evatt enquiry went so far as to accuse the Repatriation Commission of training Determining Officers ‘to find ways around Court statements of what the law was’^{xv} and of emphasising ‘ways in which a claim could be “knocked-out”’.^{xvi}

The Evatt Royal Commission was not the only authority that castigated the Repatriation Commission for its war against the intentions of the Federal Parliament.

In 1992, an amendment to Repatriation legislation was introduced into Parliament. Its effect would have been to make more onerous the standard of proof required to link veterans’ disabilities with their war service.

Senator Durak was a leading member of the Opposition. During his long parliamentary career he had served terms as Attorney General and Minister for Veterans Affairs. He had been responsible for the 1977 legislation that had clarified the ‘benefit of the doubt’ provisions of Repatriation law. He was thus singularly well qualified to speak. He was appalled, he said, by the amendments, but in a most unusual twist to the normal cut and thrust of parliamentary debate, the Senator was moderate indeed in his criticism of the Government. Rather, he focused his venom on the Repatriation Commission.

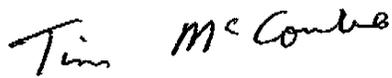
“The reason I have risen to speak in this debate is that I believe that over the last 10 years or so there have been very strong attempts by the Repatriation Commission to subvert the longstanding intentions of Parliament in favour of claims for war-caused injuries by veterans.^{xviii}”

Referring to some concessions the Minister had made during the Senate Enquiry into the bill, Senator Durack was even complementary.

“Fortunately — and I commend ... Senator Tate, ... — the Government has now got up some courage of its own and has been standing up to the pressures and blandishments that it has clearly been receiving from the Commission.^{xviii}”

That the Repatriation Commission might be guilty as charged was given credibility even by the Chairman of the Repatriation Commission, Lionel Woodward. He admitted at the start of the Senate inquiry hearings that: “... it was the [Repatriation] Commission that took the initiative and advised the Government to act.^{xix}”

The Repatriation Commission some years ago abandoned its crusade but you, apparently, have not.



Tim McCombe
National President

Endnotes

ⁱ Mr Justice Phillip Evatt, *Royal Commission on the Use and Effects of Chemical Agents on Australian Personnel in Vietnam, Final Report* (Australian Government Publishing Service).

ⁱⁱ ‘The Official History’s Agent Orange Account: The veterans’ perspective’ by Graham Walker presented on 24 September 2009 at the *War Wounds-Medicine and the Trauma of Conflict* Conference held at the Australian War Memorial. The paper was subsequently published in Ashley Ekins and Elizabeth Stewart (eds), *War Wounds: Medicine and the Trauma of Conflict*, Exisle, 2011.

ⁱⁱⁱ Peter Edwards, ‘A Tangle of Decency and Folly, Courage and Chicanery, but above All, Waste: The Case of Agent Orange and Australia’s Vietnam Veterans’ in Graeme Davison, Pat Jalland, Wilfred Prest, editors, *Body and Mind, Historical essays in honour of F B Smith*, Melbourne: Melbourne University Press, 2009.

^{iv} *Ibid*, page 229

^v Royal Commission, Evatt, vol. 7, ch. XIV, Benefits and Treatment, pp. 364–65.

^{vi} Royal Commission, Evatt, p. 366.

^{vii} Royal Commission, Evatt, p. 360.

^{viii} Royal Commission, Evatt, p. 364.

^{ix} Peter Edwards, ‘A Tangle of Decency and Folly, Courage and Chicanery, but above All, Waste: The Case of Agent Orange and Australia’s Vietnam Veterans’, *op cit*, page 227

^x *Hansard*, House of Representatives, 18 March 1943, page 2010.

^{xi} *Ibid*, page 2009.

^{xii} *Hansard*, Senate, 16 December 1992, page 5243.

^{xiii} Royal Commission, Evatt, vol. 7, ch. XIV, Benefits and Treatment, pp. 364–65.

^{xiv} Royal Commission, Evatt, p. 366.

^{xv} Royal Commission, Evatt, p. 360.

^{xvi} Royal Commission, Evatt, p. 364.

^{xvii} *Hansard*, Senate, 16 December 1992, page 5241.

^{xviii} *Ibid.*

^{xix} *Hansard*, Senate, 23 November 1992, Committee on Legal and Constitutional Affairs, page 5.