

# TERRY FOGARTY



TELEPHONE 0419 668 197  
Email: Terence.fogarty2@three.com.au  
Web: <http://vesca.tripod.com>

16 MANN AVENUE  
NORTHGATE QLD 4013  
AUSTRALIA

Friday, 28 March 2008

## Why do bureaucrats have a de facto immunity from prosecution?

Dear ,

Senator Andrew Bartlett sent a letter, on 17<sup>th</sup> June 2007, on my behalf to the then Justice Minister. The then Justice Minister's reply was dated 2<sup>nd</sup> October 2007, a few days before the election was called. As can be seen from reading the reply he didn't appear to give any effective consideration to the issues. Copies of that correspondence and the then Justice Minister's reply, can be found at the hyperlink:

<http://vesca.tripod.com/Veterans/Correspondence%202007.htm>

This letter is in support of a [similar letter](#) Senator Andrew Bartlett has been kind enough to send to The Hon Robert McLelland MP, Attorney-General. It will test the genuineness of the new Prime Minister's statement shortly after the election that his was going to be an "honest" government.

- **The essence of this request is that DVA executives have instructed DVA claims assessors to keep two sets of books and to return unsatisfactory reports to the historical researchers for correction.**
- **Matters critical to the success of the veteran's claim can thus be kept off the veteran's file used to determine the claim.**
- **The request is for the matters to be investigated.**
- **Obviously, if warranted, prosecutions should follow.**
- **All DVA claims assessors and DVA hierarchy, over the several years covered by these instructions, warrant investigation.**
- **There were 2,369 DVA Employees at 30<sup>th</sup> June 2007.**

Hyperlink to correspondence.

<http://vesca.tripod.com/Veterans/Correspondence%202008.htm>

Politicians are the people accountable to the citizens, through the electoral process. The Australian Federal Police are not accountable to the citizens in this manner. If the regulations need changing then Parliament has the power, and the responsibility, to do this.

- **Australia's Veterans have fought and died for the preservation of democracy, an essential part of which is the Australian legal system.**
- **Australia's Veterans have an undeniable right to have their complaints properly investigated and determined by an appropriate court.**

It is abundantly clear that over the decades since the Repatriation system came into existence two defacto legal systems have developed:

- **One where citizens have offended**
- **One where bureaucrats have offended.**

Because the Australian Federal Police use regulations to avoid investigations into bureaucrats the bureaucrats have a de facto immunity from prosecution.

1. Extracts from the [2006-2007 Annual Report of the CDP](#) show this very clearly. Large numbers of citizens were prosecuted whilst almost no bureaucrats were prosecuted. Note the disparity between 1,028 breaches by company directors compared with those for bureaucratic executives – no prosecutions discernible in the report for bureaucratic executives.
2. The [DVA Annual Report for 2006-07](#) (pp 175-176) shows that there were 16 convictions from 589 finalised investigations – a mere 2.7%. Contrast this with the high probability of conviction required by the CDP or the AFP before they will proceed.
3. In Queensland, The Office of Fair Trading's legal advice agreed with a veteran complainant who alleged that "historical researchers" were required to be licensed as "Private Investigators". The Queensland Government put the complaint on hold, amended the legislation and then avoided prosecuting the "historical researcher". The OFT dragged the simple complaint out for 2 years so the complaint issues would be 'too old'. Most Government regulators will not look at private complaints over 12 months old.
4. I researched a case for the veteran's advocates, so whilst I can't identify the veteran I am aware of an instance, at the AAT, where the Repatriation Commission Representative's actions should have been referred for criminal investigation. During the course of the AAT preliminaries the Repatriation Commission Representative forwarded copies of the veteran's medical reports to the veteran's previous employer. This is a breach of the Crimes Act 1914, and explained as such in publicly available internal instructions. The evidence should have been inadmissible, but was allowed by the AAT. The veteran lost his case, and therefore his TPI pension. The breach of the Crimes Act 1914 was not referred for investigation by either the AAT or the Repatriation Commission Representative's superiors. The annual value (at 1/3/08) of a single rate TPI pension (including service pension) is \$38,368.20. The twenty year value is \$767,364 – TPI pensions are normally paid for life. These figures don't take account of the value of the "Gold Card".

It is important to understand the technical requirements of the Veterans' Entitlements Act in relation to the TPI, particularly VEA sec 24(1) (c):

(c) the veteran is, by reason of incapacity from that war-caused injury or war-caused disease, or both, <b>alone</b> , prevented from continuing to undertake remunerative work that the veteran was undertaking ...
--

So if a veteran has a number of disabilities that prevent him (or her) from "continuing to undertake remunerative work that the veteran was undertaking" and one, or more, disability is not accepted as being war caused then he (or she) is ineligible for "Special Rate" (TPI). The financial incentive for the bureaucracy to disallow even one single disability is therefore very great.

Extrapolating the “fair dinkum independent” figures from CQVSC to DVA’s own figures we have:

- Annual Value Extrapolated \$1,411,436,161
- 20 year Value Extrapolated \$28,228,723,230

Those figures are in billions of dollars and they represent the extent of the possible criminality against veterans. Please feel free to check the figures yourself.

<a href="#">CQVSCstats29022008.doc</a>		Statistics From Central Queensland Veterans Support Centre	If the investigation required by <a href="#">VEA Section 17</a> was properly made then most cases would be granted without the need for appeals.
Approach made	641		
Did not proceed	211		
Proceeded	430		
Special Rate Granted	156		
Had to appeal	148		
Statistics from above			
Special Rate as percentage of:			
Approach made	24%		
Proceeded	36%		
"Had to appeal" as percentage of:			
Special Rate Granted	95%		
From:			
<a href="#">Table 99 DVA AR 2006-07</a>			
30/6/06 General Rate 100%	21,188		
30/6/06 General Rate < 100%	80,211		
Total General Rate	101,399		
Extrapolated from above (ie 36% of)	36,787		
Special Rate Fortnight Single	\$938.00		
Service Pension Fortnight Single	\$537.70		
Combined Fortnight Single	\$1,475.70		
Combined Annual Single	\$38,368.20		
Annual Value Extrapolated	\$1,411,436,161		
20 year Value Extrapolated	\$28,228,723,230		

There is bias written into the legislation, and it’s been there so long that it is bipartisan. Veterans are legislatively prohibited from being represented at the VRB by a “legal practitioner” whilst DVA is basically unrestricted in its legal services spending.

DVA Annual Report 2006-07	
Table 76: External legal services expenditure (GST included)	
DVA’s total external legal services expenditure	\$7,601,543
VEA Section 147 Parties to review before Board	
(2) A party to a review may:	
(a) appear in person, or be represented at the party’s own expense by a person <b>other than a legal practitioner</b> , at any hearing of the review; and	

The long term disadvantage of this (for veterans) is that interpretations of case law by the bureaucracy are not challenged. The “exam results” are that the Repatriation Commission has lost all five cases which have made it to the High Court, so there is a high probability that there are significant errors in interpretation (or simply non application) of case law.

There are some associated matters but they are too large to include in this letter. They include:

1. [Professor Dennis Pearce](#) as Ombudsman reporting that a number of Commonwealth Departments did not apply the relevant “case law”
2. [The Administrative Review Committee report into automated decision making](#) that included that DVA’s computer programs were not independently certified and that claims assessors were not allowed to override the computer programs. [This is despite an internal instruction that claims assessors, who make their decisions as “Delegates of the Repatriation Commission”, are to make decisions themselves.](#)
3. VRB & AAT do not generally detect and rectify these problems.
4. Most claims are “[ultra vires](#)” in one or more respects.
5. VEA Sec 4A not applied.
6. [Graham MacLeod’s 1992 report on the “independence” of the Veterans’ Review Board.](#)

I’m happy to provide additional information to anyone who wants it. In matters like this the bureaucracy is the last place from which politicians should seek advice. It’s akin to a judge in a criminal trial asking the defendant to determine the case.

I should be able to provide questions suitable for committee hearings and/or question time.

I will include additional information on my web site.

There is a generic copy of this letter on my website. Hyperlinks which appear as [blue underlined](#) in this letter are active on this generic copy.

Hyperlink to my website is:

<http://vesca.tripod.com/>

Specific hyperlinks are:

<http://vesca.tripod.com/Veterans/Correspondence%202007.htm>

<http://vesca.tripod.com/Veterans/Correspondence%202008.htm>

You should be able to easily access the two hyperlinks above from the main website.

There is also an Excel file with supporting information:

[20080328 Support File for letters to Politicians.xls](#)

Thank you for taking the time to read this material.

**Yours faithfully,**

**TERRY FOGARTY.**