

<u>Submission Introduction</u>
<u>DVA Request For submissions</u>

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Veterans have fought, have died, have been wounded, and have suffered disabilities in protecting "Democracy".

They therefore have a very strong right to have democracy work for them.

An essential component of democracy is the doctrine of the separation of powers – the executive arm of government and the judiciary are independent of one another and separate from one another.

In Repatriation matters this is circumvented by the bureaucracy who control what matters proceed to the judiciary. The Australian Federal Police decline to investigate using their regulations as justification. So it is difficult for issues affecting veterans to be ruled on by an appropriate court.

When they have made it through to the High Court (the top of the legal hierarchy) the result has been five to nil in favour of the veterans against the Repatriation Commission.

Sometimes the Repatriation Commission does not accept the umpire's verdict and seeks to have the law changed. They did so with O'Brien but were thwarted in their efforts to do the same after Bushell by the Democrats voting with the conservatives who were then in opposition.

The Repatriation Commission has got around this by not applying the precedents correctly (or at all).

The accompanying submissions satisfy the "anomalies" criteria specified in the DVA request for submissions in relation to the Veterans' Entitlements Act 1986, as amended.

This web site has copies of extensive correspondence in relation to these matters. I have twice written to all 225 members of the Federal Parliament.

Justice will only be served by having the matters referred to in this submission determined in appropriate courts. It's been my intention for some time to do a cold canvas of law firms in an endeavour to get these matters into the courts. I was delayed caring for my dying mother but now that Mum has died my available time has increased greatly.

The bureaucracy already has the power in relation to the "ultra vires" remedies. If it is necessary to pursue the criminal breaches then the "governance provisions" in the Criminal Code will encompass many in the chain of command - right up to the commissioners. Politicians appear to be exempt because of Parliamentary Privilege.

Jailing bureaucrats isn't harsh when we consider that Australia is prepared to sacrifice the lives of each of its defence force personnel in times of conflict.

The monetary value of these illegalities is considerable. For a single rate TPI (Special Rate plus Service Pension) aged 55 (estimated life expectancy 75) it is approximately \$800,000 - hardly petty crime.

Terry Fogarty

Non application of VEA Section 4A
(Criminal Code Applies)
Criminal allegations should be investigated
If AFP is too busy then someone else should investigate.

In the case below I sent the VA Minister an email advising him how he could identify the veteran, and therefore the offending Repatriation Commission staff member. After I received no reply I sent the letter to my local member who happens to be the Treasurer. You can see from the reply ([20080902 from Wayne Swan.pdf](#)) that the information appears to have been kept from the VA Minister.

In addition to the Repatriation Commission Staff Member offending against the Crimes Act 1914 Repat/DVA staff senior in the chain of command appear to have breached the Criminal Code.

The Minister's reply also listed probable offences within the Public Service. ([20080512 from Alan Griffin.pdf](#))

To my knowledge the matter has still not been prosecuted.

From: [20080328 To All Federal Politicians MHRs.pdf](#)

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".

20080328 To All Federal Politicians MHRs.pdf
20080512 from Alan Griffin.pdf
20080714 to Wayne Swan.doc
20080902 from Wayne Swan.pdf
20080630 to Wayne Swan.doc

Non publication of computer Code VEA sec 24, for one, is incorrectly treated. Large numbers of decisions should be “ultra vires”.

The method of comparing the law (legislation and court precedents) with an individual veteran's claims is by use of computer programs. The accuracy of these programs has not been subjected to genuinely independent scrutiny. To my knowledge the computer code is not publicly available.

I've researched about 20 cases for my advocates which gives me access to copies of relevant correspondence. The formal decisions and associated material enable me to make some preliminary observations. The material on this page deals with aspects of one matter - determining "special rate".

Worksheets show the "Banovich" precedent is not applied. - See [Correct Interpretation of Remunerative Work.doc](#) below.
They also show that VEA Section 28 is not considered.

The following information is provided in support of this item.

Name	Pages	Size - kb
20041101Administrative Review Council - Automated Assistance in Administrative Decision Making.pdf	80	462
Notes from 20041101 Administrative Review Council - Automated Assistance in Administrative Decision Making.doc	3	45
Veterans' Affairs (1994-95 Budget Measures) Legislation Amendment Bill 1994.doc	3	71
VETERANS' AFFAIRS (1994-95 BUDGET MEASURES).doc	2	38
AN02 - 1999 PROPER FUNCTIONS OF DELEGATES.doc	4	46
Special and Intermediate Rates of Pension.doc	1	25
Correct Interpretation of Remunerative Work.doc	6	87
Index Correct Interpretation of Remunerative Work.xls		37
Aid for Section 24 Processing.xls		34
24 Special rate of pension.doc	3	31
28 Capacity to undertake remunerative work.doc	1	24

Non application of High Court Precedents

Particularly Byrnes – probability 1 in 20.

This matter is related to the "Non Publication of Computer code" and can only be properly determined by examining the computer code.

Individual claims by veterans could be examined but this would be very labour intensive.

Flowing from non application of Byrnes use of Writeway reports should be declared “ultra vires”

Tilbrook’s letter to my advocates, circa 1999 refers.

The letter of 27 January 1999 from John Tilbrook to Bob Richards refers. I have Bob's permission to publish the letter. There are two copies below - one scanned at 100dpi and the other at 300 dpi. You can use either.

I've highlighted relevant sections on page 2 of the letter.

The High Court Precedent provided by "Byrnes" is that a probability of 1 in 20 is sufficient for a veteran's claim to succeed. (Or 19 in 20 if the Repatriation Commission wants to disallow the claim.) Whilst Tilbrook doesn't put a value on his probability it is nowhere near 19 in 20 (ie 95%). It's more like 50%.

A genuinely independent analysis of his methods would support this.

The speech by Justice Kirby is included to show the "1 in 20 probability" is a valid "High Court" precedent.

Sections 6 & 7 of the Administrative Decisions Judicial Review Act are also relevant.

Name	Pages	Size - kb
19990127 Tilbrook to AFV 100dpi.pdf	7	1,170
19990127 Tilbrook to AFV 300dpi.pdf	7	5,698
Power to remake a decision.doc	5	53
Right of reply for veterans in relation to Research Reports.doc	2	31
BYRNES v. REPATRIATION COMMISSION (1993).doc	6	77
212 Delegation by Minister.doc	1	21
Speech by High Court Justice Kirby 17 July 2006	15	55
ADJR Section 6 Applications for review of conduct related to making of decisions.doc	2	29
ADJR Section 7 Applications in respect of failures to make decisions.doc	1	26

Minister has authority to make decisions. – VEA sec 212 – not yet on web site

Name	Pages	Size - kb
212 Delegation by Minister	1	20

Going back to previous administrations Annual Reports carried a message that the Minister had no authority to make decisions. Quite clearly this is wrong.

When I get time I'll find the offending material.

Where “ultra vires” is involved veterans are entitled to have their claims redetermined (correctly) from date of original application.

Name	Pages	Size - kb
Power to remake a decision	5	53

"Power to remake a decision" is a 1999 Advisory from Disability Compensation Branch. It is DVA's own instructions about the matter.

Referral of Federal Court Precedent (requiring diagnosis before Deledio process) to High Court.

Precedent is clearly wrong and has never been to High Court – Five out of five decisions by High Court have gone against Repatriation Commission. An easy way to demonstrate Federal Court Precedent is wrong is to apply Federal Court Precedent to facts of Byrnes case. In other words use VEA sec 120(4) instead of VEA sec 120(1). Federal Court Precedent then overturns Byrnes decision. Obviously this is wrong because a lower court (Federal Court) cannot overrule a higher court (High Court).

Consent Declaration Not Valid

[Consent declaration.doc](#)

[19A Refusal to undergo medical examination etc.doc](#)

1. Consent declaration signed under duress – not valid - VEA Sec 19A
2. Consent declarations only authorise incoming information to DVA not outgoing.

[Criminal Breaches.doc](#)

[RESEARCHERS FOR HISTORICAL AND FACTUAL INFORMATION.doc](#)

[RESEARCHERS 2 FOR HISTORICAL AND FACTUAL INFORMATION.doc](#)