

The Behind-the-Scenes Story of the Agent Orange Controversy

Graham Walker

It was late 1981.

I had just left the army after 21 years.

A friend said the Vietnam Veterans Association could use some help.

Who are they? I asked.

There're the Agent Orange mob, he said.

What's Agent Orange, I asked.

The Association's office in Smith Street, Parramatta, Sydney. I climbed a set of rickety stairs overhung by a fly-marked light bulb leading to the office. The office itself was small, dingy and cluttered, more appropriate, I thought, for the legendary whisky-powered down-at-heel 'private eye' than the Vietnam Veterans Association. I moved through an obstacle course of people, old furniture and cardboard boxes full of documents to meet the National President, Phil Thompson.

Phil Thompson had been one of the youngest Warrant Officers in the Australian army. He had had two one year tours of duty in Vietnam with the 1st Battalion Royal Australian Regiment. In his second tour he was wounded when an enemy rocket exploded in a tree above him, showering him with shrapnel. Phil had loved the army, feeling it was his second family, so when, after 14 years of service, he was discharged for medical reasons, he felt the separation strongly. Leading the fight for veterans to be told to what toxic chemicals they were exposed and what harm might come from that exposure was his way of continuing that service.

I know nothing about Agent Orange or your association, I told Phil, but I can see you could use a filing system.

To establish a filing system you must read every document. What I read alarmed me.

After that I became an honorary researcher and writer and helped with lobbying governments and bureaucrats. I continued with those tasks with the Vietnam Veterans Association, then after the 1992 split, with the Vietnam Veterans Federation.

The Vietnam Veterans Association (VVAA) in the late 70s and early 80s had two concerns.

There was concern for the mental health of many Vietnam veterans. It was not unusual for someone to be called out to calm down a veteran in a domestic dispute or sometimes even to help the police with a troubled veteran. Indeed, the Association's office was used as a counselling centre employing several volunteer part-time professional counsellors.

The Association thus saw the need for a properly funded counselling service. With the assistance and case studies of one of the volunteer counsellors, Leanne Grierson, the Association made submissions to government.

When the government (Senator Tony Messner was the Minister for Veterans Affairs) agreed to establish a counselling service in 1982, Phil Thompson, in recognition of the Vietnam Veterans Association's substantial role in its establishment, accompanied Repatriation Commissioner Major General 'Alby' Morrison touring Australia interviewing potential staff. The first Counselling Centre was opened in Adelaide in 1982 with Phil Thompson making an address at the launch.

A Vietnam Veterans Association representative was appointed to the supervisory body, the National Advisory Council.

Such was the success of that first Counselling Centre that the Vietnam Veterans Counselling Service (VVCS) (since 2007 called the Veterans and Veterans Families Counselling Service) has grown to some fifteen centres round Australia.

One of its founding principles was its independence from the Department of Veterans Affairs, an independence we have had to defend from time to time.

The Vietnam Veterans Association's other concern was that exposure to the herbicide Agent Orange and other toxic chemicals whilst on war service in Vietnam might cause cancer in the veterans and birth defects in their children. Also, some medicos were suggesting exposure to the chemicals might cause Toxic Brain Dysfunction with similar symptoms to Post Traumatic Stress Disorder leading to possible mis-diagnosis.

The exposure to herbicides came about because the United States Air Force was being frustrated. It had mastery of the skies over South Vietnam and wanted to unleash its air power on the local units of National Liberation Front (NLF) and on the troops of the People's Army of Vietnam (PAVN). But those enemies skilfully used the thick canopy of the Vietnamese jungle to avoid detection. For the USAF the solution was clear: remove the canopy by defoliating the jungles with 'Agent Orange'.

The herbicide Agent Orange was a mixture of the chemical 2,4-D and the chemical 2,4,5-T with its inevitable impurity, dioxin. It was sprayed in large volumes by the US Air Force over the Vietnamese countryside. There were other herbicides used and they were often bundled under the banner of 'Agent Orange'.

The United States Air Force ceased spraying herbicides from the air in 1971 because scientific evidence suggested exposure to it might cause cancer and birth defects. After the war, more evidence of the chemical's harmfulness emerged.

Whilst in 1981 exposure to insecticides was not yet an issue, the Vietnam Veterans Association's scientific advisers pointed to their dangers. A variety of them had been heavily dispersed to kill mosquitoes, scorpions etc, round the 1st Australian Task Force base at Nui Dat and 1 Australian Logistics Support Group at Vung Tau. These also came to be include under the banner of 'Agent Orange'

Vietnam veterans around Australia had reacted to this scientific news on 'Agent Orange' and formed State based groups. In 1979 the groups federated to form the Vietnam Veterans Association of Australia.

Meanwhile, Hon Clyde Holding MP, Shadow Minister for Veterans Affairs was taking the issue to Federal Parliament. In February 1979 he asked a Parliamentary question of the Minister for Defence. The Minister answered: "The Australian Forces did not use Agent Orange in Vietnam".

Several questions followed that elicited little information.

On 28 March 1980, more than a year after the first question was asked, Clyde Holding asked a question in which he supplied more information about herbicide spraying in Vietnam than the Minister had revealed in his several answers.

Clyde Holding asked:

"...Was the Minister aware, when he denied the use of Agent Orange by Australian troops in Vietnam, that the term 'Agent Orange' is used broadly, both by the Press and by the Vietnam Veterans Action Association, to cover a range of defoliants used in Vietnam and include agents blue, orange, white and purple? Is he also aware that tordone, which he stated was used by Australian troops in Vietnam, is simply the trade name used by the Dow chemical company for the extremely toxic defoliant containing a mixture of 2,4-D and picloran which, when used by the military in Vietnam, was described as Agent White?"

The Minister's notorious reply was dismissive, even flippant:

"... I asked my Department what toxic herbicides were used... and this is the answer I was given: regione, gammoxone, tordone and hyva. I do not wish to be disrespectful to the honourable gentleman, or indeed to the House; but, as far as I am personally concerned in the field of qualifications, they [Agents Orange, Blue, White and Purple] could be four horses running at Rosehill on Saturday...."

The veterans saw it as curious that they could dig up information on the use of 'Agent Orange' that the government could not.

That had certainly been a bad start, but Phil directed me to a document that had been published by the government in 1981, around a year after the notorious 'four horses running at Rosehill' answer and two years after Clyde Holding's first parliamentary question. The document, titled *Pesticides used in Vietnam hostilities and their use in Australian agriculture: A comparative study*, listed the chemicals used, discussed their potential toxic effect and assessed veterans' potential for exposure. The document revealed that 'approximately 17,632,000 US gallons [66,744,000 litres] of the herbicides Agent Orange, White and Blue were sprayed over South Vietnam.

"Well", I told Phil, "it has certainly taken an unreasonable time to produce but it looks like the government is trying to keep faith with veterans."

Phil looked at me sadly and shook his head. "Look closer" he said. He pointed out that the document reeked with the fear that the growing 'Agent Orange' controversy would spill over to threaten the use of those same chemicals in Australian agriculture. It warned:

"...Any restrictions on pesticide use would certainly jeopardise several of our most important primary industries and reduce the quality and quantity of primary produce offered for sale domestically and overseas."

It pleaded that there were no satisfactory substitutes immediately available for 2,4,5-T and other pesticides or that substitutes that were available were prohibitively expensive.

In any case, it argued, the chemicals were used differently in Vietnam.

"In Australia, Agricultural usage of these pesticides is in no way analogous to the manner in which they were used in Vietnam for military purposes."

And it suggested that any harm to soldiers exposed to these chemicals in Vietnam might have been through the chemicals' mis-use:

"Although the regulations were designed to protect personnel from potential adverse health effects, it is impossible to determine the extent to which they were met."

Phil was right. Keeping faith with those who had fought Australia's war had been the last thing on the minds of the document's authors. Reciprocity for a job well done was the least of their motivations. It was saving the reputation of the chemicals used in Australian agriculture that motivated the writing of *Comparative Study*. The veterans were seen simply as a bunch of nuisances whose mischief had to be nullified.

I still believed the government would not abandon its veterans, so I was relieved when, in my reading, I came across the *Vietnam Special Studies Group*. It was a group formed inside the Department of Veterans Affairs in early 1981. Its task, we were told, was to collect and assess information on 'Agent Orange' which would form the basis of Departmental policy and the decisions of those assessing veterans' claims for compensation. This, surely, was good news. It seemed to me an indication that the Department did care about the health of Vietnam veterans and was keeping faith with them.

Phil's response to my optimism was not encouraging. He shook his head then related to me the background of ED Mick; Letts, the First Assistant Secretary leading the *Study Group*.

ED Letts for years had held responsible positions in the Department of Primary Industry, the Department most vociferous in its condemnation of those who warned of the possible dangers of agricultural chemicals. Indeed, in a speech made in May 1979 to the Royal Australian Chemical Institute, the Department's Pesticide Co-ordinator, Jack Snelson, claimed that those questioning the safety of these chemicals were part of a "powerful, vicious and well organised" plot to exploit the "innocent and unwary silent majority" in order to "draw [sic-probably meaning 'claw'] down man's achievements in chemical technology" and emasculate the chemical industry. He referred to those crying caution as "a heterogeneous mixture of activists, axe grinders, do-gooders, cranks, guilt complexes, profiteers and vested interests". He added, "We have all of these forces at work recently promoting the controversy over 2,4,5-T". He identified them. "The voices of chaos are a mixed bag and much too noisy. Who are these people? What are they like? Well there are the fearful, the

ignorant and the superstitious who see demons in the form of chemicals round every corner; the anti- technologist who promotes the fear of chemicals to hasten their demise; the scientist who promotes the fear of chemicals in hopes of gaining funds for supporting his research; and the politician who promotes the fear of chemicals for political gain and power.”

Even though the anarchy in that dingy Parramatta office would have cleared the Vietnam Veterans Association from any accusation of being ‘well organised’ and though the Vietnam veterans working there seemed to me to be unlikely to fit any of the categories on his list, I felt sure they were included in his condemnation.

But none of these was Jack Snelson’s most extreme statement. Here is a report in the National Times with a quote of Jack’s that could qualify:

‘One of the strongest public defenders of 2,4,5-T has been the officer co-ordinating pesticides in the Federal Department of Primary Industry, Jack Snelson.

...

‘When in June of this year [1980] a young farmer and vet [animal vet] Michael Cobb, drank a glass of 2,4,5-T at the NSW State National Country Party Conference to demonstrate its safety, Snelson said: “I’d say he could have drunk several times as much without the slightest risk”.’

As recently as 1980, ED Letts had been Assistant Secretary, Grains and Industrial Crops Branch, Department of Primary Industry. Just as I was, to some degree, a prisoner of army culture, would not the First Assistant Secretary, no matter how honest a fellow (and we do not dispute his honesty), be influenced by the radical culture of the Department of Primary Industry? Indeed, would he have been selected for such a responsible post in that Department of Primary Industry had he not been?

“Why not appoint someone from the Department of Health or an independent academic whose focus is on the possible harmfulness of the chemicals rather than someone whose focus has been on their contribution to increasing grain production?” I asked Phil.

‘Good question?’ he replied.

From the veterans’ point of view, the evidence of possible government bad faith was mounting. There was what seemed an unreasonable delay of some two years from the first parliamentary question to providing information on the chemicals used. Then, when a paper was eventually produced, it was aimed at defending the use of chemicals in Australian agriculture rather than informing Vietnam veterans. Then a senior officer of a government department vociferous in its condemnation of those questioning the safety of agricultural chemicals was appointed to head an ‘Agent Orange’ study group to advise the Department of Veterans Affairs.

Some veterans, more cynical and conspiratorially minded than I, noted that the Federal Cabinet included five farmers.

ED Letts' offsider in the *Study Group* was Assistant Secretary Bruce Manning. He was a Vietnam veteran. We have only recently realised his posting in Vietnam was the officer commanding, 25 Supply Platoon, Royal Australian Army Service Corps, in 1969-70. Part of his responsibility was the distribution of insecticides.

The *Comparative Study* judged that, "Although the regulations were designed to protect personnel from potential adverse health effects, it is impossible to determine the extent to which they were met." In other words, we could not know whether the chemicals were mis-used. The result of mis-use, of course, could have been harmful exposure. Bruce Manning was a participant in the chemicals network about which the *Comparative Study* could not rule out mis-use. It is in no way casting aspersions on the integrity of Bruce Manning to say that putting him in that situation was to risk him facing a conflict of interest in assessing information on the use of 'Agent Orange'.

"For veterans who may seek compensation", Phil told me, "the central issue is this. Despite all the evidence we have put forward, the Department of Veterans Affairs refuses to accept a link between our veterans' exposure to 'Agent Orange' and certain cancers."

I wasn't certain his criticism was fair. Certainly the system was slow and seemingly reticent in providing information, but documents showed that the evidence for harmfulness was strongly contested.

"Perhaps the Department has got it right," I said to Phil. "After all, there are studies failing to identify ill effects."

"Not that simple", said Phil, then explained that it was not only a matter of the science but also of Repatriation law.

Repatriation law required the Department of Veterans Affairs to give the 'benefit of the doubt' when assessing compensation claims. In simple terms, if the assessor could not disprove the link between a claimant's illness and war service, then the claimant would succeed. In practical terms this meant that if some good evidence showed a link then it would not be negated by other evidence failing to show that link.

Such special consideration for war veterans was not new. With increasing numbers of servicemen returning from the First World War, the Australian Soldiers' Repatriation Bill was introduced into parliament by the Minister for Repatriation, Senator E.D. Millen, in 1917. Repatriation, the Minister said, was "an earnest attempt to meet the nation's obligations to those who on its behalf have gone down into the Valley of the Shadow of Death". The bill included compensation arrangements and medical care specifically tailored for war-damaged veterans.

The Prime Minister at that time, Billy Hughes, had no doubts that this obligation was the result of an unwritten but binding contract between the Australian parliament and Australia's servicemen and women: "[W]e say to them 'You go and fight, and when you come back we will look after your welfare'... [W]e have entered into a bargain with the soldier, and we must keep it." Hughes made it clear that the servicemen and women had every right to expect that the government would honour its promises: "The soldier will say to the Commonwealth Government. 'You made us a promise. We look to you to carry it out.'"

By 1929 it had become clear that too great a burden was being placed on returned servicemen in seeking compensation for war-related disabilities. The remedy was the Australian Soldiers' Repatriation Act 1929, which relaxed evidentiary rules and put the onus on the Repatriation Commission to disprove a veteran's prima facie case.

In 1941 the Federal parliament again considered its responsibilities to the members of the armed forces returning from the front. A Joint Parliamentary Committee examined the adequacy of existing repatriation arrangements "in the light of the conditions caused by the 1939 war" and under the pressure of some "well publicised grievances" generated by the existing legislation. The result was Australia's new repatriation contract with its fighting forces, as embodied in the Australian Soldiers' Entitlement Act 1943.

In framing the new Act, much thought was given again to how difficult it should be for sick and disabled veterans to have their illnesses and disabilities accepted as war-caused. The thought of sick war veterans having to continue to fight their way through court hearing after court hearing, with too heavy a burden of proof on them, was abhorrent both to the parliament and to the Australian people. So the new legislation included a more lenient test for whether a veteran's sickness could be linked with war service. In short, the new legislation gave veterans a generous 'benefit of the doubt'. In introducing the legislation, the Attorney-General explained:

"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. In other words, if any question which is material to the case made by any of these tribunals cannot be placed beyond reasonable doubt, the question must be determined in favour of the member of the armed forces."

During the long parliamentary debate on the 1943 bill, the Federal Opposition's only objection to this provision was that it might not be generous enough.

While successive Federal parliaments supported these provisions, ambiguities in the wording of the Act led to disputes between the Repatriation Commission and the veteran community over interpretation of the 'benefit of the doubt' rule.

In 1977, however, parliament settled this issue in an amendment to the Act. In unambiguous wording that closely reflected the Attorney-General's 1943 explanation, the parliament reiterated its intention that a generous 'benefit of the doubt' was to be given to the veteran. The amended act put the onus on the determining authority to prove, beyond reasonable doubt, that a veteran's disability was not war caused.

The Vietnam Veterans Association's scientific advisers and many other reputable scientists were convinced that exposure to 'Agent Orange' could cause cancer. Even though this view was not yet firmly held by the medical establishment, we strongly felt that Repatriation law demanding that veterans be given the benefit of the doubt would ensure veterans suffering certain cancers would be granted treatment and compensation.

But the Department of Veterans Affairs consistently refused to concede any link.

Phil was convinced the Department was not obeying Repatriation law.

From what I had read, I had to agree. At least on the link between 'Agent Orange' and certain cancers, especially soft tissue sarcoma, there seemed to be credible evidence.

The scientific advisors were also convinced that exposure could cause birth defects. This was not strictly a concern of the Department. If the link was established, legislation amendments would be necessary to include the children.

There was much less scientific evidence of a link with Toxic Brain Dysfunction but because its symptoms were akin to those of Post Traumatic Stress Disorder, the Vietnam Veterans Association considered the possibility of mis-diagnosis should be investigated.

Meanwhile Phil Thompson, Tim McCombe, Terry Loftus and the rest of the team of mainly sick and disabled Vietnam veterans moved from the Parramatta office to a storeroom in the back of an old Granville RSL hall. It was no more salubrious but at least there was room to move.

There was no money for furniture or renovations (indeed, not much money at all), but a truck arrived seemingly unannounced and offloaded old furniture. Then the James Hardie company donated some building material. I was surprised, too, when a concrete truck drove up and emptied its contents into formwork at the back door to produce a landing and steps. Mick Scrace with his nail gun and his helpers got to work lining the walls and erecting partitions to form offices with James Hardie material. Norm Robinson, Bob Rogers, John Haines and many others set up shop and the work of advising and helping troubled Vietnam veterans and their families and the work of campaigning to have the harmfulness of exposure to Agent Orange recognised, began in earnest.

The Association magazine, *Debrief*, with a running commentary on the progress of our campaign, was being pumped out monthly.

With appeals to the government and the bureaucracy not having succeeded, it was time to try the judiciary. The Association began a campaign for the establishment of a Royal Commission.

The government said “No”.

But in October 1981 the Opposition and the Democrats combined in the Senate to establish an enquiry by the Senate Standing Committee on Science and the Environment.

It reported in November 1982.

In short, the Committee was undecided about the link with cancer and found no link with birth defects. It recommended more research into the possibility of Toxic Brain Dysfunction.

Of course we were grateful, but the Senate committee could not call unwilling witnesses, bring witnesses from overseas nor allow any opportunity for us to cross-examine. It held hearings for less than ten days. Though motivated by good will, the Committee was simply not in a position to resolve the huge and complex issue of ‘Agent Orange’. It was not a substitute for a Royal Commission.

But it did pose some a valuable questions. It recommended “an examination of the way in which the determining authorities have been applying the evidentiary provisions of the legislation”. In other words, was the Department giving veterans the benefit of the doubt as prescribed by Repatriation law? This was to be the Department’s first warning.

The Committee also questioned the central role being played by ED Letts' *Vietnam Special Studies Group*. It recommended an examination of "whether the determining authorities have been relying too heavily on information provided by departmental sources".

Valuable too was insight into the Department's view of the Vietnam War and Vietnam veterans.

Dr Sol Rose had been, until late 1981, Director of Medical Services in Victoria responsible for the training and oversight of medical officers who dealt with claims by veterans that their disabilities and illnesses were war-caused. This was, in part, his evidence:

"I do not think that the nature of the war in Vietnam is any different or significant, because the service was not a long one in comparison to World War II; they were not debilitated anywhere near to the same as were the ... people coming back from long service in the tropics, particularly those from the New Guinea campaigns which were long and arduous."

This showed a lack of understanding of guerrilla warfare. Indeed, evidence given by Brigadier Rogers, Director of Army Medical Services, who had served in Vietnam, differed markedly. He said:

"I did a little calculation once of the amount of stress put on a Vietnam soldier in comparison to the World War II soldier. The infantry soldiers – the combat soldiers – faced many times more stress."

We were not interested in an argument about whose war was the most debilitating, but we were interested in Dr Rose's misconception of our war, a misconception that might have influenced the way his doctors viewed the compensation claims of Vietnam veterans.

We felt, too, that such an errant view might not have been confined to the Victorian Director of Medical Services and his doctors. Indeed it was quite possible that Dr Rose's view was widespread.

We wondered whether this helped to explain the Department's obstinacy.

In 1982, while the Senate Enquiry was sitting, the government ordered some 21,000 files raised in Vietnam during the war and housed in the War Memorial archives be examined for evidence of exposure to herbicides and insecticides. A group of round 20 army officers and warrant officers with supporting staff from Army Headquarters in Canberra commanded by an army lieutenant colonel, trawled the files while a small writing team received the evidence and compiled a report.

Assistant Secretary Bruce Manning from the Department of Veterans Affairs' *Vietnam Special Studies Group* was one of the writing team. As I have said, we much later realised that Bruce Manning was, while serving in Vietnam, responsible for the distribution of insecticides. The *Comparative Study* had declared it could not rule out chemical mis-use. So whilst not suggesting any impropriety or dishonesty on his part, Bruce Manning should not have been put in the position of interpreting information on the chemical distribution system in which he participated.

The report which emerged from this process, titled *Report on the Use of Herbicides, Insecticides and Other Chemicals by the Australian Army in South Vietnam* and known as the *Army Report* was completed too

late to be viewed by the Senate Committee. Neither did it go directly to Parliament. First it was sent for review to the Department of Veterans Affairs' *Benefits and Special Projects Division* (formerly *Vietnam Special Studies Group*) led by the import from the Department of Primary Industry, ED Letts. This seemed unnecessary and inappropriate. Why should the Department of Veterans Affairs be reviewing a report produced by the army rather than acting on its unreviewed contents? On 25 November 1982 Phil Thompson distributed a press release objecting. It said in part:

“There is also an obvious conflict of interest in the DVA revision of the original Defence Department report. This interference must destroy the credibility of the final version of the report.”

The Minister for Defence, in answer to a Parliamentary question, claimed the revision was only to add information where a more detailed description of events was felt necessary; to make minor corrections of factual detail; to make editorial corrections such as spelling and typographical corrections; and make other editorial changes to improve the flow of the report. In saying this he implied there would be no significantly changes to the report's thrust.

However, the Minister added that only one copy of the original would be retained. It was a copy to which we would not have access.

But, as we were to discover much later, fundamental changes to the original report had indeed been made.

Meanwhile, Shadow Minister Clyde Holding was able to include the establishment of a Royal Commission on the Labor Party's election platform.

In 1983, Labor won the election, and one of its first actions was to announce a Royal Commission into the 'Use and Effects of Chemical Agents on Australian Personnel in Vietnam'. Its terms of reference were wide and it was properly resourced.

We couldn't have been happier. Now the truth would out.

We noted with concern, however, that the Department of Veterans Affairs was providing its input to the Royal Commission through the *Benefits Special Projects Division (Special Projects Branch)* headed by ED Letts.

As the hearings progressed we had other concerns.

One was that, while the Royal Commission was still sitting, the government amended Repatriation law making it more difficult for veterans' compensation claims to succeed. The amendment required that a 'reasonable hypothesis' be established before the 'reverse onus of proof beyond reasonable doubt' standard could be applied. This meant that the assumptions underpinning the Vietnam Veterans Association's campaign were changed. We wondered how this would affect the Royal Commission's outcome.

Also of concern was the Association's case itself. It was a somewhat messy affair. Whilst some of its witnesses were world-renowned and reliable experts, others turned out to be unreliable and even dodgy.

Even with the Association's sometimes messy case and with the law-change making compensation claims' success more difficult, the Royal Commission found that a Repatriation

determining authority might well attribute a Vietnam veteran's soft tissue sarcoma or non-Hodgkins lymphoma to his exposure to Agent Orange while on war service in Vietnam. We wondered how long that list of cancers would have been had the law not been toughened up.

A second finding of the Royal Commission vindicated our campaign even more. It found that the Department had, "for a number of years, refused to concede that benevolent judicial interpretations of the application of ... [the law] were consistent with parliamentary intention". And, the 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". The Royal Commission went so far as to accuse the Department of training Determining Officers "to find ways around Court statements of what the law was" and of emphasising "ways in which a claim could be 'knocked-out'."

The Royal Commission scolded the Repatriation Commission saying that if it was unsatisfied with the law it should move to change it, not break it. This was the Repatriation Commission's second warning.

However, the Royal Commission reported there was insufficient evidence to find the chemicals guilty of harm at the standard of proof required in a civil court. This was, of course, largely irrelevant to the veterans whose compensation cases were heard within the Repatriation system where the benefit of the doubt applied.

Our response to the Royal Commission findings was two-fold. We were unhappy with how it had handled some of the evidence, causing a storm in the scientific community with world-renowned scientists outraged by the unequivocal 'guilty' findings and two of them expressing their outrage in a letter to the Governor General. Then we found that great slabs of the most important parts of the Royal Commission's report were lifted verbatim (mistakes and all) and without attribution from the submissions of the chemical company, Monsanto. A Wollongong University academic specialising in the study of incidents of plagiarism wrote:

"The extent of plagiarism is undoubtedly great. I have examined hundreds of pages which are transcribed almost verbatim, while other parts appear to be based on the content and structure of arguments in the Monsanto submission. Of the many instances of plagiarism which I have studied, this is one of the more egregious cases."

We reasoned that without these blemishes, the Royal Commission 'not guilty' findings (at the civil court standard of proof) may have been less emphatic leaving more room for doubt.

This concern was later reinforced when, in 1989, an academic conference titled *Reappraisal of the Findings on Agent Orange by the Australian Royal Commission* concluded:

'We believe that the final decision by the Australian Royal Commission to completely exonerate 'Agent Orange' (and other chemicals) was incorrect.'

Our second and more important response was focused on the Department. We waited expectantly for a 'Mia Culpa' over its systemic avoidance of Repatriation law and for an acknowledgement of the Royal Commission's findings on cancer.

We waited in vain. Astonishingly, the Royal Commission findings made not a scrap of difference to the Department's behaviour. We noted that ED Letts' *Special Projects and Co-*

ordination Division (Special Projects Component) was responsible for advising “the Secretary, the Repatriation Commission and the Minister on matters arising from the report of the Royal Commission...”.

In the Department of Veterans Affairs 1986-87 Annual Report, the Minister for Veterans Affairs was reported as announcing:

‘On the basis of scientific, medical, statistical and other evidence relied on by the Commission the Government accepts that the case for a link between Agent Orange and the health problems among Vietnam veterans has not been established.’

We noted again that the *Special Projects Component* was responsible for advising the Minister and that the Minister had omitted mention of the Royal Commission’s findings that under Repatriation law a link had been established between exposure to ‘Agent Orange’ and certain cancers.

By June 1989 the *Special Projects and Co-ordination Division* had been disbanded and ED Letts had left the Department of Veterans Affairs.

In 1986 Phil Thompson committed suicide.

No doubt the poor outcome from his cancer operation, his marriage breakdown and his severe Post Traumatic Stress Disorder were the primary causes. But his disappointment that the Royal Commission he had fought so hard to establish had not changed things for the better could not but have contributed.

But the Agent Orange Royal Commission had not been a waste of time. In its two years of enquiry, it had collected and collated mountains of scientific evidence and information about the use of toxic chemicals in Vietnam. And the Royal Commission had pointed out that:

‘It is a matter of public record that there has been a clear divergence of opinion and of result between the Repatriation Review Tribunal and the Repatriation Commission as to the proper interpretation and application of the standards of proof prescribed under the legislation.’

So using the information collected as a base, the Vietnam Veterans Association took the fight to the independent appeals tribunals.

Adrian Crisp’s Vietnam service was as a rifleman with the 8th Battalion, Royal Australian Regiment in 1969/70. In 1977 Adrian died of malignant schwannoma of the right brachial plexus, a cancer of the nerve sheath. This is a variety of soft tissue sarcoma, a cancer identified by the Royal Commission as linked with exposure to Agent Orange. His widow applied for a war widows pension on the grounds that exposure to toxic chemicals whilst in Vietnam caused Adrian’s cancer. The claim was rejected.

With information gathered by the Royal Commission in the hands of two eminent Australian medical scientists, the Sale sub-branch’s Ted Warner with National President Tim McCombe, appealed the case. In 1989 the case came before the Administrative Appeals Tribunal (the second

level of appeal). The case was won. Adrian Crisp's cancer was attributed to his exposure to 'Agent Orange'. The 'reason for decision' carefully explained how the Tribunal identified the existence of a 'reasonable hypothesis' supporting Adrian Crisp's case. Its findings made it clear that our success came because of the good quality of evidence presented on behalf of the veteran and because the law required the Tribunal to give the veteran the 'benefit of the doubt'

Two similar successes followed, each success discrediting the initial Departmental rejection.

In December 1992 the cases of Ken Kain and Peter Edwards came before the Administrative Appeals Tribunal. Both veterans had been diagnosed in the early 80s with Hodgkin's disease, a cancer of the lymph glands. Of particular note in this hearing was Dr Millar's comprehensive evidence of the veterans' potential for exposure to a wide range of toxic chemicals. The Tribunal acknowledged there was a difference of opinion between experts, but that a 'reasonable hypothesis' had been established and that the contrary evidence did not disprove that 'reasonable hypothesis' beyond reasonable doubt. The appeals succeeded.

In February 2001 the Administrative Appeals Tribunal handed down its decision in the case of Robert Cornish. He died of disseminated Cancer of the Colon. Whilst there was considerable evidence against 'Agent Orange' being the cause, it was not sufficient, the Tribunal said, to disprove beyond reasonable doubt the 'reasonable hypothesis' supporting the link. The appeal succeeded.

In addition there were some dozen cases won at the Veterans Review Board (the first level of appeal) and a number of cases withdrawn by the Repatriation Commission before Administrative Appeals Tribunal hearings.

There would no doubt have been other successful cases sponsored by other ex-service organisations and by individuals.

In July 1993, the US National Academy of Science released a report (commissioned by the US Congress) on the association between 'Agent Orange' exposure during Vietnam service and ill health. The report was based on a review of existing evidence. In the report a list of cancers was linked with exposure to 'Agent Orange' at a standard of proof approximating that demanded in Australian civil courts.

One of those cancers cited was Hodgkin's Disease.

Only months before the US Academy of Science report's release, the Repatriation Commission had appeared before the Administrative Appeals Tribunal in the Kain and Edwards case. There, it had argued that, even at the lower standard of proof required by Repatriation law, there was no link between Hodgkin's Disease and exposure to 'Agent Orange'. Both bodies had access to the same evidence and the Repatriation Commission had a statutory responsibility to investigate. The Repatriation Commission's investigation with the less onerous standard of proof did not find the link while a link was identified using a more onerous test by the US Academy. Something was wrong.

The 1993 US Academy of Science report's findings, at that civil court standard of proof, effectively overturned the Agent Orange Royal Commission finding at a similar standard of proof that "[t]here is no reliable evidence that the chemicals in Agent Orange cause cancer in humans".

The US Academy finding could not be ignored.

In 1994 the system of assessment of claims for compensation was changed with the establishment of the Repatriation Medical Authority (RMA). Its task was to determine and publish the causes of illnesses. After the establishment of the RMA there could be no more arguing the causes of diseases before the appeals tribunals. But the RMA, following its own procedures, found a link between veterans' exposure to Agent Orange and much the same list of cancers as had the US Academy but adding multiple myeloma; and respiratory cancers (lung, larynx and trachea).

In 1994, *Medicine at War*, Volume 3 of the Official History of the Vietnam War, was published.. Its publication came seven months after the release of the US Academy of Science report effectively overturning the Royal Commission finding at the civil court standard of proof, "[t]here is no reliable evidence that the chemicals in Agent Orange cause cancer in humans".

We had been looking forward to this event expecting the narrative about the Agent Orange controversy to go something like this:

The Repatriation Commission repeatedly rejected veterans' claims that they may have been harmed by their exposure to 'Agent Orange'. The veterans believed those claims were being rejected mainly because the Repatriation Commission failed to give the 'benefit of the doubt' as required by law. Their suspicions were confirmed by the Agent Orange Royal Commission which reprimanded the Repatriation Commission for wilfully circumventing this law. While the Evatt enquiry was sitting, a legislative amendment was passed that made it more difficult for veterans' compensation claims to succeed. Despite this added difficulty, the Royal Commission found that, under Repatriation law, soft tissue sarcoma (with its very many varieties) and lymphoma could be linked with exposure to 'Agent Orange' in Vietnam. Subsequently, the campaigning veterans, time and time again, sponsored cases at the appeals tribunals in which veterans' cancers were attributed to 'Agent Orange' exposure.

We expected this narrative to lead to the conclusion that the veterans were vindicated in their 'David and Goliath' contest with the Repatriation Commission.

But rather than acknowledge the veterans' success in that contest, Smith launched an attack on the veterans' leadership.

Professor Smith had a belief about the 1980s. It was a time, he proclaimed, "when ... private greed became, for some, a public good." Without interviewing any of the campaign's national leaders, he lumped them into that category. In intemperate outbursts, he declared: "A small minority of disgruntled Vietnam veterans seized on the issue both as an explanation of their discontent and a likely source of [undeserved] additional repatriation benefits." For Smith, "[t]he clash epitomizes many of the worst aspects of Australian behaviour in the 1980s."

What had happened was this. FB Smith had failed to include in his account the two Royal Commission findings (identifying two categories of cancer linked with exposure to Agent Orange under Repatriation law and the attempts by the Repatriation Commission to circumvent the law and the intentions of parliament) that vindicated the veterans' campaign. This extraordinary failure

allowed him to wrongly claim that the veterans had no case. Claiming they had no case made it possible for him to fit the campaigning veterans into his views on behaviour during the 1980s and accuse them of dishonesty and greed.

We noted that FB Smith, during the writing of his account, had not interviewed even one of the national leadership of the ‘Agent Orange’ campaign. Perhaps if he had, his account would not have been so flawed.

Neither did FB Smith’s account mention the US Academy findings even though they had preceded the Official History’s publication by seven months. Perhaps this was too short a time for the publication process to be interrupted with an amendment. But neither did FB Smith ever acknowledge that the US Academy findings might modify his account.

Controversy followed but Official Historian Dr Peter Edwards defended FB Smith’s account and criticised the campaigning veterans.

In 2012, *Fighting to the Finish*, Volume 9 of the Official History written by Ashley Ekins was published.

On the findings of the Agent Orange Royal Commission the author reported only:

“In the 1980s and Australian Royal Commission concluded that these claims were not substantiated.”

No mention of the findings under Repatriation law linking exposure to ‘Agent Orange’ to cancer. No mention of the Royal Commission rebuke to the Department for evading Repatriation law.

In 2013, the revision of the *Army Report* again became an issue.

As previously discussed, in 1982 a team of army officers and warrant officers was assembled to examine some 21,000 files raised in Vietnam during the war for references to the use of herbicides and insecticides.

The report which emerged from this process, titled *Report on the Use of Herbicides, Insecticides and Other Chemicals by the Australian Army in South Vietnam* was known of the *Army Report*. The report did not go directly to Parliament. First it was sent for review to the Department of Veterans Affairs’ *Benefits and Special Projects Division* (formerly *Vietnam Special Studies Group*) led by the import from the Department of Primary Industry, ED Letts.

The Minister for Defence, in answer to a Parliamentary question, claimed the revision was only to add information where a more detailed description of events was felt necessary; to make minor corrections of factual detail; to make editorial corrections such as spelling and typographical corrections; and make other editorial changes to improve the flow of the report. In saying this he implied there would be no major changes made.

However, the Minister added that only one copy of the original would be retained. There were thus two versions of the *Army Report*; the original version dated May 1982 and the revised version dated December 1982. The original was not made publicly available.

The revised version of the *Army Report* was also presented to the Agent Orange Royal Commission where it became a key piece of evidence.

Major John Mordike was selected as a permanent member of the team to examine the 21,000 files because of his academic research experience. He supervised a small group given the sole responsibility for seeking out and examining records of insecticide use.

In 2011 the now historian Dr John Mordike, suspecting the full story of Australia's use of insecticides had not surfaced, and concerned veterans' exposure to them may have caused unacknowledged harm, sought out copies of the original and the revised *Army Report*.

What he found in the insecticide section of these reports alarmed him.

He found that far from only minor amendments being made to the original, a key passage had been erased making the revised edition unjustifiably beguine.

In his paper, *Insecticide Deceit? the truth about insecticides use in Nui Dat*, Dr Mordike quotes from the May (original) *Army Report* describing the 1 Australian Task Force Hygiene Officer's initial concerns about the use of insecticides at Nui Dat:

'The concern, that untrained personnel were apparently using toxic insecticides without any knowledge of concentrations, dilution factors, human toxicity factors and general safety precautions, resulted in the intended publication in Routine Orders of information on safe insecticide practice.'

In the December *Army Report*, the revised version presented to Parliament and used by the Royal Commission, that statement was amended to read:

'The 1 ATF Hygiene officers [sic] concern that practices for the use of toxic insecticides needed improvement resulted in the intended publication in Routine Orders of information on safe insecticide '

The critical words 'that untrained personnel were apparently using toxic insecticides without any knowledge of concentrations, dilution factors, human toxicity factors and general safety precautions' had been removed.

These words were critical because they came from a trained hygiene officer and suggested long standing mis-use and negligence. They also suggested the possibility of military personnel being dangerously exposed. The hiding of such information could only mislead Parliament and the Royal Commission as well as deprive veterans of evidence in claiming medical treatment and compensation for war-caused illnesses.

The omission of those words from the December (revised) report cannot but raise questions about the role of the *Vietnam Special Studies Group* and its successors.

Dr Mordike compared only the sections of the May and December *Army Report* dealing with insecticide use. What amendments were made to the rest of the original report about herbicide use remains to be discovered. Work on this is planned.

But Dr Mordike relates that much more disturbing for him was his discovery that key documents that described the misuse of the highly toxic insecticide Dieldrin at Nui Dat in 1970 and 1971 - documents that he considered to be a major discovery of the research project with profound implications for the health of soldiers - had been omitted from the original version of the *Army*

Report. Dr Mordike relates that in 1982, as the officer responsible for insecticides on the research team, he submitted copies of the Dieldrin-related documents along with file summaries to the writing team for inclusion in the Army Report as a key breakthrough for the research project. He was convinced that misuse of insecticides would become the subject of major interest for questions concerning Veterans' health. Yet the omission of these key documents in the Army Report diverted attention from insecticides and, specifically, forestalled further questions about the implications of prolonged exposure of soldiers to Dieldrin.

He then set off on a two year study of those same files to rediscover what had been omitted.

During this study Dr Mordike discovered that several documents he had sighted in his original search describing egregious mis-use of insecticides, were now missing.

The investigation led to his paper, *Insecticide Deceit? The truth about insecticides use in Nui Dat*, a paper which has radically changed our understanding of Australian insecticide use during the Vietnam war.

What will result from Dr Mordike's exposé, time will tell.

For more than twenty years we have been fighting for a new and accurate official history of the Agent Orange controversy to be commissioned.

Last year our efforts were rewarded.

This year, 2016, the project of writing a new official history titled *The Medical and Health Legacy of the Vietnam War* begins. It will take three and a half years and cost one and a half million dollars and be carried out by historian Dr Peter Yule.

We wish Dr Yule well and look forward to the new history's publication.