

COMMONWEALTH OF AUSTRALIA**ats****GLEN GREAVES****DEFENDANT'S POSITION PAPER
FOR THE PURPOSES OF MEDIATION
ON TUESDAY, 24 NOVEMBER 2015**

1. Glen Greaves (the Claimant) brings an unlitigated claim against the Commonwealth of Australia.
2. The Claimant alleges that he was physically and sexually abused whilst serving as a junior recruit at HMAS Leeuwin, Western Australia in 1971. As a result of that abuse, he claims psychiatric injury including post-traumatic stress disorder ("PTSD").
3. The Claimant was a member of the Royal Australian Navy from 1971 to 1981.
4. Mr Greaves was at HMAS Leeuwin from May to December 1971.
5. The Claimant trained as a Stoker/Marine Technician and was a leading seaman at the date of his discharge. That discharge was elective.
6. The Claimant served aboard a number of ships after leaving HMAS Leeuwin.
7. Mr Greaves has given a documented history of and made a DVA claim in relation to witnessing burnt dead bodies being loaded onto a truck and minding/guarding a dead body contained in a refrigerator/morgue over night whilst aboard the HMAS Sydney in Vietnam.
8. During his period aboard HMAS Leeuwin he claims to have been:
 - a. physically beaten and raped with a broom handle after refusing to perform oral sex on another junior recruit;

- b. forced to lick a urinal (as part of the above event);
 - c. beaten for allegedly reporting the assaults referred to in (a) and (b);
 - d. assaulted by having his head shoved into a toilet bowl that was full of faeces and letters from his parents;
 - e. physically assaulted;
 - f. raped with a broom handle on two (2) further occasions; and
 - g. the victim of undue disciplinary measures including marching at the double and marching with a rifle above his head.
9. The Claimant has a history of irritable bowel, and a dermatological condition of the natal cleft. He alleges that the onset of relevant symptomatology was at or about the time of the assaults. The records suggest that the timing is closer to his service on the HMAS Sydney in Vietnam.
10. The Claimant has made a number of DVA claims. His initial cessation of work was caused by spondylitis arising out of service on the HMAS Melbourne in 1977.
11. The Claimant worked for some time prior to accessing DVA benefits running a pest extermination business. The documents that are available reveal nothing about the structure and performance of the business.
12. The Claimant is married. He was until recently very active in the REDACT's Ambulance Division of his area in a management role. This ceased due to the closure of the division.

LIABILITY

13. Defences available to the Commonwealth in any litigation would include:
- a. a Limitation Defence for the purposes of section 38(1) of the Limitation Act (1935) Western Australia; and
 - b. Safety, Rehabilitation and Compensation Act defences.
14. The acts alleged are criminal assaults.

15. The current state of the law in relation to vicarious liability for criminal acts is favourable to Defendants.
16. The situation of young junior recruit(s) assaulting another young junior recruit does not have any of the indicia that might give rise to vicarious liability.
17. Medical causation is problematic for the Claimant.
18. The support provided by Dr Allnutt for the causation of PTSD brought about by the events alleged is necessarily based on the accuracy of the chronology.
19. The contemporaneous records trace the bowel condition to 1974.
20. The dermatological condition is consistent with having skin sensitivities and issues on other parts of his body including his face as reported in 1974. There are also references to severe problems with acne in 1972.
21. The Claimant has given a number of histories to treating doctors relevant to his PTSD diagnosis that focused on his Vietnam service.
22. Dr Delaforce (and others) found a causal link between his service in Vietnam and the PTSD. That exposure is said to have caused a number of issues including the alcoholism. The histories suggest that a great deal of the symptomatology in terms of irritable bowel, the dermatological issue with the natal cleft and the excessive consumption of alcohol had their onset within a year of his Vietnam exposure.
23. The Claimant's DVA documentation is equally problematic.
24. The Claimant made an entry in a DVA Application dated 1998 where he stated that, "*my back problem is so severe I may have to cease work*".
25. The initial claim for PTSD in 1999 clearly lists his Vietnam service as the stressor.

LIMITATIONS

26. Any claim would be statute barred pursuant to the Limitation Act 1935. The limitation period cannot be extended.

STATUTORY BARS

27. Any claim may be subject to the Safety, Rehabilitation and Compensation Act. It may be that no action lies or that damages are limited to non economic loss and capped at \$110,000.

QUANTUM

28. The Naval records record symptomatology consistent with irritable bowel syndrome including, but not limited to diarrhoea from as early as 1974.
29. The dermatological condition in the natal cleft appears to have commenced at or about the same time.
30. The Claimant has a significant history of alcohol consumption, drinking up to twelve (12) stubbies of beer per night. At one stage, he drank significant quantities of bourbon.
31. The Claimant has had treatment at the Northside and Eversham Clinics for his alcoholism.
32. PTSD symptomatology dates from the voluntary discharge from the Navy in 1981.
33. The stressors are referred to in the treating materials as the events in Vietnam and the death of his father by burning. The first reference to HMAS Leeuwin was 16 July 2014.
34. Dr Allnutt noted a manifestation of anxiety and depressive symptoms. These are said to have been consistent with chronic PTSD and associated depression. The irritable bowel syndrome is said to have been related to anxiety, although there is no gastroenterological evidence to support this. There is an alcohol abuse disorder.
35. Dr Allnutt notes that it is necessary to take into account the totality of the Claimant's stressors when analysing attribution. The chronology will be equally important.
36. The Claimant has received significant DVA payments.
37. A number of items in the Schedule appear to claim amounts plus the retention of DVA payments. This is not sustainable.

38. There is no evidence giving accurate costings for future treatment for any of the Claimant's conditions.
39. What proportions of those costs are related to the alleged abuse is in issue.
40. The claim for economic loss is equally problematic where it claims a set amount plus DVA entitlements.
41. There is no evidence to sustain economic loss prior to 1991. It seems that the Claimant was in full employment.
42. The records are insufficient to have any real appreciation of the performance of the pest business when self employed. The Claimant ceased that business because of his back injury.
43. The career progression report is not relevant as the Claimant left the Navy and retired voluntarily. **[May need to come out depending on instructions]**
44. The Claimant has exercised voluntarily capacity in non-manual work. Any allowance for past or future economic loss is questionable.

SUMMARY

45. The alleged assaults were criminal assaults perpetrated by junior recruits.
46. The Commonwealth will not be vicariously liable for those acts on the current state of the law.
47. The matter is statute barred and the Limitation period cannot be extended.
48. There are significant causal issues that include:
 - a. the timing of the onset of the symptomatology;
 - b. the clear linkage of the symptomatology with the Claimant's service in Vietnam;
and
 - c. the severe back injury for which the Claimant has been compensated and which it appears was sufficient to have him cease manual work.

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49. There are significant DVA issues to be taken into account.
50. Despite these issues, the Commonwealth is willing to entertain settlement on an appropriate compromise basis due to the appalling nature of the assaults that he endured.



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5 November 2015