

Deed of Release

Parties **Commonwealth of Australia**, represented by the Department of Defence,
Campbell Park Offices, Campbell ACT 2612

 ("Commonwealth")

Glen Thomas Greaves, REDACTED NSW REDA represented by
Shine Lawyers Toowoomba

 ("Claimant")

 (together, the "Parties")

Background

1. The Claimant seeks compensation from the Commonwealth for
 - A. The Claimant served with the Royal Australian Navy at HMAS Leeuwin from April 1971 to December 1971. He served in the fleet from December 1971 to April 1981.
 - B. The Claimant alleges he was bullied, intimidated, physically abused and sexually abused while serving at HMAS Leeuwin. The Claimant alleges the Commonwealth was negligent and/or liable to the Claimant for assaults and batteries. The Claimant has commenced an unlitigated claim against the Commonwealth. The Claimant seeks damages for physical and psychiatric injuries suffered by him while serving at HMAS Leeuwin.

 ("The Claim").
2. The parties agree to resolve the claim and the dispute between them on the basis set out in this deed.

Operative provisions

1. Definitions and Interpretation

1.1 Interpretation

In this deed:

- (a) headings are for convenience only and do not affect interpretation,
and unless the context indicates a contrary intention:
- (b) "**person**" includes an individual, the estate of an individual, a corporation, an authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;
- (c) a reference to a party includes that party's executors, administrators, successors and permitted assigns, including persons taking by way of novation and, in the case of a trustee, includes a substituted or an additional trustee and further includes any person claiming on behalf of or under or through a party to this deed;

- (d) a reference to a document (including this deed) is to that document as varied, novated, ratified or replaced from time to time;
- (e) a reference to a statute or statutory provision includes a statutory modification or re-enactment of it or a statutory provision substituted for it, and each ordinance, by-law, regulation, rule and statutory instrument (however described) issued under it;
- (f) a word importing the singular includes the plural (and vice versa), and a word indicating a gender includes every other gender;
- (g) a reference to a party, clause, schedule, exhibit, attachment or annexure is a reference to a party, clause, schedule, exhibit, attachment or annexure to or of this deed, and a reference to this deed includes all schedules, exhibits, attachments and annexures to this deed;
- (h) if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (i) **"includes"** in any form is not a word of limitation;
- (j) a reference to **"\$"** or **"dollar"** is to Australian currency;
- (k) a reference to this agreement, this document, this Deed or a similar term means either the agreement set out in this Deed or the document itself, as the context requires;
- (l) a reference to a law includes any law, principle of equity, statute and official directive of any governmental authority;
- (m) a reference to the singular includes the plural and vice versa;
- (n) a reference to a gender includes a reference to each gender;
- (o) an agreement on the part of, or in favour of, 2 or more persons binds or is for the benefit of them jointly and severally;
- (p) a reference to doing something includes an omission, statement or undertaking (whether or not in writing) and executing a document;
- (q) any schedule attached to this Deed forms part of it. If there is any inconsistency between any clause of this Deed and any provision in any schedule, the clause of this Deed prevails; and

2. Elements of settlement

2.1 Payment of settlement sum

- (a) In consideration of the releases and indemnities contained in this Deed of Release ("Deed") and entering into this Deed, the parties agree to resolve this Claim without the payment of any settlement sum (the Settlement Sum).
- (b) Noting the content of (a) above, paragraphs 2.1(c) to (j) inclusive do not apply.
- (c) The claimant agrees that he will pay all treatment expenses out of the Settlement Sum in paragraph (a) above.

- (d) If the Claimant receives, has received or is entitled to receive compensation, pension(s), entitlement(s) and/or benefit(s) under the Veterans' Entitlements Act 1986 (Cth), the Safety, Rehabilitation and Compensation Act 1988 (Cth) and/or the Military Rehabilitation and Compensation Act 2004 (Cth):
- (i) the Claimant acknowledges his obligations to notify a person or representative of a relevant department or entity under those Acts that he has claimed and/or received compensation from the Commonwealth, including but not limited to sections 54 and/or 127 of the Veterans' Entitlements Act 1986 (Cth), section 47 and/or 48 of the Safety, Rehabilitation and Compensation Act 1988 (Cth) and/or section 390 of the Military Rehabilitation and Compensation Act 2004 (Cth), and warrants he will abide by any such notification requirements;
 - (ii) the Claimant acknowledges that the Commonwealth may receive a preliminary or recovery notice under sections 59Y and/or 59ZA of the Veterans' Entitlements Act 1986 (Cth) in relation to any potential or actual payment of compensation to the Claimant, and that the Commonwealth:
 - A. must give written notice of liability or receipt of a preliminary notice to the Department of Veterans' Affairs under section 59Z of the Veterans' Entitlements Act 1986 (Cth); and/or
 - B. must pay any recoverable amount specified in a notice under section 59ZA of the Veterans' Entitlements Act 1986 (Cth) out of any potential or actual compensation to the Commonwealth;
 - (iii) the Claimant acknowledges that the Commonwealth may receive a notice under section 51 of the Safety, Rehabilitation and Compensation Act 1988 (Cth) in relation to any potential or actual payment of compensation to the Claimant, and that the Commonwealth must pay any recoverable amount specified in such a notice to Comcare out of any potential or actual compensation;
 - (iv) the Claimant acknowledges that, on receipt of any compensation from the Commonwealth, he may incur a liability to repay compensation, pension(s), entitlement(s) and/or benefit(s) under section 59R of the Veterans' Entitlements Act 1986 (Cth), section 48 of the Safety, Rehabilitation and Compensation Act 1988 (Cth) and/or section 401 of the Military Rehabilitation and Compensation Act 2004 (Cth), and to the extent that any such liability may fall on the Commonwealth, the Claimant agrees that the Commonwealth deduct the amount of the liability from the Settlement Sum;
- (e) the Claimant warrants that he will comply with any other relevant notification obligations in relation to any other compensation, pension(s) or entitlement(s) received under Commonwealth, State or Territory legislation in relation to compensation claimed and/or received from the Commonwealth, and that where any liability to repay an amount of any other compensation, pension(s), entitlement(s) and/or benefit(s) falls on the Commonwealth, he will pay for the liability out of the Settlement Sum.
- (f) If the Commonwealth receives a relevant Centrelink notice, a notice regarding repayment of social security payments or payments under the Veterans'

Entitlements Act 1986 (Cth), the Safety, Rehabilitation and Compensation Act 1988 (Cth) and/or the Military Rehabilitation and Compensation Act 2004 (Cth) the Commonwealth will disburse any required amount of money in accordance with the notice from the Settlement Sum.

- (g) The Commonwealth will pay 10% of the Settlement Sum by advance payment to Medicare Australia in accordance with section 33B of the Health and Other Services (Compensation) Act 1995 (Cth).
- (h) The Commonwealth acknowledges that in accordance with section 22 of the Health and Other Services (Compensation) Act 1995 (Cth), the claimant has been informed of a possible liability to pay amounts under that Act or under the Health and Other Services (Compensation) Care Charges Act 1995 (Cth).
- (i) The Commonwealth will pay the Settlement Sum, less any amount required to be forwarded in accordance with clauses 1.1(f), 1.1(g) or 1.1(h), to Shine Lawyers on behalf of the claimant, ("the Agreed Sum").
- (j) The Commonwealth will pay the Agreed Sum within 28 days from:
 - (i) the date of Agreed Sum; or
 - (ii) receipt by the Commonwealth's solicitor of a Medicare Notice of Settlement signed by or on behalf of the plaintiff pursuant to section 23 of the Health and Other Services (Compensation) Act 1995 (Cth); or
 - (iii) when the Commonwealth's solicitor receives a notice from the Managing Director of Medicare Australia under sections 24 or 25 of the Health and Other Services (Compensation) Act 1995 (Cth); or
 - (iv) when the Commonwealth's solicitor receives a notice under sections 1177, 1179 or 1182 of the Social Security Act 1991;
 - (v) when the Commonwealth's solicitor receives any notice of a liability to repay any compensation, pension(s), entitlement(s) and/or benefits under the Veterans' Entitlements Act 1986 (Cth), the Safety, Rehabilitation and Compensation Act 1988 (Cth) and/or the Military Rehabilitation and Compensation Act 2004 (Cth); or
 - (vi) receipt of any authority to receive satisfactory to the Commonwealth,
 whichever is the later.

2.2 Restorative engagement

Captain Neville Teague of the Royal Australian Navy has provided the claimant with a letter of apology during a face to face meeting on 24 November 2015.

3. No admission of liability

The parties acknowledge that the Commonwealth's agreement to enter into this Deed is made without any admission of liability whatsoever on the part of the Commonwealth, its officers, servants or agents.

4. Release and Bar to Proceedings

- (a) The claimant releases the Commonwealth from all obligations, sums of money, actions, suits, causes of actions, proceedings, claims, accounts, costs and expenses both at law or in equity or arising under any statute which he/she has or had or may have against the Commonwealth arising out of or in any way related, either directly or indirectly, to the facts and circumstances described in the Background or the Proceedings.
- (b) This Deed may be pleaded as a bar to any action commenced or to be commenced by any party against any other party concerning or arising out of or in any way related, directly or indirectly, to the facts and circumstances described in the Background or the Claim.
- (c) The release and bar referred to in (a) and/or (b) above does not prevent the Claimant availing himself of any statutory, executive or other redress scheme designed to address the facts and circumstances of a kind referred to in the Background.

5. Indemnities

5.1 The Claimant indemnifies the Commonwealth

- (a) Subject to clause 5.1(b) the Claimant shall indemnify and keep indemnified the Commonwealth against any loss arising out of or in any way related, either directly or indirectly, to the facts and circumstances described in the Background or the Claim.
- (b) The Claimant is not obliged to indemnify the Commonwealth under this clause to the extent that any claim in respect of which an indemnity is sought under this clause arises by reason of fraud.
- (c) The indemnity provided by the Claimant is a continuing obligation, separate and independent from the other obligations of this deed and survives termination, completion or expiration of this deed.
- (d) The Claimant shall pay to the Commonwealth on demand by the Commonwealth the amount of any indemnity under this clause.

6. Binding effect of this deed

This Deed binds the parties and any executor, administrator, transferee, assignee, liquidator or trustee in bankruptcy appointed in respect of any of them.

7. Warranty

The Claimant warrants that before entering into this Deed:

- (a) He has read the terms of this Deed;
- (b) he has taken independent legal advice as to the nature, effect and extent of this Deed;

- (c) the Commonwealth has made no promise, representation or inducement, nor been party to any conduct material to the entry of the plaintiff into this Deed other than set out in this Deed; and
- (d) He is aware that the Commonwealth is relying on these warranties in executing this Deed.

8. General

8.1 Governing law and Jurisdiction

- (a) This Deed is governed by the laws of Western Australia.
- (b) The parties submit to the exclusive jurisdiction of its courts.

8.2 Severance

If at any time any provision of this Deed is or becomes illegal, invalid or unenforceable in any respect under the law of any jurisdiction, that will not affect or impair the legality, validity or enforceability in that jurisdiction of any other provision of this deed.

8.3 Entire agreement

To the extent permitted by law, in relation to the subject matter of this Deed, this Deed:

- (a) embodies the entire understanding of the parties, and constitutes the entire terms agreed by the parties; and
- (b) supersedes any prior written or other agreement of the parties.

8.4 Amendments

This Deed may only be varied by a deed signed by or on behalf of each party.

8.5 Waiver

- (a) Failure to exercise or enforce, or a delay in exercising or enforcing, or the partial exercise or enforcement of, a right, power or remedy provided by law or under this Deed by a party does not preclude, or operate as a waiver of, the exercise or enforcement, or further exercise or enforcement, of that or any other right, power or remedy provided by law or under this Deed.
- (b) A waiver or consent given by a party under this Deed is only effective and binding on that party if it is given or confirmed in writing by that party.
- (c) No waiver of a breach of a term of this Deed operates as a waiver of another breach of that term or of a breach of any other term of this Deed.

9. Counterparts

- (a) This deed may be executed in any number of counterparts and by the parties on separate counterparts. Each counterpart constitutes the agreement of each party who has executed and delivered that counterpart.

(b) If this deed is undated and there is no contrary intention stated, the date of this Deed is the date of the last execution by a party.

Executed as a deed.

SIGNED for and on behalf of the
COMMONWEALTH OF AUSTRALIA
represented by the Department of Defence and by
in the presence of:

M. Lysen
Signature
Defence Special Counsel
Department of Defence

Stewart

Signature of Witness

KERRY ANNE STEWART

Name of Witness in full

SIGNED by **CLAIMANT** in the presence of:

L.P. Brewster
Signature

Lisa Kinder

Signature of Witness

LISA KINDER

Name of Witness in full

I confirm that I have explained the contents of this
deed to the Claimant

Gerard Mullins

NAME, ~~Solicitor~~ for the Claimant
Barrister.

GERARD MULLINS

Name of ~~Solicitor~~ in full
Barrister