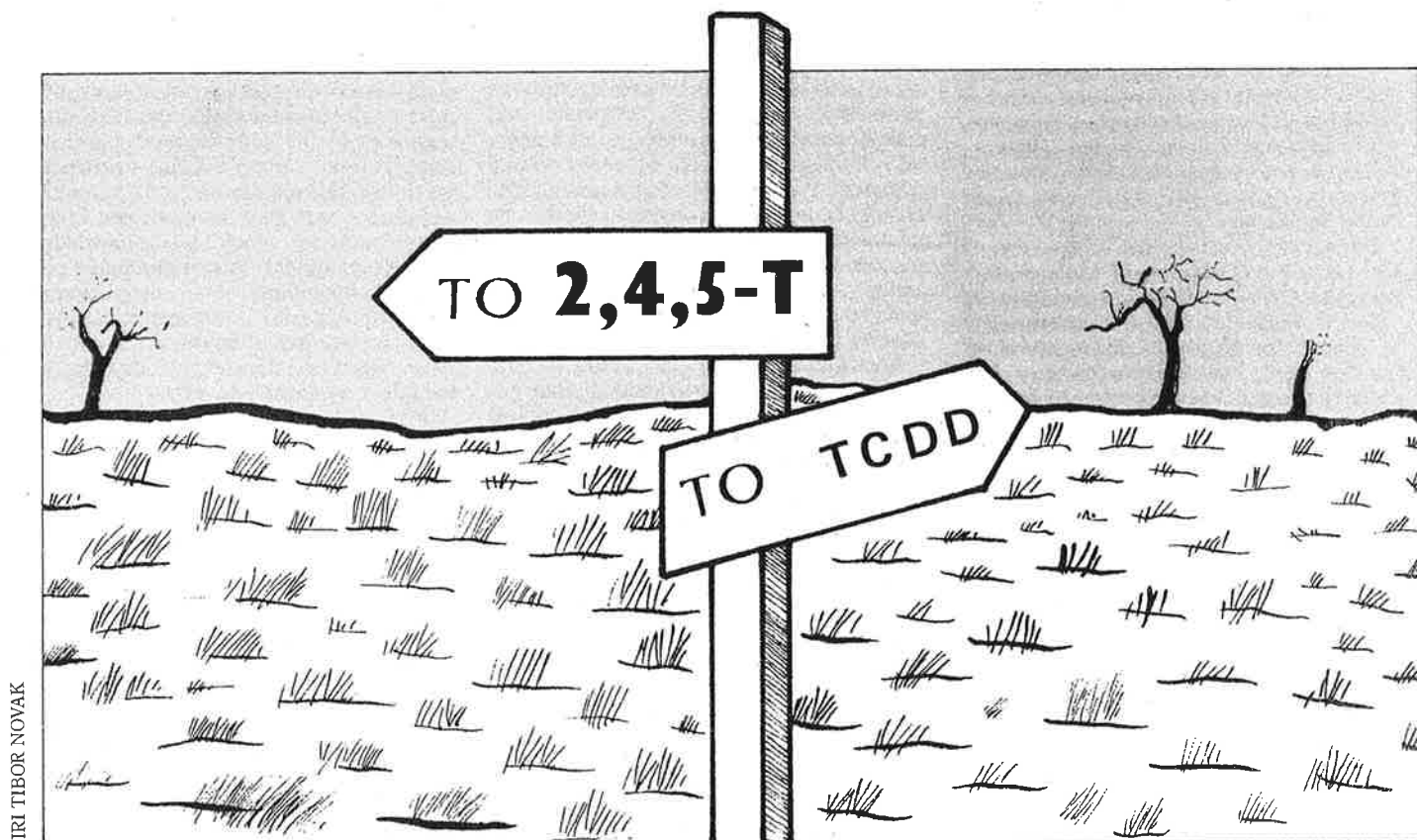


Brian Martin looks at the royal commission that acquitted Agent Orange

Agent Orange: the new controversy



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A YEAR AFTER THE FINAL report of the Agent Orange Royal Commission, the federal government has responded to the concern of Vietnam veterans by reopening the issue that the commission considered closed. Conflicting scientific evidence and interpretation are back in the melting pot. But in this case there is an added factor — the conduct of the commission itself.

When the report of a royal commission contains hundreds of pages copied without acknowledgement straight from the submission of one of the interested parties, what are the implications? This problem will quickly become pressing in any re-evaluation of the *Report of the Royal Commission on the Use and Effects of Chemical Agents on Australian Personnel in Vietnam*.

Claims by Vietnam veterans that some of their health problems have been caused by

exposure to the multitude of chemical agents used in the war are politically explosive. A judgement in favour of the veterans would provide support to the Vietnamese government in pursuing claims against the United States government for the effects of chemical warfare. The chemical industry has most to lose from a decision in favour of the veterans. For example, the ingredients of Agent Orange itself, 2,4-D and 2,4,5-T with some admixture of TCDD or 'dioxin', have long been used as herbicides in agriculture and elsewhere. A decision against the chemicals would be a body blow to the chemical industry both financially and ideologically.

The veterans have had a difficult struggle in pursuing their claims. Many people who actively opposed the war have provided at most grudging support for the veterans, while supporters of Australia's involvement have been uniformly hostile due to loyalty to

the government that pursued the war. Nevertheless, the veterans have attracted enough support to make their case a continuing political issue. One response of the Australian government was, eventually, to set up a royal commission, which had been sought by the Vietnam Veterans Association of Australia to overcome the intransigence of government departments in the face of their claims.

In cases where political claims are linked with technical uncertainties, an inquiry or commission often diverts political issues into a dispute between technical experts. This is certainly the way the Agent Orange Royal Commission operated in practice. The issue became one of *which* experts were right: those who said that exposure to the many chemicals used in Vietnam possibly could increase the risk of cancers and genetic defects in children, or those who said that the chemicals and the likely exposures

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could not cause this result.

Actors in the drama included the commissioner, Justice Phillip Evatt, and the counsel assisting the commission, John Coombs QC. On the side of the chemicals was Monsanto Australia (whose parent company in the United States was a manufacturer of Agent Orange.) On the other side was the Vietnam Veterans Association.

The report of the commission was passionate in its claim that no veteran had suffered due to exposure to chemicals in Vietnam. It concluded that 'This is good news and it is the commission's fervent hope that it will be shouted from the roof-tops'.

Not everyone was happy with this conclusion. Many scientists were sceptical of the verdict of total innocence for the chemicals, which happened to coincide with the conclusion by the United States Environmental Protection Agency that 2,4,5-T can cause cancer in humans.

During the hearings, both the evidence and personal credibility of those expert witnesses whose views gave credence to the veterans' claims had been attacked strongly by counsel for Monsanto. Many scientists felt that they had been ruthlessly and unfairly treated. They expected to provide their understanding and expertise to serve the commission, and instead found that they were being treated like hostile witnesses in a court, without benefit of defence counsel (since in the later stages of the hearings the Vietnam Veterans had no money to hire counsel).

The commission's report evaluated the expert witnesses in similar terms to Monsanto. Those who did not rule out the possibility of the chemicals having harmful effects had their scientific contributions denigrated and their reputations belittled. By contrast, expert witnesses exonerating the chemicals were uniformly lauded by the commission.

The Swedish researchers Olav Axelsson and Lennart Hardell felt so strongly that they wrote to the Australian Governor General protesting about the treatment of their evidence. Even Bruce Armstrong, who was favourably received by the commission, commented on the harsh treatment of witnesses who presented evidence suggesting herbicides might have contributed to veterans' health problems.

WHEN VETERANS AND SCIENTISTS started examining the report in detail they discovered something else which they considered reflected badly on commission. It seemed that the commission in many portions of the report had taken no account of some of the testimony of experts supporting the veterans. The reason was that great slabs of the report are copied almost verbatim from the Monsanto submission — including parts of the Monsanto submission called into question by some of the witnesses.

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In the vital volume four on cancer, nearly 200 pages on the carcinogenic and mutagenic potential of 2,4-D, 2,4,5-T and TCDD appear to have been copied directly from the Monsanto submission, with only minor changes here and there.

In defence of this copying, it might be argued that there is nothing wrong with the commission judging the evidence and making conclusions entirely in agreement with Monsanto. This is indeed a sound argument. The point is that agreement to the extent of extended copying should be acknowledged. When the copying is not acknowledged it becomes plagiarism, 'the taking and using as one's own of the thoughts, writings, or inventions of another' (*Shorter Oxford Dictionary*).

The extent of the 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.

The effect of the copying is to present the views of the Monsanto submission as the commission's own. This is most apparent where, for example, the Monsanto submission's phrase 'it is submitted that' has been replaced in the commission's report by the phrase, 'the commission concludes', in the midst of pages and pages of almost verbatim copying.

In comparing the Monsanto submission with the closely similar parts of the commission's report, two intriguing differences become apparent. Monsanto was only concerned with the components of Agent Orange, which it manufactured. In some places, the commission's report alters the Monsanto text to refer to all chemicals, not just Agent Orange. For example, to Monsanto's sentence, 'There are thus three substantial reasons why it would be surprising as a matter of theory to find an excess of congenital malformations among children of Vietnam veterans, arising as a consequence of the exposure of those veterans to Agent Orange', the commission deleted a few words and added the phrase 'or the other chemical agents'.

The significance of the copying from the Monsanto submission is a matter for dispute. John Coombs, counsel assisting the commission, told me that the term 'plagiarism' is an inappropriate description in the forensic process when talking about submissions of counsel. In his view, it is normal

practice for a commissioner to receive submissions and then to incorporate those which are thought to be 'best'. There is no rule requiring submissions — which are commonly oral rather than written — to be made into exhibits, so that any copying is normally not apparent. According to Coombs, the incorporation of submissions can be seen in this case because, due to the complexity of the arguments, Justice Evatt had requested that submissions be made into exhibits.

IF COOMBS IS CORRECT AND THIS IS standard practice, it is not all that well known to outsiders. I contacted several people to ask about this practice. Professor Charles Kerr, a commissioner on the Ranger Uranium Environmental Inquiry — and also, incidentally, a witness before the Agent Orange Royal Commission — said that plagiarism of this sort is not an acceptable practice and raises serious doubts about the capability of the commission to interpret complex issues. Hugh Saddler, who worked for the Ranger Inquiry and drafted much of its reports, said that incorporation of submitted material should be acknowledged through quotations. A commissioner (who requests anonymity) of a major inquiry which also involved complicated scientific issues and written submissions said he had never heard of this sort of copying and thought it was extraordinary.

Whatever one's judgement of the apparent copying by the Agent Orange Royal Commission from the Monsanto submission, it is clear that contending views about 'plagiarism' have now become part of the wider political debate about the validity and objectivity of the commission's conclusions.

There are a number of ironies associated with the commission. If it had been more generous to those witnesses who did not rule out harm from the chemicals, and had written its report entirely in its own words, it probably would have been able to provide a stronger rather than weaker stamp of legal and technical authority on its conclusions — even if those conclusions had been nearly identical to those actually reached.

In spite of giving the chemicals a clean bill of health, the commission reached sweeping conclusions concerning benefits payouts to veterans. Nearly every condition claimed by Vietnam veterans which they attributed to chemicals would fall under the category of 'post traumatic stress disorder'. The commission recommends that repatriation legislation cover such problems, with the benefit of doubt about claims to favour the claimant.

The government is extremely unlikely to implement these recommendations since it would involve massive increases in benefits payouts. The irony is that one excuse which can be used for this inaction is the criticism of the commission's report by the Vietnam Veterans Association.

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