

Dear Senate Enquiry,

I would like to submit a complaint (legal or otherwise) against the Department of Environment.

It is now a matter of “public record” through the media, that even the officials and other departments all say they got it totally wrong. There were many warnings (including ABSA) to the Department of increasing number of trainees but Peter Garrett ignored the warning and said continue with the program. They did not stop training, applications or the offer of Government contracts knows this information.

To me that means a confession and admission, so the rest should be due course through the senate or ombudsman for compensation. The contract states that no promises were made for work but a “disregard of duty of care” is blatant and total mis management that they encouraged people to the program in every action and disregarded their options not to.

I have personally lost \$30,000 setting up a company infrastructure and staff that never happened. I have supported myself through \$12,000 in saving while waiting and waiting and waiting. I am broke now (Total outlay 42,000). We were totally misinformed about the program on which I based my decisions, and then waited three months for a contract that never happened while spending the last of my savings. Read the assessor blogs; don't be surprised if there are a few **suicides** out of this!

The Department has run a program including:

- 1. Mismanagement**
- 2. Disregard of Care of Duty**
- 3. Causing damages (to 4500 individuals)**
- 4. Negligence**
- 5. Mis-leading information**

1. My Request to the Senate committee is:

1. Ask the Department to reimburse all cost, expenses and losses associated with the program on an individual basis.

My Legal advice to date (which I discussed my enclosed points of law) indicates there is a strong case for the above. Also undisclosed evidence at this stage will clearly substantiates these claims.

The first and most important point is...

“The Australian legal system is based on a fundamental belief in the rule of the law” people “are treated **equally** before the law and safeguards exist to ensure that people are **not arbitrarily or unfairly**

treated by Governments or officials”...quote Department of Justice and this is the corner stone of Australian law.

From my understanding and discussions this is the general sentiment of other Government Departments, the senate, the opposition and the public. A judiciary you would think must award damages to the potential claimants (being the assessors). Errors have been admitted at the highest levels so those errors are part of the Green Loans contracts right? If mistakes in the contract are acknowledged then this can only mean liability. The Prime Minister has already stated he is sorry for this failed program.

ABSA stated in **August and November** concerns about the numbers of people getting trained. The fact that this action was **declined** at the time and was not done until **19th February** makes the Department solely responsible for all assessors completing their training before the 24th December. ABSA asked for action **to stop further certifications and** also asked for audits of Trainers and industry audits which was promised to control the industry. But this also was **never done**.

With holding now certification and contracts is completely contrary to the essence of good will to the program and what the Department promised. To do thus breaking its own regulatory procedures and therefore the essence Green Loans contract.

My point is if everything was done right contractually, there would have been no problems right?

Withholding jobs and dreams from so many over so much time was never part of what was in the contract and any discussions with authorities were quite different to the eventual outcome giving **all assessors false hope and despair**. All the original time and dates that were relayed at the outset were completely wrong and makes mock of the program.

The Department gave the tender to ABSA to control certification because of their area of expertise in this field “then ignored their requests and advice from **August to 19th February**. The Department has to accept liability to 4500 graduates caught up in this debarkle for 3 months and all the associated cost incurred over this period. ABSA was not advised of the press release on the 19th February or its contents before anyone else. So the Department assumes all responsibility for all decisions made under the program.

The **overriding** point of law (Australia constitution) is **people have been treated unfairly by Government or officials**. The Department hasn't been fair and everybody else knows it.

It is maybe too late to resurrect a now damaged product but compensation after 3 months of stagnation for uncertified & uncontracted assessors. My feedback from other assessors is similar to mine in that their beliefs in the program and the Department have suffered irreparably. There was plenty of time to evoke **clause 31** of not guaranteeing anyone work. **Seven months** after the first of several warnings seriously discredits this **one clause and makes it basically admissible** (which was the get out of jail card). It is simple NOT fair what was done by any ones standards and the law or Senate committee must judge against the department I'm confident on these points.

The unofficial case has already been won out of court so going to court will only add to the cost of such an exercise for the Department. Going with what is likely the **100% discount** of **settling out of court** and all the negative publicity it will bring, does not seem a bad option. After all, Labour is for the people and this goes against the "**core values**" of what your "political party stands for". Why people vote for you (or have). Your party on this stance may lose all credibility and keeps the newspapers ink flowing...

This is a huge risk to go to court and risk losing; liabilities include payouts to assessors and huge legal fees. Also, the **legal president** and liability this will likely bring to all other programs and maybe even political folly. No one has any legal guarantees of the outcome and there lies the problem for the Department. How risky will it be?

Personally, I support Kevin Rudd and eco-philosophy, but not the Department of Environments Program that has cost me my last dollar and strung me along for so long and causing me to hit a financial brick wall. As a direct result. I can't feed my family now on fresh air plus the money and time I have wasted on this Program and setting up a company. I still have no certification after 3 months and I'm broke. Sorry, but I'm left without options...

What concerns me is there is no relief while justice is being sort and even on unemployment, \$200 odd dollars goes nowhere and I would rather not have it. I want a job!

The Department of Environment is in crisis. The programs they have stuff up is public record. Peter Garrett has been demoted. They have changed the structure of the Department by splitting it in two. The Prime minister has gone on record saying it is his fault and he accepts the blame.

Our Legal system (Quote Dept of foreign affairs and trade website)

http://www.dfat.gov.au/facts/legal_system.html

“The Australian legal system is based on a fundamental belief in the rule of law, justice and the independence of the judiciary. All people—Australians and non-Australians alike—are treated equally before the law and safeguards exist to ensure that people are not treated arbitrarily or unfairly by governments or officials.”

Questions:

1. Based on the above legal description of the law even though the Department “never guaranteed work from the scheme” as its main get out of jail clause indicates that there were jobs there being the whole point of the program. If they have limited the number why not take these measures at the time not 7 months and 3 months as requested by ABSA 4500 trained assessors would not have trained and there would be no issues...simple.
2. Does the Dept have legal obligations to run their program properly? Not to pick and choose who is accepted which is not treating people fairly or equally.
3. The Department nominated ABSA as their representative to train and accredit assessor. It took much longer than we were told and then Dept stopped accreditations and contracts, although later people went through before earlier people (not rational or fair)
4. Do I have the right under the program to still be certified by ABSA without Dept stopping certification?
5. ABSA and Govt were at logger heads blaming one another for who ran what 2 months ago.
6. There has to be a legal obligation to the 4500 doing the training and all the associated requirement and checks. Never having a chance to do even one assessment.
7. Is incompetence by the Department throughout the program (proved) carry liability to get those 4500 settlement or federal funding towards litigation?
 1. No work for 3 months
 2. No formal qualification with Govt.
 3. Average outlay (\$5000) training and business setting up plus 3 month (\$12000) loss of earnings while waiting with more to come.

Other areas of points of law we can look into and help.

MY STORY (similar to most of the 4500)

I would like some assistance in reference to the Department of the Environment under the **Green Loans program**. Please inform me if the Australian laws may have been broken and there is legal liability against the Department of the Environment and any assistance I may receive.

I ask for assistance because the scheme has lead me (and many others) into financial difficulties for three month waiting for accreditation. The Department has gone against the “Legal System of Australia” in the changes to the scheme and showing prejudice of one group over another. Also they have created a program for everyone, then limit those through prejudicial means who can remain in the program. Nearly 50% of people waiting to be on contract have been cut loose being approx., 4500 people. Most looking for new beginnings at large financial outlay and emotional cost (over 3 months while waiting).

All programs carry a moral obligation as well as legal. We cannot now be even being certified through ABSA because the Department stopped them certifying any more application (most pending before Christmas). It was all supposed to take no more than **30 days** as stated on websites up until the New Year. Which has “financially crippled most applicants”? Most applications were submitted months ago and getting police checks, photos and legal documentation for application before the 24th December.

1. Applicants have paid over \$3000 for training, insurances, police checks, character references and photographs and many are owed much more setting up business at an average cost of 2000-10,000).
2. A high percentage of these people have had no income for 3 months (average family expenses of \$12,000 during this period).
3. The Department are offering no assistance unlike the Home Insulation scheme which may also be seen as prejudicial even though they are different programs.
4. With your help I'm sure there are a number of other breaches to add to this list.

If mistakes have been made we don't want to compound them and to do that we need to pull their heads out of the sand. It has already been proven incompetence has ruled these programs and the department. But should people lives and now hardships not be recognised as a result of the department's actions...and corrected?

The Department has always been advised about numbers being trained through the program (training organisations) by ABSA and has lead this group of people on for 3 months without acting. This has to be illegal...“being treated arbitrarily or unfairly by government or official”...

The Department has now turned its back on this group in Peter Garrett's statement of the 19th of February (cutting all applicants not on Government contract by 20th February, (no matter how long people had been waiting in the system). The crazy thing is that the time line was not uniform for

applicants, so some got through that applied later than earlier applicants? So how can you base a cut off date that penalises applicants that have no control how long and erratic the processing went?

Subsequent discussion through ABSA state the Department has no obligations to this group or timeline. My simplistic understanding of the law says the law has been broken quite clearly as per the courts.

“The Australian legal system is based on a fundamental belief in the **rule of law, justice and the independence of the judiciary. All people—Australians and non-Australians alike—are treated **equally** before the law and safeguards exist to ensure that people are not treated arbitrarily or unfairly by governments or officials”.*

As in Peter Garrett’s lyrics...

The time has come
To say fairs fair

Every other person outside the Department (including other Govt Departments) agrees what they have done is immoral and therefore illegal (unfair by government or officials). I would therefore be quite happy to be judged by one’s peers in this matter as I would see only a positive result. Please advise me how to continue? The Department unless forced, will ignore the massive problem they have created. It is the Departments problem and not one individual even though recognition of the stuff ups has lead to repositioning of staff.

INFO FROM ASSESSOR BLOGS ON THIS SUBJECT

For the record, ABSA told DEWHA they would have too many assessors in AUGUST 2009 and November!!

They asked if they could close of acceptance of new assessors on September 30th and DEHA refused.

So the blame for the debacle is CLEARLY with DEWHA and the greedy RTOs and big corporates's stuffing the system up for everyone else.

The Greens have today written to the Auditor General asking for an immediate and comprehensive investigation into the gross mismanagement of the Green Loans Scheme by Minister Peter Garrett and the Department of Environment, Water, Heritage and the Arts.

Allegations sent to Senator Milne and forwarded to the Auditor General include:

- failure to adhere to the promised 1,000 -2,000 limit on the number of assessors;
- failure to deliver on the promised online booking mechanism, and failure to provide or oversee the interim call centre booking process;
- failure to administer the conditions the Federal Government placed on its own program regarding conflicts of interest;

- failure to exercise quality control and due diligence in relation to the standard of training provided to prospective assessors, and the quality of assessments provided to consumers;
- failure to implement an audit facility within the program; and
- favouritism and discriminatory practises relating to access to work through the program.

"The government's failure to limit the number of accredited home sustainability assessors, and the preference it has given to large corporates, is destroying job security and undermining the viability of many small businesses." A program expected to last until 2013 is likely to achieve its 360,000 assessments next month. "The government has once again massively underestimated community enthusiasm to get behind action on climate change and the transformation to a low carbon economy and green jobs.

Of course ABSA staff and the 'external operation' are paid handsomely; not-for-profit organisations disburse income in the form of wages and bonuses rather than have a 'profit' at the end of a financial year, while we have to wait patiently to receive a document that will enable us to earn ???

ABSA also believes that whatever parts of the protocol it has not kept to is because the Department has not fulfilled a commitment, such as hiring auditors and implementing its training course before the program started.

ABSA, the non-profit accrediting body, warned DEWHA in August 2009 of high numbers of assessors and asked for a cap from September 30. DEWHA ignored this advice and did not suspend training until December 24. On January 22, 2010, ABSA sent an email inviting applicants to withdraw from the accreditation process, which would waive the ABSA membership fee but not refund any training or insurance costs. As I predicted, very few applicants took them up on this (less than 2 per cent in the first week).

The Department needs to be treated as any organisation in Australia and suffer the same consequences (and not be protected just because they are a Government Department and immune from the law). Which is what is happening right now and not offering any admissions, apologies, compensation.