

From: Pirani, Paul  
Sent: Wednesday, May 10, 2006 9:49 AM  
To: Sutherland, Kerry (NAT)  
Cc: Ludwig, Vicki; Kalagayan, Norman; Harrison, Ted  
Subject: RE: Writeway Research Services - Request for information from the Office of Fair Trading - QLD [SEC=UNCLASSIFIED]

Kerry

The legal position is as follows.

Writeway is contracted by the Repatriation Commission and the Commonwealth of Australia to:

".....provide advice on preparing a report arranged by the Repatriation Commission or the Department. The report will be on claims of events experienced, witnessed or believed for people entitled under the Veterans' Entitlements Act 1986 to claim for disability pension or service pension."

The legal framework under the Veterans' Entitlements Act 1986 (VEA) which involves the activities of Writeway is as follows.

A claim for disability pension is made under sections 14 and 15 of the VEA and lodged with the Department (see section 5T). That claim for pension must be in writing and on the approved form. The claim must be accompanied by relevant evidence about the incapacity claimed and the alleged link to war-service. Section 17 of the VEA requires that the Secretary of the Department "shall cause an investigation to be made into the matters to which the claim or application relates". On completion of the investigation, subsections 17(2)&(3) of the VEA requires that the Secretary cause the claim and other relevant evidence to be forwarded to a delegate of the Repatriation Commission for determination.

The Department (on behalf of the Repatriation Commission) is able to engage contractors to assist in the performance of functions under the VEA (see section 181). Subsection 181(5) of the VEA provides that such contractors are not to be regarded as employees. However, the contract for services imposes a range of legal obligations on Writeway including that they must comply with all relevant Commonwealth, State and Territory laws that could apply to their activities. In addition, as a "Commonwealth contractor" they have a number of other transparency and accountability criteria that they must comply with in relation to the manner in which they perform their services under the services Agreement.

Tying the above together, it is apparent that Writeway is engaged to assist both the Secretary in undertaking investigations into historical events arising from war-service relating to claims under the VEA and to provide evidence for consideration by delegates of the Repatriation Commission in relation to those events.

The above task does NOT involve any role in relation to the investigation of claims for incapacity that would be undertaken by private investigators that involve video taping persons or asking questions about current or even recent events. The task that is allocated is merely to examine allegations that certain events took place during war-service and providing historical reports as to whether or not there is any evidence in Defence records and other sources to indicate whether or not a particular event took place and whether or not the claimant was actually involved or witnessed that event. The resultant report is then placed before a delegate of the Repatriation Commission to assist in the making of decisions on eligibility for disability and service pension (ie "qualifying service") entitlements under Parts II, III and IV of the VEA. The resultant report then becomes a part of the body of evidence that is referred to in the decision of the delegate of the Repatriation Commission and is available to the claimant. On review of any decision by the Veterans' Review Board and the Administrative Appeals Tribunal the historical report is also a relevant document that is required to be made available in those public reviews.

I trust that the above assists.

Paul Pirani  
Acting General Manager  
Business Integrity Division

-----Original Message-----

From: Sutherland, Kerryn (NAT)  
Sent: Tuesday, May 09, 2006 12:28 PM  
To: Pirani, Paul  
Cc: Ludwig, Vicki  
Subject: FW: Writeway Research Services - Request for information from the Office of Fair Trading - QLD [SEC=UNCLASSIFIED]

Paul

The Office of Fair Trading (OFT) - QLD has requested further information from DVA about where Writeway's authority to conduct research falls under the legislation (see below) and what their "status" is under the legislation. I have some preliminary thoughts but would appreciate it if LSG could have a look at this issue before we respond to OFT.

As I understand the situation, Writeway employees are not considered employees under the Public Service Act and they are not defined in the VEA. Their authority to research on behalf of the Department comes from Section 128 of the VEA (Secretary may obtain information) which says:

The Secretary may, for the purposes of this Act, by notice in writing given to a person (including a person employed in or in connection with a Department of the Government of the Commonwealth, of a State or of a Territory or by any authority of the Commonwealth or of a State or Territory), require the person:

(a) to:  
(i) provide the Department, or an officer specified in the notice, with such information as the Secretary requires.

An officer is defined in section 131 which says:

In sections 127 to 130 (inclusive), unless the contrary intention appears:

Officer means a person performing duties, or exercising powers or functions, under, or in relation to, this Act.

Thank you for your assistance

Kind regards  
Kerryn Sutherland  
VEA Compensation Policy Section  
Compensation Policy Group  
Policy and Development Division  
Department of Veterans' Affairs - Canberra Office Phone (02) 6289 6102  
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-----Original Message-----

From: Tamsin Mellor [mailto:Tamsin.Mellor@dtftwi.d.qld.gov.au]  
Sent: Tuesday, May 09, 2006 9:59 AM  
To: kerryn.sutherland@dva.gov.au  
Subject: Writeway Research Services

Good morning Kerryn, futhering our conversation yesterday... I would like to know what legislation authorises your "researchers" to act on your behalf in conducting interviews with private individuals as witnesses to compensation claims. I would also like to know if Writeway Research Services have access to

DVA records in preparing their reports.

I'm also interested to know if aside from S 128 of the VEA 1986 and S 384 of MRCA 2004 is there any other legislation that specifically gives a defined status to your researchers. I understand that Mr John Tilbrook is not your employee, he has his own company, policies and private insurance etc, but for him to be performing the work he does for the DVA in Queensland... without a state based private investigators licence I need to clearly show that your legislation overrides the state based provisions.

As I was saying yesterday, there are cases in Qld of private companies who conduct investigations and prepare reports for the public service. Policy indicates that these companies do not need to be licensed due to the transparency of the work conducted and the fact that their services are retained by the state. For example: in accordance with the Ambulance Service Act "Membership of service" consists of the commissioner; and ambulance officers, medical officers and other staff members employed under section 13.

13 Employees

- (1) the chief executive may appoint and employ on salary or wages or engage and employ under contracts such persons-
- (a) as ambulance officers; and
- (b) as medical officers; and
- (c) as other staff members:

Obviously this piece of state legislation is not applicable in this instance, but I wanted to give an example of the sort of information I'm looking for. I also realise that older legislation may not have foreseen this situation where private contractors are employed as investigators, so the two sections of Commonwealth legislation I mentioned earlier may be the only appropriate authorisation for your "employees".

Kerryn, I do appreciate your help in this matter, in this case I am potentially contradicting past information this Office received and I need to be certain of the authorisation Wri teway Research Services has. If they do not have appropriate authorisation it may mean that private investigators licences will be required for all researchers who conduct your research in the State of Queensland. However, that is not the conclusion I am forming from the information I have received to date. Please contact me if I can provide any more information.

Thankyou.

Tamsin Mellor  
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Investigations Branch  
Office of Fair Trading  
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