

CHAPTER TWENTY THREE

INTRODUCTION TO VOLUME THREE

23

23.1 The Committee's terms of reference concerning the special rate and other rates of disability pensions required it to:

- document and examine past and current disability compensation pension and related benefits available to veterans under the *Veterans' Entitlements Act 1986* (VEA);
- consider submissions made by interested parties as to the structure and appropriateness of those pensions and benefits;
- consider the extent to which the medical, social and vocational rehabilitation needs of compensation pensioners are being adequately met; and
- make recommendations on possible improvements in benefits and support programs to address any identified deficiencies, including the potential to restructure benefits and programs in order to assist the funding of desired reforms.

23.2 This volume addresses these parts of the terms of reference.

23.3 The Committee's approach to its task has been to begin by documenting, in Chapter 24, the history of the disability pensions structure. That chapter examines in detail the intentions of Government and Parliament in providing for the several rates of the disability pension. This background information is important to the subsequent analysis of the claims made in submissions about the erosion and adequacy of rates of disability pensions and options for reform of the structure.

23.4 A detailed description of all benefits available to disability pensioners and their eligible dependants under the VEA and the *Social Security Act 1991* appears in Chapter 25. This information is important to the understanding of

following chapters that deal with the restructuring of some VEA benefits. It clearly demonstrated to the Committee that any examination of the adequacy of the benefits to disability pensioners must take into account the fact that individual benefits are part of a comprehensive package.

23.5 Chapter 26 describes the issues and arguments, presented to the Committee in writing or at meetings, about the structure and appropriateness of the current special rate and other rates of disability pensions and related benefits available to veterans under the VEA.

23.6 A number of submissions made to the Committee compared repatriation disability benefits to those provided under workers' compensation schemes or to damages awarded under common law. The Committee decided that it was important to understand clearly these other forms of disability compensation in order to compare them to repatriation benefits. Accordingly, Chapter 27 sets out how Australian workers are compensated for injury or disability resulting from their employment. The chapter discusses the principles underlying the provision of such compensation and clarifies the Government's responsibility, as an employer, to veterans of Australia's armed forces.

23.7 Disability compensation under the VEA has been examined in several reviews over the past 30 years. All dealt in some degree with the above general rate disability pension. The 1975 *Toose Report of the Independent Enquiry into the Repatriation System* (Toose 1975) and the 1994 *Baume Report, A Fair Go: Report on Compensation for Veterans and War Widows* (Baume 1994), were critical of the structure of the pension, particularly that of the special (totally and permanently incapacitated, or TPI) rate. Chapter 28 examines the outcomes of the various reviews, with particular focus on the findings of Toose and Baume.

23.8 Chapter 29 examines claims made in submissions to the Committee that the special rate pension has eroded in value over time and that consequently it is now inadequate to meet veterans' financial needs. The chapter reviews how the total package of payments made through the special rate and war widow/er's pensions has fared against community wage income over the past 30 years, and draws conclusions on the adequacy of the present disability compensation payments. The Committee concludes that a new approach is needed in the way disability compensation is provided.

23.9 In Chapter 30, the Committee proposes a new structure that provides compensation on a fair and equitable basis related to normal community standards, while meeting the changing needs of the disabled veteran and his or her family over time, and providing access to an appropriate scheme of rehabilitation.

23.10 Chapter 31 gives the results of the Committee's consideration of the extent to which the medical, social and vocational rehabilitation needs of disability pensioners are being adequately met. The chapter recommends improvements to address identified deficiencies.

23.11 A summary of the recommendations contained in this volume and the financial implications of the proposed disability compensation structure are set out in appendices at the end of this volume.

23.12 The implementation of the recommendations contained in this volume would provide a more appropriate disability compensation system for veterans and their families through improved arrangements for financial compensation and rehabilitation.

CHAPTER TWENTY FOUR

HISTORY OF THE DISABILITY PENSION STRUCTURE

24

INTRODUCTION

24.1 Chapter 5 of this Report provides an overview of major benefits available under the repatriation system, while Chapter 25 describes in more detail the pensions and benefits that compensation disability pensioners may receive.

24.2 This chapter examines in detail the intentions of Government and Parliament in providing for the several rates of the disability pension. While the intent has changed very little, divergence between such intent and practical implementation occurred over six decades up to the early 1980s. This was particularly so with regard to the special or, as it became commonly known, the totally and permanently incapacitated (TPI) rate.

24.3 This background information is important to the subsequent analysis of the claims made in submissions about the erosion and adequacy of rates of disability pensions and options for reform of the structure.

REPATRIATION LEGISLATION IMPACTS ON PENSION STRUCTURE

Overview

24.4 There are six legislative landmarks: 1914, 1920, 1965, 1986, 1988 and 1994.

24.5 The *War Pensions Act* was passed in 1914, providing for compensatory payments according to rank. This model was abandoned with the introduction of the *Australian Soldiers' Repatriation Act 1920*, which substituted the concept of 'like compensation' for 'like degree of disablement'. The 1920 Act also introduced the special rate pension for TPI veterans, payable at 190 per cent of the general rate.

24.6 Since 1920, two additional rates have been introduced. In 1965, the Act was amended to provide for an intermediate rate halfway between the 100 per cent general rate and the special rate for veterans able to work part time or intermittently. The *Veterans' Entitlements Act 1986* (VEA) repealed and consolidated the *Repatriation Act* and a number of related measures. It was also felt necessary by the government of the day to restate emphatically the purpose of the TPI rate and to spell out tighter criteria for its grant. As a result, it became more difficult to be granted TPI after the age of 65.

24.7 The extreme disablement adjustment (EDA) was introduced in 1988 at a level of 150 per cent of the general rate for its recipient. The EDA was designed to effectively compensate veterans who had full working lives, but whose health had deteriorated severely after the age of 65 as a result of accepted disabilities.

24.8 Finally, an amendment to the VEA in 1994 curbed the grant of the TPI pension to veterans over the age of 65. This was in response to a highly critical report from the Auditor-General in 1992-93 that found considerable divergence between the intent of the TPI pension and the practice. Specifically, veterans well past retirement age were continuing to receive TPI pensions on relatively tenuous grounds, against community expectations and the intent of the legislation.

War Pensions Act 1914

24.9 During the second reading debate in the House of Representatives, the then Navy Minister, Jens Jensen, described the object of the War Pensions Bill in these terms:

The Bill has two main principles. The first is that a pension is to be provided for the nearest dependant, and for his children if he is married, of any officer or soldier who be [sic] reason of the war meets with his death.

It is proposed also to provide a pension in the case of total incapacity arising from injuries received during the war. Any member of the Expeditionary Forces, or any person who has signed on in the Navy, who is totally incapacitated, will receive a pension during his lifetime, while his wife will be paid a half-pension, and the children an allowance until they reach the age of sixteen, regardless of sex.

In cases of partial incapacity ... the pension will be determined by a Pension Board subject to certain conditions.¹⁴³

24.10 Payments introduced in 1914 for total incapacity were made on a sliding scale determined by rank, ranging from £52 up to a maximum of £156 per year. The scheme was modelled on the British system, but with a narrower bandwidth of payment, ensuring a smaller differential between private soldiers and senior officers. The Opposition favoured more accurately duplicating Britain's system, on the grounds that talented Australian officers would be lured away by higher benefits. Regard was also had to contemporary workers' compensation schemes.

Australian Soldiers' Repatriation Act 1920

24.11 *The Australian Soldiers' Repatriation Act 1920* repealed an Act of identical title from 1917, as well as the *War Pensions Act 1914*. It was principally concerned with establishing the skeleton of the repatriation system, and it is obvious from the speeches made during the parliamentary debates that the 'flesh on the bone' was to be provided by a combination of regulation and administrative policy.

24.12 In 1943, the then Repatriation Minister, Charles Frost, described the purpose of the general rate disability pension thus:

[T]he government had decided to retain the present principle of war pensioning for soldiers other than those who are totally and permanently incapacitated, who are specially pensioned. That is, that pensions be medically assessed according to the actual degree of war-caused incapacity and regardless of the economic position of the pensioner. This is a recognised war pensioning principle which is adopted throughout the British Empire, and, I believe, in most other countries. It is a sound principle – assessment of incapacity on equal terms for men disabled in like degree.¹⁴⁴

24.13 The special or TPI rate established by the 1920 Act slipped into Australia's repatriation system virtually unnoticed. To put the matter in context, the second reading debate and committee stage in the Senate covers 114 pages of Hansard, of which one quarter of one page refers to the special rate payment. The Repatriation Minister, Senator Edward Millen, quoted extensive statistics relating to demobilisation and repatriation, praised the efforts being made to rehabilitate returned diggers, lauded the success of land settlement programs and war service loans, and commented favourably on the Commonwealth Bank's generous interest rates.

¹⁴³ Australia, Parliament 1914, *Debates*, vol. XXIV, p. 1896.

¹⁴⁴ Australia, Parliament 1943, *Debates*, vol. CLXXIII, p. 811.

24.14 In contrast, the first reference Senator Millen made in the debate to TPI veterans was in the context not of pension, but of the establishment of hostels in each state for the care of such individuals. Where he did refer to the rate of payment, it was almost as an aside. Equally, during the committee stage, he described a TPI veteran as 'being literally what the words say', prophesying also that there would never be more than 150 of them.

24.15 The second schedule to the Act (equivalent to s.24 of the VEA) defined the TPI veteran as one 'incapacitated for life to such an extent as to be precluded from earning other than a negligible percentage of a living wage'. Veterans who were blinded in both eyes or who were tubercular were also eligible.

24.16 The repatriation system originally provided for the payment of pensions to the wives and children of disabled veterans at a percentage of the veteran's rate. Thus, in 1914, a veteran could receive £2 0s 0d per fortnight at the general rate, his wife would receive £1 0s 0d per fortnight (50 per cent of the veteran's rate) and his first child 10s 0d per fortnight (25 per cent of the veteran's rate). In the 1920 Act, these amounts rose to £4 4s 0d per fortnight for the veteran assessed at the general rate, £1 16s 0d (43 per cent) for his wife and £1 0s 0d (24 per cent) for his first child. Second and third children received 15s 0d and 10s 0d respectively.

24.17 Dependants' pensions continued to be a significant proportion of the overall income of a disability pensioner – especially a TPI – until at least the 1960s, despite a reduction to the rates in 1931. Apart from a Goods and Services Tax adjustment in 2000, the dependant's pension for children was last increased in 1952 and those for wives in 1964. This was largely as a result of post-war reforms to the social security system, specifically the introduction of child endowment, wife's pensions and tax rebates for dependants. Grants of, and increases in, the rate of dependants' pensions ceased in 1985. The current maximum dependants' pensions are \$8.42 per fortnight for a wife and \$2.86 per fortnight for a child.

Repatriation Act Amendment, 1965

24.18 The intermediate rate was initially established by amendment to the *Repatriation Act* in 1965 at a point midway between the 100 per cent general rate and the special rate. This was in response to a perceived inadequacy in the treatment of veterans who were quite severely disabled, but nonetheless capable of some paid work. The exact wording of the 1965 amendment was 'unable to engage in a remunerative occupation except on a part-time basis, or

intermittently'. It is a lower gradation of the TPI, and governed by the same basic principles.¹⁴⁵

Veterans' Entitlements Act 1986

24.19 The VEA consolidated most of the disparate pieces of repatriation legislation into one Act. So far as disability pensions were concerned, it attempted to address long-standing government concerns regarding difficulties with the criteria in the Act for the TPI rate, and the incidence of grants of TPI to veterans well past the usual retirement age of 65 years.

24.20 Speaking to those concerns, the then Minister for Veterans' Affairs, Senator Gietzelt said:

Since 1920, there has been a special rate of disability pension payable in circumstances where, because of total and permanent incapacity resulting from war service, a veteran has been unable to resume or to continue in civil employment. The special or TPI rate pension was designed for severely disabled veterans of a relatively young age who could never go back to work and could never hope to support themselves or their families or put away money for their old age. *It was never intended that the TPI rate would become payable to a veteran who, having enjoyed a full working life after war service, then retires from work possibly with whatever superannuation or other retirement benefits are available to the Australian workforce.*¹⁴⁶ (Emphasis added)

24.21 More stringent conditions were introduced governing the grant of TPI pensions. These were that the veteran must qualify for the 100 per cent general rate (subsequently reduced to 70 per cent in 1988), be unable to work more than eight hours per week due to service-related incapacity and suffer an actual loss of salary, wages or earnings.¹⁴⁷ Furthermore, such service-related incapacity must, 'of itself alone', render the veteran incapable of work for more than eight hours a week; and must, 'of itself alone', prevent the veteran from undertaking remunerative work.¹⁴⁸ These changes also flowed on to the intermediate rate.

24.22 Another significant change was made with the introduction of the VEA. A decision of the full bench of the Federal Court in *Repatriation Commission v. Smith* (1987)¹⁴⁹ suggested that TPI eligibility could be subject to review during a veteran's lifetime and should not be payable beyond the age of 65 years. In

¹⁴⁵ VEA s.23.

¹⁴⁶ Australia, House of Representatives 1985, *Debates*, vol. HR142, pp. 2646–2647.

¹⁴⁷ VEA s.24 (2A) provides that a special rate pension may be granted to a veteran over 65 if that person had been engaged in the same employment for the previous 10 years and was forced to cease work because of war-caused or defence-caused conditions alone.

¹⁴⁸ VEA ss.24 (2A)–(2B).

¹⁴⁹ *Repatriation Commission v. Smith* (1987) 15 FCR 327

response to concerns raised in the veteran community, the Government included a provision in the VEA that has the effect that TPI and intermediate rate pensions are generally payable for the life of the veteran. Exceptions apply where the pension rate was granted on the basis of misrepresentation or fraud or where the veteran's condition improves to the extent that remunerative work is possible in excess of the threshold periods of eight hours (special rate) or 20 hours (intermediate rate) per week set out in the legislation.

1988 Amendment to the VEA — Extreme Disablement Adjustment

24.23 The tightening of the TPI criteria with the introduction of the VEA led to concerns about veterans aged over 65 years who were ineligible for TPI but whose condition deteriorated significantly after that age. The EDA arose out of a recommendation made by a committee of eminent persons (chaired by Justice Toose and composed of ex-service and departmental representatives) established to monitor the operations of the VEA in its early years — the VEA Monitoring Committee. The Act was amended in 1988 to provide for an EDA of 50 per cent of the general rate, bringing payment to an equivalent of 150 per cent for certain veterans over the age of 65. To be eligible, the veteran had to be at least 70 per cent impaired, have a lifestyle rating of at least six, and not be in receipt of either an intermediate or special rate pension.¹⁵⁰ In his second reading speech, the then Minister for Veterans' Affairs, the Hon Ben Humphries, described the EDA as being:

to assist those frail, aged veterans who are not adequately compensated by the present disability pension structure and who are severely incapacitated by their war or defence-caused disabilities.¹⁵¹

1994 Amendment to the VEA — Curbing Grant of TPI to Veterans Aged over 65 Years

24.24 In 1992–93, an Auditor-General's report was highly critical of grants of the TPI pension to veterans aged over 65. A committee chaired by the Hon Professor Peter Baume in 1994 took up this issue, and legislation to amend the VEA was introduced that year to curb the practice. The legislation required that the last paid work, which the veteran was precluded from undertaking due to war-caused incapacity alone, must have commenced before the age of 65 and been of at least 10 years duration.¹⁵² This was the last major change to the eligibility criteria for particular rates of disability pension. It implies that the

¹⁵⁰ Australia, House of Representatives 1988, *Debates*, vol. HR163, p. 2034.

¹⁵¹ VEA s.22.

¹⁵² VEA s.24 (2A)(g)(ii).

attempted tightening of the criteria for the TPI in 1986, as foreshadowed in Minister Gietzelt's second reading speech to the VEA, had not been entirely successful.

CONCLUSION

24.25 Parliament has expressed clearly its intent regarding the different rates of the disability pension. The rates structure has changed since 1914 with the addition of the special rate in 1920, the intermediate rate in 1965 and the EDA in 1988. There have also been changes in the 1980s and 1990s to the criteria for the special and intermediate rates to bring practice into line with government and parliamentary intentions. However, the disability pension rate structure remains based on the concept of a lifetime pension for service-related incapacity.

24.26 This historical analysis raises the question of whether the current structure is appropriate. That question is addressed in Chapter 30 of this Report.

CHAPTER TWENTY FIVE

DESCRIPTION OF BENEFITS AVAILABLE TO COMPENSATION PENSIONERS

25

INTRODUCTION

25.1 This chapter provides detail on the benefits available to disability pensioners and their eligible dependants under the *Veterans' Entitlements Act 1986* (VEA) and the *Social Security Act 1991* (SSA). This information is important to the understanding of following chapters that deal with restructuring of some VEA benefits.

BENEFITS AVAILABLE UNDER THE VEA

Current Disability Pensions

25.2 The purpose of the disability pension is to compensate a veteran for incapacity resulting from eligible service. Four rates of disability pension are provided; the rates are shown in Table 25.1.

Table 25.1

Rates of disability pension

Pension	Fortnightly rate (\$)
Special rate	742.40
Intermediate rate	512.40
Extreme disablement adjustment (EDA)	422.25
General rate (10–100 per cent)	28.15–281.50

25.3 Disability pension is non-taxable and non means tested. It is paid for life unless the veteran's condition improves to the extent that he becomes ineligible for a particular rate or the benefit is found to have been obtained fraudulently.

25.4 Disability pensions are adjusted twice yearly in line with movements in the Consumer Price Index (CPI). These adjustments are made each March and September. Twice yearly adjustments have been made since 1976, before which either annual CPI indexation or ad hoc adjustments were applied.

Specific Disabilities

25.5 Under s.27 of the VEA, additional disability pension may be provided to a veteran for particular service-related amputations, or amputations and/or loss of sight. The rate of disability pension and additional pension provided may not together exceed the amount of the special rate pension. Additional pension provided for the first six items set out in s.27, which include multiple amputations and dual amputations combined with blindness in one eye, bring the total payment to the equivalent of the special rate.

Allowances for Disability Pensioners

25.6 A number of allowances may be available to disability pensioners in certain circumstances or particular need. These allowances include:

- attendant allowance for severely disabled veterans needing constant care and attention, such as double amputees, those suffering from blindness and those with cerebrospinal conditions;
- recreation transport allowance to compensate for the impact of severe disabilities, such as amputations, blindness and severe locomotion handicaps, on the veteran's ability to get to recreational events and facilities;
- clothing allowance to compensate for exceptional wear and tear or damage to clothing related to an accepted disability;
- loss of earnings allowance while receiving treatment for accepted disabilities or attending pension hearings; and
- temporary incapacity allowance for periods of hospitalisation, and any subsequent outpatient treatment, rest or recuperation, of more than 28 days.

25.7 These allowances have stringent eligibility provisions and are only provided to a small number of veterans. Their listing here is not to imply that all or the bulk of disability pensioners receive them.

25.8 In addition, there is a vehicle assistance scheme that may assist a veteran to buy and modify a motor vehicle where amputation, injury or disease severely affects the veteran's mobility. A running and maintenance allowance may also be payable to help defray the cost of registering and insuring the vehicle.

Other allowances

25.9 A decoration allowance of \$2.10 per fortnight is payable to disability pensioners with certain decorations. A Victoria Cross Allowance of \$2808 per year is payable to holders of that decoration.

Service Pension

25.10 A veteran with qualifying service may receive income support in the form of a disability or age service pension, subject to the income and assets tests. About 55 per cent of disability pensioners also receive a service pension.

25.11 The partner of a service pensioner can receive a partner service pension if:

- they are aged over 50 years; or
- they have dependent children; or
- the veteran receives a special rate disability pension.

25.12 As a couple, both veteran and partner may receive the partnered rate of service pension. However, if separated by illness, each may receive the single rate.

25.13 The current maximum fortnightly rates of service pension are shown in Table 25.2.

Table 25.2

Rates of service pension

Pension	Fortnightly rate (\$)
Single service pension	413.10
Pension supplement	16.30
Total	429.40
Partnered rate service pension	345.00
Pension supplement	13.40
Total	358.40

Indexation

25.14 Service pensions are indexed in line with wages and prices. These pensions are adjusted twice yearly to reflect movements in the CPI, but are also

adjusted so that the single rate remains at least 25 per cent of Male Total Average Weekly Earnings (MTAWE). The partnered rate is a fixed proportion of the single rate.

25.15 The pension supplement was introduced in July 2000 as part of the Government's Goods and Services Tax (GST) compensation package. Being indexed to the CPI, the supplement is linked to prices.

Means Testing

25.16 Service pensions are means tested. However, persons permanently blinded may receive a service pension free of the income and assets tests. The income and assets tests operate in tandem: the lesser result of the two tests determines the rate of pension paid. The assets test excludes the value of the family home.

25.17 The income and assets tests have 'free areas', below which pensioners may have income or assets without affecting their pension. There are different free areas depending on marital status and whether the veteran has dependent children.

Income Test

25.18 The income test free areas for the service pension are \$116 per fortnight for a single veteran and \$204 per fortnight for a couple. A couple's pensions are assessed on their combined income: the combined income is halved and that amount is used to assess the pension of each member of the couple. Income free areas are increased by \$24.60 per fortnight for each dependent child under 18 years of age.

25.19 If the income of a single veteran or couple exceeds the free area, a tapered reduction of 40 cents in the dollar applies to the excess. This means that each dollar of income above the free area reduces the income support pension by 40 cents.

25.20 Income includes any earnings, superannuation and other income stream products, investment and property income, and business income. Amounts held in financial institutions are subject to deeming rules, which deem amounts above certain levels to earn interest. There are two interest deeming rates: a high rate and a low rate. The low deeming rate of 2.5 per cent currently applies up to a threshold of \$34,400 for singles and \$57,400 combined for couples. Amounts above these thresholds are deemed to earn four per cent interest.

25.21 Under the income test, a single person who is a homeowner may have income of up to \$1204 per fortnight and still receive a part pension. The income cut-off point for a homeowner couple is \$2010.50 per fortnight.

Assets Test

25.22 The free areas under the assets test are different for homeowners and non-homeowners. Current free areas are shown in Table 25.3.

Table 25.3

Free areas under the assets test

	Low limit — homeowners (\$)	High limit — non-homeowners (\$)
Single veteran	145,250	249,750
Couple (combined)	206,500	311,000

25.23 Pension is reduced by 75 cents for every \$250 over the limit. The cut-off points under the assets test are \$393,000 for a single person and \$550,000 for a couple.

Taxation

25.24 Income support pensions granted on the basis of permanent incapacity for work are exempt from taxation up to age pension age. Most income support pensioners do not pay tax on their service pensions, because their taxable incomes are below the tax threshold. About 85 per cent of service pensioners receive pensions at the maximum rate.

Health Benefits

25.25 A disability pensioner may be provided with either a Repatriation Health Card – For Specific Conditions (White Card) or a Repatriation Health Card – For All Conditions (Gold Card). Disability pensioners receiving the special rate, intermediate rate, extreme disablement adjustment (EDA), an allowance under s.27 of the VEA or 100 per cent of the general rate are provided with the Gold Card. A veteran in receipt of a disability pension at between 50 and 95 per cent of the general rate and any amount of service pension is also provided with a Gold Card.

25.26 A veteran may also qualify for a Gold Card, if not otherwise eligible, if his income and assets are below certain limits, which are called the treatment eligibility limits. These are higher than the free areas but below the pension cut-off points. Health benefits are further discussed in Chapters 5 and 22.

25.27 Service and disability pensioners receive a pharmaceutical allowance of \$5.80 per fortnight (single) or \$2.90 per fortnight (for each member of a couple).

This is to partly offset the \$3.60 co-payment for each pharmaceutical prescription. The matter of pharmaceutical co-payments is further discussed in Chapters 6 and 30.

Rent Assistance

25.28 Service pensioners who rent in the private market may receive rent assistance, subject to a separate test of income and assets and the amount of rent paid. The maximum rent assistance paid is \$92.00 per fortnight for a single pensioner and \$86.80 per fortnight for a couple without children. The rent thresholds used for assessing rent assistance vary according to whether the pensioners have dependent children.

25.29 Disability pension received by a veteran is taken into account as income in assessing rent assistance. Veterans with high rates of disability pension may therefore be excluded from receiving rent assistance.

Dependent Child Add-On

25.30 In the past, a dependent child add-on was provided to assist service pensioners with dependent children under 15 years of age. Since 1 January 1998, this benefit has been subsumed into family benefits provided under social security legislation.

Remote Area Allowance

25.31 Pensioners and their dependants living in remote areas may also receive a remote area allowance to help offset the higher costs in those areas.

Telephone Allowance

25.32 An allowance may be paid to assist certain pensioners to maintain a telephone service connected to their home. An eligible person is:

- a veteran of World War I;
- a veteran receiving the special rate or EDA;
- a double amputee (items 1–8 of s.27);
- a war widow/er (referred to hereafter as ‘war widow’);
- a service pensioner; or
- a veteran or partner who holds a Commonwealth Seniors Health Card (CSHC).

25.33 Telephone allowance may be paid to a single veteran at the current quarterly rate of \$18.60. Each member of a couple receives \$9.30. Veterans of World War I may currently receive \$65.70 per quarter.

Pensioner Concession Card

25.34 A service pensioner receives a Pensioner Concession Card (PCC) regardless of the amount of service pension. The PCC is generally recognised in the community as an indication that the holder has limited means. The main benefit provided by the PCC is access to pharmaceuticals through the Pharmaceutical Benefits Scheme at concessional rates. The PCC is also recognised by a range of state governments, local governments and private companies for concessions on utilities, transport and entertainment.

Commonwealth Seniors Health Card

25.35 The CSHC is available to veterans and their partners of pension age or over who have income equal to or less than:

- \$50,000 per year for a single person;
- \$80,000 per year (combined) for couples; or
- \$100,000 per year (combined) for couples separated due to ill health.

25.36 These limits are increased by \$639.60 per year for each dependent child.

25.37 The CSHC entitles the holder to pharmaceuticals at concessional rates, telephone allowance and a limited range of travel concessions.

Benefits for Dependants

Dependants' Pensions

25.38 The original purpose of dependants' pensions was to compensate dependants of a veteran for the disadvantage they are presumed to have suffered in consequence of his war-caused disablement. New grants of dependants' pension have not been made since 6 June 1985.

25.39 Dependants' pensions were once significant components of the compensation payable to veterans with families, but the amounts have declined in value greatly over several decades. Pension rates for children have not been increased since 1952 and for wives since 1964, other than the adjustment for the GST in July 2000. The current maximum benefit payable to the wife of a veteran is \$8.42 per fortnight. The maximum benefit for a child is \$2.86 per fortnight.

Veterans' Children Education Scheme

25.40 The purpose of the Veterans' Children Education Scheme (VCES) is to provide eligible children of veterans with financial assistance and student support services and to arrange for their guidance and counselling. The scheme acknowledges that these children may be disadvantaged by the impact of service-related injury on their veteran parent.

25.41 Eligible children are:

- children of living or deceased totally and permanently incapacitated (TPI) veterans, EDA veterans and veterans receiving an increased rate of disability pension under s.27 (items 1–6) for service-related amputations or blindness;
- those children whose veteran parent's death has been accepted as war/defence-caused; and
- those children whose veteran parent is deceased and had operational service, where the other parent has also died.

25.42 For primary school students, the VCES benefit is a current annual grant of \$186.90. For secondary and tertiary students, an allowance is payable depending on age and living arrangements (at home, away or homeless). The allowances payable under the VCES are identical in amount to the youth allowance paid under social security legislation. However, VCES allowances are not subject to parental income or assets tests.

25.43 In addition, the VCES provides reimbursement for special tuition fees, books and other equipment considered necessary. Education guidance and counselling is also available to eligible students. The VCES Boards run the scheme in each state, within policy parameters set by the Repatriation Commission. These boards can also arrange special assistance for children with educational difficulties.

Payments Upon the Death of a Veteran

Bereavement Payments

25.44 In order to avoid unnecessary additional emotional and financial stress at a time of bereavement, certain payments may be made to the partner of a deceased veteran pensioner. These payments, due from the time of the veteran's death, are:

- if the veteran was in receipt of service pension – seven fortnightly pension instalments; and

- if the veteran was in receipt of disability pension – six fortnightly pension instalments at the disability pension rate of payment up to 100 per cent of the general rate.

25.45 If the deceased veteran pensioner was single, one service pension instalment may be made to his estate.

Funeral Benefit

25.46 A funeral benefit, up to a maximum of \$572, may be granted towards the cost of the funeral of an eligible veteran. An eligible veteran is one:

- whose death was war-caused;
- who died in indigent circumstances;
- who died in an institution (and the Commission approved of the veteran's admission to the institution for treatment);
- who died while travelling to or from an institution (and the Repatriation Commission approved of the veteran's admission to the institution for treatment);
- who died after having been discharged from an institution in which the veteran was being treated for a terminal illness (and the Commission approved of the veteran's discharge from the institution);
- who died while being treated for a terminal illness at his home instead of in an institution (and the Commission approved of the veteran being treated at home, rather than in an institution).
- who was in receipt of disability pension at either the special rate or EDA, or at a rate increased under s.27 of the VEA; or
- who was a former prisoner of war.

War Widow's Pension

25.47 The war widow's pension is provided to compensate the widow of a veteran whose death was related to eligible service. Table 25.4 shows current war widow's pension rates.

Table 25.4

Rates of war widow's pension

Pension	Fortnightly rate (\$)
War widow's pension	413.10
Supplement	16.30
Non-indexed amount	25.00
Total	454.40

25.48 The war widow's pension is indexed in the same manner as the service pension. The GST-related supplement is indexed to the CPI. An amount of \$25.00 per fortnight, formerly called 'domestic allowance', is not indexed. All these amounts are non-taxable and non means tested.

25.49 About 74 per cent of war widows also receive an income support supplement (ISS). This is an income support pension that is usually taxable and is means tested. A war widow may receive this supplement on reaching pension age (currently 57 years for females, 60 for males). It may also be paid to a war widow under pension age who has dependent children or is permanently incapacitated for work.

25.50 Before 1 July 2002, the ISS was paid at a frozen ceiling rate of \$124.90 per fortnight. This ceiling is now indexed by the same proportion as the service pension. The ISS is assessed under the income and assets tests that apply to the other income support pensions. It is assessed using the maximum single rate income support pension. War widow's pension is counted as income in that assessment. However, the total rate cannot exceed the ceiling, which is currently \$127.20.

25.51 War widows also receive the pharmaceutical allowance, the telephone allowance if they are telephone subscribers, and the Gold Card.

Orphan's Pension

25.52 The dependent child of a veteran whose death was related to service may receive a single orphan's pension of \$68.60 per fortnight while under 16 years of age. Where the child is left without a parent, either through death or absence of the other parent, they may receive a double orphan's pension of \$137.20 per fortnight while under 16 years of age. Orphan's pensions are non-taxable and non means tested.

25.53 Children receiving an orphan's pension are also provided with a Gold Card.

Social Security Benefits

25.54 A number of social security benefits are also available to veterans, with and without qualifying service, and their eligible dependants. While not exhaustive, the benefits listed here represent those most utilised by veterans and their families.

Income Support Pensions

25.55 Disability pensioners who do not have qualifying service under the VEA may receive social security income support pensions on the basis of their disability or age. About 14,500, or nine per cent, of disability pensioners receive social security pensions and benefits. Of these, over 7400 persons currently receive their social security age pensions through the Department of Veterans' Affairs under an agency arrangement with the Department of Family and Community Services. These pensions are paid at the same rates as the service pension.

25.56 The income and assets tests for social security age and disability support pensions are the same as those applied to service pensions, with the exception of the treatment of the disability pension in the income test. The disability pension received by a veteran is currently regarded as income for the purpose of pensions and benefits provided under the SSA. This reduces the amount of pension payable in many cases. Reduction occurs in the case of a single veteran receiving the disability pension above 40 per cent of the general rate or a partnered veteran receiving more than 70 per cent. These levels of disability pension exceed the respective free areas.

Family Tax Benefit

Part A

25.57 Family Tax Benefit Part A is available to persons who have income under a certain level, and a dependent child aged under 21 years or a qualifying dependent full-time student aged 21 to 24 years. If family income is \$30,806 or lower, full rates of this benefit may be available. The benefit reduces by 30 cents for each dollar of income above \$30,806, down to a base rate. The base rate may be paid until income exceeds \$79,643 plus \$3212 for each eligible child other than the first.

25.58 The income test for Family Tax Benefit Part A does not apply to those who receive, or whose partner receives, a veteran's or social security income support payment. There is no assets test applied to this benefit. The rate depends on the age of the child.

25.59 Current maximum fortnightly rates for Family Tax Benefit Part A are shown in Table 25.5.

Table 25.5**Rates of Family Tax Benefit Part A**

Age of child	Fortnightly rate (\$)
Under 13 years	126.70
13–15 years	160.72
16–17 years	40.74
18–24 years	54.74
In an approved care organisation aged 0–24 years	40.74

25.60 Current base (minimum) rates are shown in Table 25.6.

Table 25.6**Minimum base rates of Family Tax Benefit Part A**

Age of child	Fortnightly rate (\$)
Under 18 years	40.74
18–24 years	54.74

Part B

25.61 Family Tax Benefit Part B may be payable where a family includes a dependent child aged under 16 years or a qualifying dependent full-time student up to the age of 18 years not in receipt of youth allowance or a similar payment. This benefit targets single-income families. Secondary earners must have income below certain levels to qualify.

25.62 The secondary earner can earn up to \$1752 each year before earnings affect his or her Family Tax Benefit Part B. Payments are reduced by 30 cents for every dollar of income earned over \$1752. An assets test does not apply to this benefit.

25.63 Current minimum fortnightly rates of Family Tax Benefit Part B are shown in Table 25.7.

Table 25.7**Minimum base rates of Family Tax Benefit Part B**

Age of child	Fortnightly rate (\$)
Under 5 years	108.78
5–15 years (or 16–18 years if a full-time student)	75.88

Parenting Payment

25.64 This benefit may be paid to a person or family with a qualifying child under 16 years of age. Sole parents may receive up to \$429.40 per fortnight and partnered parents up to \$338.10 per fortnight. For maximum payment, the recipient's income must be no more than \$62 per fortnight and the partner's income no more than \$568 per fortnight.

25.65 The recipient's income reduces this payment by 50 cents for each dollar between \$62 and \$245 and by 70 cents for each dollar over \$245 per fortnight. Partner's income up to \$568 per fortnight has no effect. Income over this amount reduces the rate by 70 cents for each extra dollar.

Carer Allowance

25.66 Carer allowance may be paid to a person providing daily care and attention to a person with a disability who is:

- aged 16 years and over, where the disability causes a substantial functional impairment; or
- a dependent child aged under 16 years.

25.67 Carer allowance is paid at the rate of \$85.30 per fortnight. This benefit is not subject to income or assets tests.

Carer Payment

25.68 Carer payment may be made to a person providing constant care for a person who needs care permanently or for an extended period, including:

- a person who has a physical, intellectual or psychiatric disability;
- a child with a profound disability;
- two or more children with disabilities; or
- an adult and that adult's dependent child.

25.69 A person cannot receive a carer payment as well as another income support payment. The person being cared for must receive social security income support or a service pension. This benefit is currently paid at the same rate as the age pension, subject to income and assets tests.

Newstart Allowance

25.70 Newstart allowance is available to those persons who are unemployed and are capable of undertaking, available for and actively seeking work, or are temporarily incapacitated for work. This benefit is currently paid at the

fortnightly rate of \$374.90 (single), \$405.40 (with children) and \$338.10 (each partner of a couple). It is subject to income and assets tests.

Mature Age Allowance

25.71 Mature age allowance may be paid to a person aged 60 years or over, but younger than age pension age, who has no recent workforce experience. This benefit is currently paid at the same rate as the Newstart allowance.

Other Allowances, Benefits and Concessions

25.72 These items, including rent assistance, the remote area allowance, the pharmaceutical allowance and the PCC, are provided on the same conditions and at the same rates as under the VEA.

CONCLUSION

25.73 A wide range of benefits is available to veterans and their eligible dependants. The Committee concludes that, in considering the adequacy of benefits in either the VEA or the social security system, the totality of benefits available from these complementary sources must be considered. Neither should be considered in isolation.

CHAPTER TWENTY SIX

SUBMISSIONS RELATING TO THE SPECIAL RATE AND OTHER RATES OF DISABILITY PENSION

26

INTRODUCTION

26.1 The Committee's terms of reference required it to consider submissions made by interested parties about the structure and appropriateness of current special rate and other rates of disability pensions and related benefits available to veterans under the *Veterans' Entitlements Act 1986* (VEA).

26.2 The purpose of this chapter is to describe the issues and arguments about the disability pension structure and related issues that were presented by individuals and ex-service organisations (ESOs) in written submissions or at meetings with the Committee.

26.3 Many submissions made to the Committee expressed discontent, anger and frustration about the impact on the lives of veterans and their families of the structure and appropriateness of the special rate and other rates of disability pensions, and the related benefits available to veterans under the VEA. The point was strongly made that no veteran chooses to be totally and permanently incapacitated (TPI) and that all would opt for a normal working life in preference to being reliant on disability compensation and income support payments for their income.

26.4 The major concerns raised in submissions were:

- the adequacy of the special rate disability pension and associated benefits;

- the treatment of disability pensions paid under the VEA as income for the purposes of age or disability support pensions or social security benefits;
- the disparity between the special rate disability pension paid to TPI veterans (commonly referred to as the TPI pension) and the extreme disablement adjustment rate of disability pension (EDA);
- the adequacy of war widow/er's (hereafter war widow's) pensions;
- provision of a Repatriation Health Card – For All Conditions (Gold Card) for spouses/carers of veterans receiving high levels of disability compensation;
- the adequacy of bereavement payments and funeral benefits;
- lack of access to lump sums in compensation for permanent disabilities; and
- issues specific to younger veterans.

26.5 Other, related concerns, which are addressed in Chapter 30, included:

- disincentives within the current disability pension and taxation structures, which impose means testing on top of normal taxation and thereby discourage veterans' partners from contributing to family income through employment;
- the adequacy of the general rate disability pension; and
- the pharmaceutical allowance and co-payments.

26.6 In addition to the matters raised, the Committee received a number of submissions about other services or parts of services, amounts of disability compensation payments (such as allowances) and eligibility for particular services or payments. These highlight the huge range of services provided by the repatriation compensation system. In the time available to it, the Committee concentrated on the major issues associated with disability compensation; that is, the structure of the disability compensation system and the adequacy of overall assistance that is provided. The Committee felt that in this way the best interests of veterans would be served.

26.7 The Committee also received submissions about service delivery and quality. For the most part, these matters fell outside the Committee's terms of reference and consequently were not addressed.

26.8 The recommendations made to the Committee by ESOs about the special rate disability pension and related issues are in Appendix 14.

26.9 The Committee's analysis and response to the concerns described in this chapter are provided elsewhere in the Report, principally in Chapters 30 and 31.

NUMBERS OF SUBMISSIONS

26.10 Most of the 351 submissions about disability pensions asserted that the levels of benefit are too low and that pension levels should be increased, or commented on some aspects of rates or perceived anomalies. There were 284 submissions concerning the special rate of disability compensation or some aspect of the special rate (TPI) entitlements. A total of 208 submissions commented on the level of the special rate and asserted that it had eroded in comparison to community wage benchmarks, particularly that there had been a loss of parity with average weekly earnings over the past few decades.

26.11 A significant number of submissions (190) addressed the treatment of disability compensation payments paid by the Department of Veterans' Affairs (DVA) for those veterans without qualifying service who are seeking or receiving income support pensions from the social security system and want to have their DVA disability pension disregarded under the income test.

26.12 Comments on the entitlements of veterans receiving the EDA were made in 129 submissions. Specific comments on the EDA rates and perceived anomalies in various entitlements were made in 101 submissions. The entitlements of EDA recipients compared to those of special rate recipients were mentioned in 92 submissions. These submissions included comments on the level of the EDA rate vis-a-vis the special rate, the eligibility criteria for EDA being more stringent than those for TPI, the difficulty of obtaining special rate benefits after reaching 65 years of age and that EDA veterans are often older and more infirm than TPI recipients.

26.13 War widows' issues were raised in 169 submissions. Most related to questions of entitlement to the war widow's pension, but some raised concerns about the adequacy of payments.

26.14 The proposal that partners supporting TPI or EDA veterans should receive a Gold Card was made in 176 submissions.

26.15 Twenty-four submissions commented on matters relating to rent assistance, some stating that the rent assistance assessment test should be changed so that the disability pension is not regarded as income in determining eligibility or, alternatively, that some other housing assistance should be provided to disability pensioners.

ISSUES RAISED

Adequacy of the Special Rate Disability Pension and Associated Benefits

26.16 There was virtual unanimity, in written submissions and in the sentiments expressed at the public meetings, that the special rate or TPI disability pension no longer meets the needs of its recipients. A major concern was that the value of the pension had been eroded because of the lack of a suitable benchmark and indexation. Individual submissions revealed a raft of different areas of concern. The following quote exemplifies many veterans' views about the underlying reasons for granting the pension and its associated benefits:

This submission is based on the belief and understanding that the TPI pension and associated benefits have been provided by a grateful government to ex-active service men and women as *compensation* for the loss of career, loss of potential income, loss of normal family life, and the physical, social and emotional problems suffered by armed forces personnel as a result of their dedicated service to their Country.¹⁵³

26.17 Difficulties in providing for dependent children, particularly those undertaking education, featured prominently in many submissions:

My son was twenty when I was made a special rate recipient. My daughter was twelve. The government has forced me to raise two types of children. One child has been given a better lifestyle while growing up, the other having to go without in many cases. Where is my self-esteem as a father and a husband and provider?¹⁵⁴

26.18 Although it was recognised that access to the Veterans' Children Education Scheme alleviates some problems associated with educating children, submissions noted that education is only one of the costs of raising children.

26.19 Inability to save for the future or to build capital was another common theme.

My ability to accumulate wealth and funds with which to retire was cut short by at least six years. The special rate was a very poor alternative compensation in my case. And it is compensation, rather than a pension.¹⁵⁵

The foregoing argument brings me to two central conclusions. The first is that the special rate is inadequate compensation for loss of earnings, loss of business growth and value, and loss of accumulated funds on which to

¹⁵³ Submission 665.

¹⁵⁴ Submission 808.

¹⁵⁵ Submission 854.

retire with dignity and comfort. It needs to be urgently reviewed to increase in amount.¹⁵⁶

26.20 This issue is also related to another serious cause of concern amongst the veteran community, namely home ownership. This goal was seen as a near impossibility for many veterans whose main source of income is the special rate disability compensation and service pension or income support payments from the social security system.

For younger T&PIs they have not been able to reach their lifetime potential and as a result have not been able to commence to amass the normal asset base consistent with the average Australian. They are condemned to never owning their own home. Bank lending to T&PIs is limited because they are considered to be pensioners on a subsistence income. These T&PIs clearly demonstrate the inadequacy of the payments.¹⁵⁷

26.21 Concerning impediments to home ownership, the Australian Peacekeepers and Peacemakers Association pointed to the erosion in value of the Defence Service Home (DSH) Loan (which has remained at \$25,000 since 1973) and argued for a completely new, low-interest scheme and review of the DSH Scheme. The Australian Gulf War Veterans Association wanted a system similar to that provided by the Aboriginal and Torres Strait Islander Commission, which is at low interest and available to borrowers unable to obtain commercial finance. An alternative solution was to convert part of the TPI payment to a lump sum for this purpose.

26.22 The payment of the service pension to TPIs was described as:

... a welfare related payment paid to veterans with qualifying service as a means of supplementing the compensation payment as compensation alone would cause the veteran to be unable to survive in a manner befitting even the least deserving members of our community ... However, the recipients are not welfare cases and should not be treated as such.¹⁵⁸

26.23 There was an explicit or implicit argument in all submissions that there had been erosion in the value of the special rate pension. Consequently, there was an identified need to increase it and benchmark its value.

Since the demise of the 'basic wage' system, TPI pensioners have been relegated to the ranks of the impoverished aged pensioner with the TPI pension being subject to CPI rises which have no relation to current wages. The government had admitted that CPI increases were not a suitable benchmark for the cost of living by linking the aged pension to the average weekly wage. However in making this adjustment the government failed the TPI pensioner, deliberately or otherwise, by not suitably linking the TPI

¹⁵⁶ Submission 854

¹⁵⁷ Submission 2556.

¹⁵⁸ Submission 28.

pension to an appropriate level of the average weekly wage. As a result the gap between a reasonable compensatory TPI pension and the real standard of living is ever increasing to the detriment of the TPI pensioner.¹⁵⁹

26.24 Only the proposed solutions varied to any significant degree. The TPI Federation's solution was to legislate directly to increase the value of the special rate to 75 per cent of Male Total Average Weekly Earnings (MTAWE), with benchmarking and indexation to ensure it maintained its real value over time. By contrast, the Vietnam Veterans Association of Australia (VVAA) used a different index – the Average Collective Bargain Wage (ACBW) – with the benchmark set at 62 per cent. This figure was intended to reflect the value of costs of earning an income, including taxation, the Medicare levy and compulsory superannuation, to which the TPI is not required to contribute.

26.25 The Returned & Services League of Australia (RSL) recommended indexing the TPI pension to variations in the Consumer Price Index (CPI) or MTAWE, whichever is the greater, increasing the rate by not less than \$60 per fortnight and benchmarking the final amount to MTAWE.¹⁶⁰ The Australian Veterans and Defence Services Council (AVADSC) postulated a similar figure (\$65, with changed benchmarking and indexation of the TPI), although it noted that there was no complete consensus amongst its member associations on the best benchmark or index.¹⁶¹ Somewhat more general was the submission from the Royal Australian Air Force Association, which argued simply for 'a level commensurate with ... an average Australian family'.¹⁶² This was taken as a generally desirable level of support in the submissions and public meetings.

26.26 In addition to advocating an increase of the special rate to 70 per cent of MTAWE, the Vietnam Veterans' Federation of Australia (VVFA) also thought that the income-free area in the means test on the invalidity service pension should be substantially extended, from the present \$100 per week to \$800 per week.

26.27 Providing for retirement was another area of major concern for the Australian Peacekeepers and Peacemakers Association and the Australian Gulf War Veterans Association. The focus of the Peacekeepers and Peacemakers Association was a retirement incentive package to enable the younger veteran to plan independently for the future, without recourse to the service pension. In contrast, the Gulf War Veterans Association concentrated on expanding the existing Veterans' Vocational Rehabilitation Scheme (VVRS) to enable the undertaking of post-secondary or tertiary education, and thereby give the disabled veteran access to a new and fulfilling career path. (The Committee

¹⁵⁹ Submission 2556.

¹⁶⁰ Submission 1268.

¹⁶¹ Submission 1269.

¹⁶² Submission 1270.

understands that these services are already available to eligible veterans under the scheme.)

Treatment of Disability Pensions Paid Under the VEA as Income for the Purposes of Age or Disability Support Pensions or Social Security Benefits

26.28 Disability pensioners without qualifying service must apply through Centrelink for the age or disability support pension. The *Social Security Act 1991* (SSA) classes the disability pension paid by DVA as income. As a consequence, the income support paid to a veteran without qualifying service is reduced significantly compared to that paid to a veteran with qualifying service receiving the age service or invalidity service pension from DVA, where the disability pension is not so regarded.

26.29 This issue impinges significantly on issues raised in connection with World War II qualifying service. However, the major focus of submissions considered in this chapter is on a perceived inconsistency in the treatment accorded the same payment (the disability pension) by three Commonwealth Government agencies. The payment is regarded as tax-free by the Australian Taxation Office and is exempted from the income test for the DVA service pension, but it is treated as income by the social security system in means testing for benefits. A number of submissions raised the concern that, although the disability pension is not treated as income by DVA in means testing for service pension purposes, DVA treats it as income in determining rent assistance.

26.30 Individuals and major ESOs extensively expressed concern about the treatment of the disability pension as income, particularly as it relates to the special rate disability pension. The point was strongly made that the disability pension was compensation, not income, and ought to be treated as such. There were certain flow-on effects from this.

26.31 First, younger veterans without qualifying service were significantly disadvantaged in being unable to save for the future or adequately care for their families. Second, many veterans without qualifying service considered they were being treated as 'second class' citizens, notwithstanding that their accepted disability was in many cases the same or worse than that of a veteran with qualifying service. Third, veterans injured in the same incident may receive different benefits, because the qualifying service of one permits access to DVA income support arrangements that are more generous in the treatment of disability compensation pensions as income.

26.32 Although submissions generally supported the concept of like compensation for like injury, the RSL acknowledged that:

... in pushing for this change we are to some extent undermining the meaning of qualifying service. In other words those with qualifying service have won the right to be paid service pension without having their disability pension counted as income. Now we want non-qualified veterans to have the same monetary outcome.¹⁶³

26.33 The proposition to disregard disability pension as income under the social security system was supported in submissions by the Regular Defence Force Welfare Association, the Australian Special Air Service Association, the TPI Federation, the RSL and AVADSC. With the exception of the TPI Federation, however, there were no detailed proposals as to how the discounting would be achieved.

26.34 The TPI Federation proposed that a definition should be incorporated into the SSA, similar to that contained in the VEA, which exempts disability pension as income for the service pension. This, it was argued, would do 'no violence to the original policy intentions. Those who faced the 'enemy' would still have the differential that was intended for them in that they can obtain a service pension five years earlier than the rest of the community – including their comrades who are not considered to have that service'.¹⁶⁴

26.35 This point was taken up to a degree by the RSL, which emphasised what it saw as a need to continue to differentiate in the delivery of income support between veterans with qualifying service and those without. Thus, while the total of disability plus service pension between the two groups of veterans would be equalised, recognition of qualifying service would be achieved by the payment of the service pension by DVA.

Disparity Between the Special Rate Disability Pension (TPI) and the Extreme Disablement Adjustment Rate of Disability Pension (EDA)

26.36 Submissions were received on this subject from individuals and from the various EDA associations, raising many common issues.

26.37 The most prominent of these was the disparity between the levels of payment for TPI and EDA. To qualify for the EDA, a veteran must be assessed under the Guide to the Assessment of Rates of Veterans' Pensions (GARP) as being eligible for the 100 per cent general rate disability pension with an impairment rating of at least 70 and a lifestyle rating of at least six. This entitles the veteran to have his 100 per cent disability pension 'adjusted' by an

¹⁶³ Submission 1268.

¹⁶⁴ Submission 1265.

additional 50 per cent to reflect the extreme level of his disablement, taking the total pension to 150 per cent of the general rate.

26.38 In contrast, it is possible to qualify for the special or TPI rate (approximately 263 per cent of the general rate) while only eligible for a 70 per cent general rate pension. In practice, this is most commonly achieved with an impairment rating of 40 points – just over half of that needed for the EDA, if lifestyle rating is three (half of that needed for the EDA). A number of submissions argued for a reduction in the required lifestyle rating for the EDA from six to five.

26.39 Most submissions recognised that the TPI and EDA payments had different purposes. The first was to provide compensation for being unable to earn an income and provide for the future (economic loss), as well as for pain and suffering, and loss of lifestyle (non-economic loss). In contrast, the EDA was intended for ‘frail, aged veterans’ who became severely incapacitated from war-caused conditions after a full working life. As such, it was compensation exclusively for non-economic loss.

26.40 However, the point was strongly made that a key underlying assumption of the EDA – that the veteran had a full working life – was unsound. A significant percentage of submissions from individual EDAs made three points in this regard. First, they did not have a full working life because of ill health from war-caused conditions. Second, they were often unaware of their entitlements and so did not claim for the TPI even though they would have been eligible. Third, most EDAs are World War II veterans whose working lives preceded the introduction of compulsory superannuation in Australia.

26.41 As a result of these factors, EDA veterans with circumstances and histories quite similar to TPIs receive considerably less income. Moreover, those EDA veterans without qualifying service receiving the social security age pension are even worse off.

26.42 The proposed solution was to remove the age barrier to the grant of the special rate pension. In further support of this proposition, the submission of the National Council of Extreme Disablement Adjustment Associations pointed out that:

... the present Government has legislated to remove the 65 age retirement for statutory office-holders by the Abolition of Compulsory Age Retirement Act 2001 so surely this must create a precedent for the Veterans’ Entitlements Act.¹⁶⁵

¹⁶⁵ Submission 98.

26.43 The Committee noted that the legislation referred to, the *Abolition of Compulsory Age Retirement (Statutory Office Holders) Act 2001*, amended only those Acts that specified mandatory retirement age limits for statutory office holders. It did not create a precedent for the VEA. In order to thoroughly examine this issue, the Committee obtained legal advice. The advice provided to the Committee was that there is no law that applies to the VEA that would enable challenges to the provisions of the VEA on the basis that the provisions rely on age-based criteria.

26.44 In addition to parity of pension level with the special rate, the National EDA Council also recommended the extension to EDAs of other benefits available to TPIs, including Goods and Services Tax (GST) exemption on motor vehicles, and proposed the implementation of a home assistance allowance to help EDAs remain in their own homes.

26.45 A significant number of submissions about the EDA also advocated extension of the Gold Card to the spouses of EDA veterans.

Adequacy of the War Widow's Pension

26.46 Four major areas of concern about the war widow's pension emerged from individual submissions and from those of the Legacy Co-ordinating Council and the War Widows' Guild of Australia: the erosion in value of the income support supplement (ISS); ineligibility for rental assistance; provision of the Gold Card for dependants of deceased veterans; and restoration of the ISS to war widows living overseas.

26.47 One submission addressed forcefully the erosion of value of the ISS:

For TPI widows to exist on this paltry amount is also totally impossible should the widow be younger, with children and a mortgage. This is the reality of life in modern day Australia and our widows are in and will be in penurious circumstances. The ISS should be dropped totally as it has never been subject to CPI since 1983 and went from \$120 per fortnight to \$124.90 in its first rise since 1983 on the introduction of the GST. TPI Widows Pension should be benchmarked at 75% of MTAW.¹⁶⁶

26.48 It was pointed out that, before 1986, the ISS was subject to an income and assets test and fully indexed for inflation. Since then, there has been no increase. In combination with the frozen element of the war widow's pension (the domestic allowance) 'the effect has been to progressively erode the worth of a War Widows package, compared with a single aged pensioner in similar financial circumstances'.¹⁶⁷

¹⁶⁶ Submission 376.

¹⁶⁷ Submission 1358.

26.49 The question of rent assistance appeared particularly vexed from the war widow's perspective. The Legacy Co-ordinating Council wrote that the access to rent assistance is:

... limited by a unique provision in the Veterans Entitlements Act that unjustifiably combines rental assistance with income support supplement and then subjects both payments to a 1986 based ceiling of \$124.90. This inequity is particularly unfair as it is imposed on the most needy ... The need to correct this anomaly enjoys widespread support but does not appear to enjoy high priority within Government expenditure review considerations.¹⁶⁸

26.50 Referring to the issue of a Gold Card for the dependants of deceased veterans, the War Widows' Guild submitted that an anomaly exists:

... as prior to 1986 disabled dependants [of deceased veterans] did and still do possess a Gold Card. Those that came after 1986, with the exception of some dependants of Vietnam Veterans, have not received the same benefit.¹⁶⁹

26.51 The remaining major issue related to some 400 Australian war widows living overseas, who by reason of non-residency are not eligible for ISS¹⁷⁰. The great majority of these live in the United Kingdom, and the Australian dollar's low exchange rate against the British pound has resulted in a significant reduction in the value of their pensions. It was recommended that, because of this, consideration should be given to restoring the ISS to these widows.

26.52 A number of submissions suggested that a war widow's pension should be granted to all widows of veterans, regardless of whether the veteran's death was war caused.

Provision of a Gold Card for Spouses/Carers of Veterans Receiving High Levels of Disability Compensation

26.53 Those who recommended provision of a Gold Card for spouses and carers of special rate recipients and recipients of the EDA offered a common rationale: that the strain of caring for a severely disabled veteran was such that there were almost inevitable negative flow-on effects to the spouse/carers. Therefore, both as compensation for damaged health and in recognition for saving the Government the cost of full-time residential care, a Gold Card should be issued giving the spouse access to free health care for all conditions.

¹⁶⁸ Submission 1358.

¹⁶⁹ Submission 1271.

¹⁷⁰ In its submission (1358), the Legacy Co-ordinating Council claims this number was 388. DVA advises that there are around 250 war widows living overseas who do not receive ISS.

The spouse of a TPI should also be issued with a Gold Card. This would not only lower the burden of stress on the veteran knowing that his spouse was looked after medically but it would lower the financial cost of providing satisfactory health cover to the wife. Wives of veterans deserve special recognition, as they are the ones who really look after the veteran. This would seem to be a reasonable proposition.¹⁷¹

26.54 The Gold Card for spouses/carers was advocated by the VVFA, the TPI Federation and the National Council of EDA Associations. In addition, the TPI Federation argued for government funding of private health insurance for private hospital and ancillary services for spouses/carers of TPIs. A related recommendation – subsidised gym membership for TPI spouses/carers – was made by the Australian Gulf War Veterans Association.

Bereavement Payments and Funeral Benefits

26.55 Where a disability pensioner in receipt of the special, intermediate, 100 per cent general or EDA rate dies, the surviving spouse or partner receives a lump sum bereavement payment equivalent to six fortnightly payments of the 100 per cent general rate, plus seven fortnightly payments of the service pension at the rate at which the deceased veteran was receiving it. The spouses of those who were in receipt of less than the 100 per cent general rate receive a payment that mirrors the percentage at which the deceased was paid.

26.56 Two perceived difficulties emerged in submissions on this issue. First, representations were made to the effect that if the service pension is paid after the death at the same rate, so should the disability pension be. Accordingly, the spouses of EDAs, intermediate and special rate recipients should receive sums based on the equivalent of the disability pension rate paid to the veteran:

The government's payments after the veteran's death to his widow are currently made at 100% of the general disability rate – they need to be made at the TPI rate.¹⁷²

26.57 Second, where the disability pensioner was single, there is no benefit at all payable to his estate. This, it was argued, ignores the situation where a friend or relative (usually a child) was providing full-time care to the veteran, and the loss to this person was of comparable significance to that of a spouse or partner.

26.58 Some submissions sought an increase of the funeral benefit, which is payable at a maximum rate of \$572. The benefit is paid to assist with meeting funeral expenses. It is payable to the estate of the deceased veteran or to the person who meets the funeral costs. Some submissions considered that the

¹⁷¹ Submission 2455.

¹⁷² Submission 2455.

amount was inadequate, especially when compared with the payment available from the Military Compensation and Rehabilitation Service, and the actual cost of cremation or burial.

These [funeral benefits] are scandalously low. \$572 might get you a cardboard box and a fire with the pets put down at the council refuse [sic]. Real cost of the most basic of funerals is \$3610.¹⁷³

Lack of Access to Lump Sum Payments in Compensation for Permanent Disabilities

26.59 There were opposing views amongst the veteran community about the proposal for lump sum payments in compensation for permanent disabilities. Some submissions (e.g. those of AVADSC, the TPI Federation, the West Australian Branch of the RSL and the Regular Defence Force Welfare Association) sought access to varying levels of lump sum payments to provide veterans with the capacity to meet the substantial costs of housing purchases and renovations, and vehicle purchases. The VEA arrangements were considered to be inequitable when compared to those of the *Safety, Rehabilitation and Compensation Act 1988*.

26.60 In meetings with the Committee, other ESOs opposed the proposal. Reasons for this opposition included awareness that lump sums could be exhausted quickly, with the result that the recipients later became reliant on welfare payments, and that security is provided by regular pensions.

26.61 In Chapter 30 of this Report, on the proposed disability compensation structure, the Committee has considered the possibility that the Government might wish to further examine providing lump sum payments.

The Pharmaceutical Allowance and Co-payments

26.62 Some submissions to the Committee recommended that the Government bear the full costs of all pharmaceuticals for disability compensation recipients (i.e. that recipients be exempted from co-payment arrangements). The TPI Federation's submission exemplifies the arguments proposed in support of this recommendation:

The present co-payment arrangements for pharmaceuticals leave a gap between the amount provided to TPIs through the pharmaceutical allowance and the actual cost of medication up to the point where the safety net is reached. This provides another unnecessary drain on a TPI's limited resources.

¹⁷³ Submission 2455.

TPIs almost by definition do not enjoy the best of health and can be expected to have higher pharmaceutical expenses. All care and treatment costs for TPIs should be fully covered. There is no reason why TPIs should have to bear any cost in respect of their war caused incapacity.¹⁷⁴

Issues Specific to Younger Veterans

26.63 Two submissions from ESOs (the Australian Peacekeepers and Peacemakers Association and the Australian Gulf War Veterans Association) concentrated on issues relating to younger TPIs.

26.64 In addition to the previously described concerns of other special rate disability recipients, two other issues relating to veterans' children were raised by the Gulf War Veterans Association: the inadequacy of the Veterans' Children Education Scheme (VCES), and problems relating to child maintenance in the event of relationship breakdown.

26.65 The Association felt it was appropriate to extend VCES eligibility to veterans receiving the temporarily totally incapacitated (TTI) pension, because younger veterans were more likely to spend considerable time on this benefit. As a result, they had all the disadvantages of the special rate recipient but without recourse to a key program to assist their children's education.

26.66 Regarding child maintenance, it was felt that the Child Support Agency's processes were too stressful for many TPI veterans with posttraumatic stress disorder, and that disability pensions were treated unfairly in calculating the level of maintenance to be paid.

COMMITTEE'S OBSERVATIONS

26.67 The most significant cause of concern, expressed in written submissions to the Committee and reinforced during its meetings with veterans, was the strain of raising children while families were reliant on the disability pension and income support payments. The submissions reflected a strong sense of discontent and frustration with current disability pension levels amongst many veterans. The Committee notes the ex-service community's view that these problems are even worse for veterans without qualifying service.

26.68 The decline or 'erosion' in the value of the special rate pension was widely criticised in the submissions. There was, however, little attention given to other benefits that have accrued over recent years, particularly the access since 1973 to increased service pensions where, previously, the disability pension was counted as income for this purpose by DVA.

¹⁷⁴ Submission 1265.

26.69 While noting that the VVAA proposed benchmarking the special rate to the ACBW, the Committee observes that most submissions considered a percentage of MTAWE to be most suitable for this purpose.

26.70 No submission from a major ESO canvassed fundamental reform of the existing structure (although the Regular Defence Force Welfare Association advocated clear delineation of income support and compensation for pain and suffering).¹⁷⁵

26.71 Submissions to the Committee sought relief from the disincentives within the current disability pension and taxation structures that impose means testing of partners' earnings on top of normal taxation and thereby discourage veterans' partners from contributing to family income through employment.

26.72 The Committee's analyses and responses to the above matters are contained in Chapters 30 and 31.

26.73 The Committee notes that veterans who received EDA compared their level of disability compensation unfavourably with the levels of compensation paid to special rate recipients. This issue is addressed in Chapter 30.

26.74 Submissions about the adequacy of the war widow's pension expressed concerns about the erosion in value of the ISS, ineligibility for rent assistance, provision of the Gold Card for dependants of deceased veterans, and the restoration of the ISS to war widows living overseas. Chapters 29 and 30 contain the Committee's analyses and responses to these issues, with the exception of the requested provision of the Gold Card, which is addressed in Chapter 22.

26.75 The Committee notes the submissions that stressed the importance of the role of carer, which is undertaken by many partners of veterans with severe service-related disabilities. Many submissions suggested that a Gold Card be issued in recognition of their work and its negative effects on their health. The Committee discusses this issue in Chapter 22.

26.76 The Committee notes the submissions that sought changes to the eligibility criteria for, and level of, bereavement payments, and increases to the funeral benefit. These issues are addressed in Chapter 30.

26.77 The Committee notes that submissions about the lack of access to lump sum payments in compensation for permanent disability contained opposing views, and sets out its suggestion in Chapter 30.

¹⁷⁵ The Committee notes, however, an innovative submission from the advocate of the Vietnam Veterans' Motorcycle Club, Submission 376, that was repeated in a very small number of other submissions and correctly identifies a particular problem with the present structure — namely, the incorporation of a significant element of income support since 1973 in what had previously been a package substantially comprising disability compensation at the special rate.

26.78 Regarding younger veterans and their need to provide for their own future, the Committee considers that the new, restructured model of the disability pension structure in Chapter 30, in combination with a renewed commitment to rehabilitation (see Chapter 31), will substantially address these concerns.

26.79 Some submissions to the Committee recommended that the Government bear the full costs of all pharmaceuticals for disability compensation recipients, exempting recipients from co-payment arrangements. The Committee's discussion of this issue is included in Chapter 30.

26.80 The following chapters contain the Committee's views on most of the issues raised in submissions, and its preferred responses to those issues.

CHAPTER TWENTY SEVEN

THE NATURE OF MODERN DISABILITY COMPENSATION

27

INTRODUCTION

27.1 A number of submissions made to the Committee compared repatriation disability benefits to those provided under workers' compensation schemes or to damages awarded under common law. The Committee decided that it was important to gain a clear understanding of these forms of disability compensation so that they could be compared to repatriation benefits. Accordingly, this chapter:

- identifies how Australian workers are compensated for injury or disability resulting from their employment;
- discusses the principles that underlie provision of this compensation; and
- clarifies the Government's responsibility as an employer to veterans of Australia's armed forces.

WORKERS' COMPENSATION

27.2 Australian workers' compensation arrangements have evolved in response to 19th century European systems. Those systems had themselves evolved in response to inadequacies inherent in common law as a means of seeking redress for work-related injury.

27.3 Towards the end of the 19th century, European society began to take a more humanitarian view of work accidents. Work injuries were accepted as an inevitable part of work, the cost of which should be borne by business rather

than by the worker. In 1897, the *Workmen's Compensation Act* was passed in the United Kingdom, encompassing the principles of 'no fault' and compensation of workers for loss of earning capacity.

27.4 The Australian colonies, and later states, soon followed the British lead. In 1900, South Australia was the first Australian jurisdiction to introduce workers' compensation legislation, followed by Western Australia (1902), Queensland (1905), Tasmania (1910), Victoria (1914), the Northern Territory (1920), New South Wales (1926) and the Australian Capital Territory (1951).

Recent Developments

27.5 Compensation coverage and benefits available to Australian workers have broadened over the years. Change occurred irregularly through the 20th century, resulting from legislative amendments, judicial interpretations and administrative decisions.

27.6 Several Acts were passed in the later 1980s, giving greater powers to workers' compensation authorities and extending their roles into rehabilitation and prevention (Industry Commission 1994, pp. F1-4). Lump sum compensation fell from favour and was curtailed in many cases. Access to common law, another source of lump sum compensation, was further restricted by many of these Acts and 'table of maims' payments were increased.

Current Workers' Compensation Legislation

27.7 Each Australian state and territory has its own compulsory workers' compensation arrangements. Overlying these are two Commonwealth jurisdictions, one for Commonwealth employees and one for seafarers.

27.8 A common factor in all schemes is the concept of 'no fault' compensation, in which employers are held liable for work-related injury or illness suffered by their employees. Other common features are provision of:

- compensation for lost earnings (economic loss);
- compensation for non-economic loss (pain and suffering);
- compensation for other expenses; and
- rehabilitation.

Principles

Compensation for Lost Earnings

27.9 Initial levels of compensation may be based on either the worker's pre-injury earnings or a proxy, such as an award rate or average weekly earnings.

Benefits are usually paid for an initial period at 100 per cent of pre-injury levels or of the earnings approximation.

27.10 After an initial period, benefits usually reduce. Exceptions are the Western Australian and Tasmanian schemes, in which compensation is paid at the initial rate until a dollar limit is reached. Partial compensation may also be paid to a partially incapacitated worker. Economic compensation is paid until usual retirement age, generally 65 years.

Non-Economic Loss

27.11 Most schemes provide for non-economic loss (such as pain and suffering associated with loss of a limb) determined through 'tables of maims'. All schemes pay a prescribed lump sum in the case of death.

Other Expenses

27.12 Schemes generally provide compensation to injured or ill workers for expenses deemed reasonable under legislated provisions. These can include hospital, medical and rehabilitation expenses. They can also extend in some cases to funeral expenses, personal property damage, attendant care, and legal and travel expenses.

Rehabilitation

27.13 Rehabilitation services can be provided in-house or by external providers. All schemes suspend a worker's benefits if the worker does not undertake rehabilitation once directed to do so. 'Safety net' provisions protect benefits if a worker is unable to successfully return to work. Some schemes also enhance weekly benefit limits for injured workers while they are undertaking rehabilitation.

An Example of Workers' Compensation Legislation — the *Safety, Rehabilitation and Compensation Act 1988*

27.14 The *Safety, Rehabilitation and Compensation Act 1988* (SRCA) is the legislative basis for the Commonwealth Government's workers' compensation arrangements. It provides for the compensation and rehabilitation of employees who are injured in the course of their employment.

27.15 The SRCA covers Commonwealth employees, including members of the Australian Defence Force (ADF) and employees of some private sector corporations. It also covers ACT Public Service employees. Many large private enterprises have modelled their workers' compensation schemes on SRCA provisions.

Benefits Available Under the SRCA

Compensation for Loss of Earnings

27.16 Under the SRCA, an injured worker may receive normal weekly earnings for the first 45 weeks of incapacity, less any income they might earn in that time. After 45 weeks, benefits are reduced to 75 per cent of normal weekly earnings.

27.17 The maximum amount payable after 45 weeks of incapacity is 150 per cent of average weekly ordinary time earnings of full-time adults, as reported by the Australian Bureau of Statistics. The minimum is the lesser of a statutory amount (currently \$311.18) or 90 per cent of the worker's normal weekly earnings. A lump sum may also be paid as redemption of weekly payments in limited circumstances.

27.18 Weekly payments are discontinued when a worker turns 65, is imprisoned or makes a false statement. Payments may also be suspended if a worker refuses a medical examination. Where a worker is aged 63 years or more at the time a claim is accepted, weekly payments may continue for two years past age 65.

27.19 Being compensation for loss of earnings, weekly payments are subject to taxation as normal income.

Non-economic Loss

27.20 Reasonable medical and associated travel, accommodation and household service expenses are paid, as well as the cost of alterations to the place of work, the residence, a vehicle or an article required by the worker, particularly when changes are made in conjunction with a rehabilitation program. Household assistance is currently subject to a weekly limit of \$317.65.

27.21 Lump sums are payable on the death of a worker and weekly payments are made to the worker's children. Funeral expenses may also be paid. The lump sum for death is currently \$190,595.65, weekly payment for each child under 16 years of age or a full-time student under 25 is \$63.52, and funeral expenses of up to \$4,399.68 may be paid.

27.22 Lump sums may also be payable for permanent impairment of at least 10 per cent. The maximum such lump sum is currently \$174,712.70.

27.23 Compensation for non-economic loss is not subject to taxation.

Common Law

27.24 Common law claims against the Commonwealth for economic loss have been abolished. However, a worker may sue the Commonwealth for non-economic loss of up to \$110,000 if the worker makes an irrevocable decision to take common law action rather than accept statutory compensation for permanent impairment and non-economic loss.

Rehabilitation

27.25 In common with other modern workers' compensation legislation, the SRCA focuses on rehabilitation. For example, an authority specified under the Act may determine that an employee should attend a rehabilitation program. Chapter 31 discusses this aspect of the Act in more detail.

COMPENSATION UNDER COMMON LAW

Access

27.26 Recourse to the common law of tort¹⁷⁶ may provide injured workers with an alternative avenue to compensation. Common law actions may be brought directly against employers for their own actions and for the actions of third parties, or directly against third parties. However, workers' compensation reforms since the mid-1980s have severely restricted the private right of workers to sue their employers for damages. Common law access has been abolished in the Northern Territory and South Australia. Partial access is available under the New South Wales, Western Australia, Victoria, Commonwealth and seafarers' schemes. Unlimited access is available in Queensland, Tasmania and the Australian Capital Territory.

Awards of Damages Under Common Law

27.27 The principal division in awards of damages made by the courts under common law is between pecuniary and non-pecuniary loss. Pecuniary loss can include loss of earning capacity and expenses for medical treatment, rehabilitation, surgical appliances, attendant costs, home modifications and transport. Non-pecuniary loss can include pain and suffering, loss of limbs or bodily function and reduction in life expectancy.

27.28 The Committee is aware that some members of the veteran community have expressed concerns about large common law awards being made by the

¹⁷⁶ Tort is a private or civil wrong, independent of contract, arising from wilful or negligent misconduct in breach of a duty owed to the injured person (Industry Commission 1994, p. 33).

courts for apparently minor disabilities and have compared these to disability compensation benefits under the *Veterans' Entitlements Act (1986)* (VEA). However, what may not be well understood is that the greater part of these awards is provided for past and future medical expenses. The non-economic (pain and suffering) component is usually small compared to associated costs.

27.29 The Committee notes that there has been a recent trend towards the courts critically examining common law claims and the circumstances surrounding them. The award of large common law damages is now being addressed in a concerted way by Commonwealth and state governments, largely in response to concerns about the spiralling cost of public liability insurance. Some jurisdictions, notably New South Wales, have now capped these awards.

CONCLUSIONS

Veterans as Workers

27.30 Workers' compensation is currently provided to serving members of the ADF through the SRCA, which also applies to other Commonwealth employees. Application of this legislation is a clear indication of the Government's responsibility as an employer to members of its armed forces. This follows the basic principle of workers' compensation, by which an employer is liable for work-related injury or illness suffered by its employees.

27.31 The Government also provides compensation to veterans, as defined in the VEA, for incapacity related to their service in Australia's armed forces. The Committee finds that the VEA recognises the same employer-worker relationship as that recognised by the SRCA and other workers' compensation legislation. Veterans are workers in this sense and the Committee believes that they should receive compensation of a standard, at the very least, equal to that available to the rest of the Australian community. The SRCA is arguably the most generous of the 10 government employee workers' compensation schemes in Australia.

The Repatriation System and Workers' Compensation

27.32 The Committee finds that workers' compensation and the Australian repatriation system, with its emphasis on compensation for injury, are directly comparable in purpose. However, the compensation benefits provided are substantially different in structure.

27.33 Under the VEA, disability compensation:

- is provided for life;
- is not taxed;
- does not make a clear distinction between economic and non-economic compensation;
- includes health care delivered through community systems separately from financial compensation; and
- may include health care for all conditions, rather than merely those related to the compensable condition.

27.34 Legislated workers' compensation schemes:

- usually only provide weekly compensation payment for loss of earnings until normal retirement age;
- regard weekly payments as taxable;
- pay non-economic compensation as non-taxable lump sums; and
- only provide reimbursement for medical expenses that relate to the compensable condition.

27.35 In contrast, awards for damages under common law are made as lump sums for:

- loss of income, adjusted to provide for tax that would otherwise be payable;
- pain and suffering (non-economic loss); and
- past and future medical treatment and associated costs.

A Need for Reform

27.36 The Committee believes that this divergence between workers' compensation and the repatriation system, primarily a result of separate historical developments, needs to be addressed. Further discussion of this matter and recommendations for a new VEA disability compensation structure are contained in Chapter 30.

CHAPTER TWENTY EIGHT

EARLIER REVIEWS OF DISABILITY COMPENSATION

28

INTRODUCTION

28.1 Disability compensation provided to veterans under the *Veterans' Entitlements Act 1986* (VEA) and previous legislation has been examined in several reviews over the past 30 years. All dealt in some degree with the payment of the disability pension at above the general rate. Those of the Hon Mr Justice P B Toose CBE (Toose 1975) and the Hon Professor Peter Baume AO (Baume 1994) were critical of the structure of these payments, particularly that of the special totally and permanently incapacitated (TPI) rate. This chapter will examine the outcomes of these reviews, focusing particularly on the findings of Toose and Baume.

Senate Standing Committee on Health and Welfare, November 1973

28.2 In September 1970, the Senate referred the issue of 'all aspects of repatriation, including the operation of the *Repatriation Act*' for examination by its Standing Committee on Health and Welfare.

28.3 That committee reported to the Senate in November 1973, midway through the independent Toose Enquiry. As Toose would do subsequently, the committee recommended a reformed war (disability) pension structure, with gradations of five per cent leading to the TPI rate at 100 per cent. Controversially, it also recommended the payment of all pensions through the Department of Social Security, with the then Repatriation Department retaining responsibility for policy, claims, reviews and administration. The Senate

committee's recommendations were completely overshadowed by the Toose Report and little or nothing came of its recommendations (Lloyd and Rees 1994, pp. 330-1).

Advisory Committee on Repatriation Legislation Review, November 1983

28.4 In September 1982, the Minister for Repatriation announced that a comprehensive review of the repatriation legislation would be undertaken to provide simplified legislation covering all repatriation entitlements.

28.5 An advisory committee was established to present the views of veterans and dependants, and to provide advice to the Minister on matters arising in the proposed consolidation and review of repatriation legislation.

28.6 That committee reported to the Minister in November 1983. The report (Keys 1983) made substantial detailed recommendations for change to the repatriation legislation. Many were incorporated into the VEA. Particularly relevant to the special rate pension was a recommendation to define a negligible amount of remunerative activity as less than eight hours per week. Previously, the key criterion for the special rate ('totally and permanently incapacitated to such an extent as to be unable to earn more than a negligible percentage of a living wage') had been so vague that it resulted in considerable inconsistency between individual grants of pension.

Veterans' Entitlements Act Monitoring Committee Reports, May 1988

28.7 In April 1986, during the closing stages of the Senate's consideration of the Veterans' Entitlements Bill and its associated legislation, the Minister for Veterans' Affairs gave an undertaking to establish a committee to monitor the operations of the VEA once it had been in operation for a period of one year.

28.8 The committee was seen as a way to monitor operational experience of the VEA to ensure that, in practice, no greater or other restrictions were imposed on the benefits prescribed by the Act than were intended.

28.9 The committee lodged its report with the Minister in May 1988 (Toose 1988), making 58 recommendations for change. The most important of these was the recommendation to introduce the extreme disablement adjustment (EDA) at 150 per cent of the general rate for frail, aged veterans over 65 who were ineligible for the intermediate or special rates of disability pension.

Senate Standing Committee on Legal and Constitutional Affairs Inquiry into the Veterans' Entitlements Amendment Bill 1992

28.10 In November 1992, the Senate Standing Committee on Legal and Constitutional Affairs considered the Veterans' Entitlements Amendment Bill 1992, which proposed amendments to the VEA following the High Court's decision in the *Bushell* case.

28.11 The standing committee received written submissions and oral evidence at a public hearing. Much of this material was critical of the changes and the lack of consultation about them.

28.12 The committee reported to the Senate in November 1992 and consideration of the Bill was postponed. The Bill expired with the dissolution of the Senate in June 1993. There were no implications for the disability pension structure in anything proposed. Rather, the questions dealt with were entirely concerned with the question of the standard of proof.¹⁷⁷

The Auditor-General's Report ANAO No. 8 1992–93: Compensation Pensions to Veterans and War Widows

28.13 This report (Auditor-General 1993) was sharply critical of a number of aspects of the repatriation system, particularly the grant of TPI pensions to veterans well past retirement age.

28.14 Its findings, which led in part to the commissioning of the Baume inquiry, will be considered in more detail below.

THE TOOSE REPORT

Requirements of the Disability Pension Structure

28.15 Justice Toose established the parameters of a reformed disability (then war) pension structure thus:

Clearly any restructuring of the system would need to be capable of accepting present pensions levels without existing pensioners being disadvantaged by the transition. Equally, of course, there should not be significantly higher costs to the Government attributable to the new structure itself. (Toose 1975, p. 311)

28.16 In addition, he considered that the new structure should:

¹⁷⁷ Australia, Senate, *Debates 1992*, vol. S. 156, pp. 2967–70.

- be comprehensive by providing sufficient levels to accommodate a wide variety of disablement, while maintaining relativity between levels;
- be flexible enough to meet particular and unusual circumstances;
- be easy to understand and administer; and
- ensure a consistent measure of justice to all.

Criticisms of Existing Disability Pension Structure

28.17 Submissions to the Toose Enquiry relating to the pension structure centred on the fact of there being two basic but seemingly unrelated rates – the general rate and the special rate.

28.18 Toose noted that a relativity of 2:1 between the special and general rates was mostly maintained until 1950 and that subsequently a gap had developed. A number of submissions from 100 per cent general rate recipients requested the restoration of the parity to the original 2:1.

Leaving aside the questions whether the relativity established in 1920 was valid at that time, and whether subsequent developments in the general employment field would have indicated a change of relativity, it seems to me that to do no more than raise the general rate pension in money values would not resolve the more fundamental question to be answered. It has been suggested that relativity in the complete sense is unattainable so long as there are the two rates, each with its own separate entry criteria, within which persons must be accommodated. (Toose 1975, p. 311)

28.19 It was submitted that the requirement in the special rate for total and permanent incapacity indicated an economic – as distinct from disablement – component. The converse argument was that the parenthetic definition merely established the measure of disablement necessary to attract the special rate pension. In support of this, reference was made to the guidelines of the Repatriation Commission in 1920 that the special rate pension should only be granted ‘in extreme cases where there is no possible doubt as to a pensioner’s helplessness and the permanency of that state’ (Toose 1975, p. 312). Over time, the helplessness requirement was eased to a point where a veteran qualified merely if unable to engage in some regular employment. Toose concurred, stating that:

In my view the definition was intended to establish the measure of disablement and not to cover an economic component. Clearly, its application has over the years been eased to the extent claimed. (Toose 1975, p. 313)

28.20 It was further argued by Toose that the 1920 definition established a measure of disablement – TPI – and that difficulties arose only with the easing of the helplessness requirement. The Commission, in interpreting the negligible

percentage clause, developed guidelines that permitted some work to be undertaken. Toose considered that the system as he found it 'may have been appropriate in 1920 when the basis for assessment was incapacity for work' but was now 'unsuitable as a vehicle for compensation of disablement which for many years now has taken account of other factors' (Toose 1975, p. 314).

Recommended Disability Pension Structure

28.21 Toose considered that there were two broad categories of damage: those of disablement and economic loss. A key question was whether these categories should be reflected separately or continue to be unidentified components in a single payment.

28.22 With respect to disablement, Toose argued that 'generally disease or injury suffered by a member would bear on the capacity for employment in proportion to the loss or diminution of functional capacity, and therefore does not warrant separate assessment'. This assumption was tempered, however, by the reality that a veteran unable to engage in any remunerative employment, must, of necessity, be worse off than one who, though seriously disabled, was still able to work full time. Therefore, if the compensation payment was to reflect the veteran's economic loss, the inability to earn must be recognised 'by the provision of significantly increased payment at the point where the member cannot, or ought not to, engage in full-time employment' (Toose 1975, pp. 329–330).

28.23 Toose buttressed his reasoning with reference to civil actions for damages in respect of injury. In these, where the victim is assessed as having no capacity for employment, a higher sum is awarded to reflect actual and prospective loss of income. For Toose, 'the critical defect in a single pensions structure with regular progression of rates throughout would be its inability to cope with this situation' (Toose 1975, p. 320). Accordingly, it was recommended that two separate elements be clearly identified in the war pensions structure: disablement pension and economic loss compensation.

Pain and Suffering, Loss of the Amenities of Life and Extreme Disablement – the 'Disablement Pension'

28.24 A rating table for disablement was proposed, with the highest level equating to rating 100. The term 'rating' was proposed to distinguish between disablement and impairment, with the latter being expressed as a percentage in the standard guide for the assessment of impairment. The Toose model would have equated an impairment rating of 85 per cent with 100 per cent disablement.

28.25 Within the disablement component itself, Toose considered that there were three particular features:

- pain and suffering;
- loss of amenities of life; and
- exceptional disablement.

28.26 Up to an impairment rating of 85 per cent, the payment would reflect the first two elements. Rating beyond that point would be considered extreme disablement and attract a higher level of compensation. This was to be known as the exceptional disablement allowance and would have been paid at two levels 'with monetary values appropriate to the extreme level of disablement'. There was to be no test of employability associated with disablement pension (Toose 1975, pp. 320–321).

Supplement for Economic Loss – the 'Income Supplement'

28.27 The income supplement was intended to compensate the veteran for economic loss resulting from service-related conditions in cases where he could not, or ought not to, engage in 'regular remunerative employment'. As to the quantum of payment, Toose thought it 'inconceivable that a disabled member should be required to accept a standard significantly lower than that which obtains in the community generally' (Toose 1975, p. 323).

28.28 Accordingly, the income supplement would be set at a level that would bring the combined payment of it and the disablement pension to the equivalent of the then 'average industrial wage'. Such income supplement would take into account 'regular personal exertion income, any superannuation payments, means-tested or means-test free service or social security pension, and payments of pension under the defence force retirement and death benefits legislation'. Income from savings and investments would be exempted. After the age of 65, the veteran would cease to receive the income supplement and thenceforth be reliant on the support available to the general community by way of earnings, age pension or superannuation. However, payment of the disablement pension would continue for life (Toose 1975, p. 323).

THE BAUME REPORT

Precursor: The Auditor-General's Report No. 8 1992–93

28.29 A major focus of the Auditor-General's Report was on grants of the special or TPI rate pension to veterans well past normal retirement age.

28.30 Specifically, the Auditor-General's Report found that, in virtually all grants to World War II veterans, the individual had had most or all of a full working life. The report also found that grants of the special rate pension to veterans over 65 years of age were generally to professional people, such as those engaged in the legal or medical professions, farmers and self-employed tradesmen, who ceased work after 65 years. Moreover, the relationships between many disabilities and war service were described as 'weak and ... indirect', and the extent of the disability was not in accord with the public's perception of 'totally and permanently incapacitated' (Auditor-General 1993, pp. xv-xvi).

28.31 The Auditor-General referred to the second reading speech on the Veterans' Entitlements Bill 1985 of the then Minister for Veterans' Affairs. In that speech, the Minister stated emphatically that the TPI was intended for relatively young veterans so disabled as never to be able to earn a living and save for the future.

28.32 A number of illustrative examples of concern were quoted by the Auditor-General:

- A veteran retired at 60, stating that he had stopped work because of his age, and was granted the service pension on the grounds of old age. He subsequently applied for and was granted an increase in the disability pension to TPI effective at age 65, driven by generalised osteoarthritis.
- The TPI pension was granted to a veteran who held a quasijudicial post for several years and who did not finally retire until age 68. He had a full working life, was financially independent and entitled to superannuation.
- A farmer was granted TPI at age 73, three years after selling his farm.

28.33 The Auditor-General was critical of the cost involved, considering that 'the current arrangements also raise considerable issues of equity', particularly favouring professional and self-employed veterans over 65 compared to former wage earners of the same age.

28.34 The report also paid attention to structural issues, specifically the constituent elements of the TPI. The Auditor-General considered it arguable that the proportion of the TPI over 70 per cent of the general rate (the lowest point of entry for the TPI) could be considered to be income support. He also considered it arguable that the proportion of the TPI over 100 per cent of the general rate could be considered to be income support. Some 90 per cent of TPI pensioners also received the service pension. The Auditor-General argued that, as a consequence, the vast majority of TPIs received two income support payments.

28.35 In order to overcome this perceived difficulty, the Auditor-General's Report recommended a restructuring of the disability pension structure similar

to that recommended by Toose, with clearly defined disablement pension and income support components.

The ANAO considers that a revised pension structure along these lines would remove the inconsistencies noted above and represent a clearer and more coherent strategy for income support for TPI veterans.
(Auditor-General 1993, p. 43)

28.36 It was formally recommended that:

... a review be undertaken ... of how operations of the legislation might better articulate the stated purpose of the TPI pension. The review should consider ... whether an alternative TPI pension structure would better reflect the fact that the TPI pension could be considered to provide an untaxed and non means-tested income support element. (Auditor-General 1993, p. 44)

Baume: Requirements of the Disability Pension Structure

28.37 The report by the Hon Professor Peter Baume took up the concerns about the special rate pension raised in the Auditor-General's Report. Baume's principal stated concern was to afford justice to TPI veterans by guaranteeing a standard of living at least equivalent to that of an 'average' Australian, while at the same time ensuring that veterans' entitlements were within general community standards and expectations (Baume 1994, pp. 65-6).

28.38 However, Baume was critical of the TPI structure on a number of grounds and generally endorsed those recommendations made in the Auditor-General's Report.

Over time the number of TPI grants has increased. Progressively wider legal interpretation by the Courts, advances in the understanding of medical aetiology and reduced employment opportunities for veterans with disabilities, have contributed to the growth.

In recent years the Courts have interpreted the qualification for TPI pension far more generously than was intended in 1920. Emphasis has been placed on the inability to work rather than the degree of disablement. Over the years the award of TPI pension has come to reflect the reality that incapacity to work may be related to an employment-specific disability rather than total incapacity.

As the understanding of aetiology has advanced, connection of diseases with war service has become increasingly common irrespective of the time of life in which manifestation occurs. This has led to grants much later in life than originally envisaged. Advances in medical treatment have meant that veterans, who in one generation would have been left with a reduced life-span and poor quality of life, now can enjoy a better quality of life for longer despite a serious medical condition.

The employment market has changed through increased availability of social welfare and superannuation. Employers are less willing, or even unable, to carry employees with a limited capacity to work. Automation and computerisation have removed many of the jobs that disabled veterans could undertake.

Clearly, the eligibility criteria for a TPI payment have changed fundamentally. While a disability preventing employment must be permanent, it no longer needs to be total. The public perception of TPI, however, seems to have remained in accord with the original intentions of the grant. This disparity between perception and reality leads to misunderstanding of the real nature of this category within the Special Rate Pension (its correct statutory title) and to consequent accusations of 'robbing the system'. We believe that this inaccurate perception has led to the situation where the Act now allows many veterans to be overcompensated for their disabilities. Furthermore, use of the word 'pension' to embrace both compensation and income support has led to unsoundly based attempts to exact taxation and apply income and asset testing to the compensation component. (Baume 1994, pp. 67-8)

Recommended Disability Pension Structure

28.39 Baume thought that the problems associated with the special rate could be overcome by clearly defining the constituent elements of the total package. He contended that the VEA contained two separate eligibility tests for the TPI rate:

- a GARP (Guide to the Assessment of Rates of Veterans' Pensions) assessment to measure the level of compensation payable for the degree of impairment and loss of lifestyle that results in eligibility for a disability pension of at least 70 per cent of the general rate; and
- a work test under s.24 of the VEA to establish that the veteran is unable to work more than eight hours per week and that this results in a loss of salary, wages or earnings.

28.40 According to Baume, these tests suggested two purposes: to compensate and to supplement income (Baume 1994, p. 73).

28.41 Rather than the existing structure composed of a service pension (income support) and a disability pension (compensation for pain and suffering, and loss of lifestyle), Baume proposed instead a compensation element and an income support element. The TPI (set at 263 per cent of the general rate) was considered too generous as compensation for pain and suffering. It was therefore recommended that the new compensation element be paid at 150 per cent of the general rate. In addition to this, a means-tested income support element in combination with the compensation element would bring the total

payment to the equivalent of average weekly earnings after tax (Baume 1994, pp. 79–81).

28.42 Holding the view that veterans should be treated generously but within community expectations, Baume proposed that the income support element would cease to be payable at age 65, and would be replaced by the normal age or service pension. This would ensure a reduction in the veteran's income at the same time, in accord with the same principles as those applied to the community at large (Baume 1994, pp. 84–6).

TOOSE AND BAUME: A COMPARISON

28.43 Both Toose and Baume recognised the essential duality of the TPI pension, and they formulated similar models to address the perceived deficiencies. Each had a component compensating for non-economic loss: disablement according to Toose, pain and suffering by Baume's definition. Equally, both proposed an economic element: income supplement in the Toose model, income support in Baume's. In addition, it was proposed in each case that the combination of the two elements should be equivalent to a measure of average earnings: the 'average industrial wage' in the former instance and 'average weekly earnings' in the latter.

28.44 Each held to the belief that the non-economic loss component should be payable for life. Furthermore, both regarded it as being in accord with community norms for the economic component to be reduced at age 65 and be replaced by the age or service pension, or such other means of retirement income as the veteran might have access to. Indeed, it can be reasonably argued that Toose and Baume were similar in their intent, their principal difference being the relativity between the economic and non-economic elements within their respective models.

28.45 Ultimately, neither option was taken up by the government of the day. There remain, however, elements in both proposals that the Committee finds attractive, namely:

- the explicit delineation between compensation for pain and suffering, and income substitution for the loss of the ability to work related to service;
- the concept of a total package of compensation and income substitution equating broadly to community norms;
- the different treatment of the two elements in the package in terms of taxation and means testing as appropriate to their intended purpose; and

- the concept that compensation for pain and suffering is a lifetime benefit, while income substitution for loss of ability to work should cease upon normal retirement age and be replaced by superannuation or an income support pension.

28.46 Both Toose and Baume developed approaches based on the premise of a uniform level of compensation for all veterans based on their degree of disablement. The 'uniform' approach does not permit differences reflective of past or future earning capacities. The payment of the same rate to all with like degree of disablement is a practical approach, bearing in mind the wide range of veterans' capacities and the affordability of the compensation arrangements. The Committee regards the uniform approach as the only feasible one for the VEA.

CONCLUSIONS

28.47 The Toose, Baume and Auditor-General's reports illuminate some logically sound principles and approaches to the disability pension rate structure. The Committee has noted certain of these that it considers constitute a fair basis for the restructuring of the disability pension rate structure, as discussed in Chapter 30.