



TPI FEDERATION AUSTRALIA

“Disabled in our Service, United in our Cause”

Supplementary Submission to the Productivity Commission Review into the Compensation and Rehabilitation of Veterans 2018.

“When we look back at Australia’s treatment of Veterans, the sad truth is that our actions have not always matched their best interests the best way to honour the Nation’s past heroes is to support and care for the heroes and Veterans of today.”

Prime Minister Malcolm Turnbull, 2016

The TPI Federation would like to provide this supplementary submission in order to express its deep and considerable concern and dismay with the Department of Veterans’ Affairs (DVA) July 2018 Productivity Commission (PC) submission. In that submission at Para 4.4.3 and again at Annex 14, the DVA completely misrepresents (without attribution) the TPI Federation’s rightful claim and representations regarding the erosion of the Totally & Permanently Incapacitated (TPI) and Special Rate Disability (SR) compensation payments.

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Simply put, the TPI/SR compensation payment, as measured against average weekly earnings (AWE), has eroded significantly over several decades. This, together with recent structural increases in the non-taxable threshold enjoyed by all Australians, has naturally reduced the relative value, purchasing power and living standards of TPI/SR Veterans, relative to the rest of the Australian community. Their total compensation payment now only measures at approximately 43% of AWE¹, where the embedded notional ‘economic loss’, or the extant ‘Above General Rate’, component of the total payment equates to less than 65% of the minimum wage.

Contrary to DVA’s unfounded assertions, the TPI Federation has only ever sought to obtain a once-off structural adjustment to the current base of the total payment, in order to redress this long outstanding issue.

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After numerous meetings with successive Ministers and senior officers of the DVA, the TPI Federation feels strongly that DVA’s PC submission, together with recent Ministerial correspondence sent to individual TPI constituents, represents a complete misunderstanding and/or a total fabrication of the TPI Federation’s advocacy². This reflects rather poorly upon the Minister, and the highly paid senior executive officers who are seemingly incapable, or unwilling, to understand basic principles that would deliver a “fair go”.

Sadly, DVA by its own hand has now demonstrated an egregious attempt to subvert the facts and deflect attention away from the Department’s own defective administration, and that of the “Central Agencies” (namely the Department of Finance) who are responsible for the maintenance of such payments^{3,4}.

Indeed, the DVA is required to ‘Maintain’ and ‘Enhance’ Veterans’ compensation benefits, pursuant to its own key performance indicator of ‘Outcome 1’, as stated in the Budget Papers.

“Outcome 1: Maintain and enhance the financial wellbeing and self-sufficiency of eligible persons and their dependants through access to income support, compensation, and other support services, including advice and information about entitlements.”

¹ To appreciate the long-term impact upon TPI/SR Veterans, please see the graph at Annex A

² Please see a recent letter sent to a TPI Veteran at Annex B

³ The former DVA Secretary – Simon Lewis - clearly implicated the Department of Finance in this failing, as he provided testimony to Senate Estimates (FADT) on 25 Oct 2017 that “the budget that the Department [DVA] gets, and the estimates over the forward estimates, are adjusted on our behalf by Finance. We don’t control that”. The Secretary clearly stated several times that he had no control over the [DVA] budget allocations”, it is all controlled by the “Department of Finance”.

⁴ To substantiate, please watch the former DVA Secretary’s evidence here: <https://bit.ly/2MAZbuy>

Contrary to the prognostications of the Minister, and/or the falsities presented within the DVA's submission, a structural adjustment does not necessitate a change to the current legislative provision. All it requires is some political and bureaucratic will to effect a simple amendment entailing an amendment that has precedents from the past (e.g. May Budget 2007).

In its various negotiations, the TPI Federation has only ever sought to effect a single amendment to the total monetary fortnightly tax-free figure, as stated at Section 24(4) of the Veterans' Entitlements Act (VEA). Legislative action applied to the VEA would in-turn directly reflect upon the equivalent 'Special Rate Disability Pension' provision contained within the Military Rehabilitation and Compensation Act (MRCA). The required amendment would result in a net increase of just \$400 per fortnight on top of what a TPI/SR Veteran currently receives in order to raise their compensation back in line with the community's minimum standard⁵. Now how hard is that?

The TPI Federation, as a collective, has tried for over six years to act in good faith by providing the Minister and the Department with what, it believes, is a defensible and equitable solution to remedy this long outstanding deficiency. Yet in recent times, senior Departmental staff have increasingly exhibited an apparent lack of understanding and/or will to remedy the situation.

The TPI Federation has only ever petitioned the Government to effect a single once-off increase to the notional 'economic loss' or 'Above General Rate' component, so as to equate to the tax-adjusted minimum wage. The TPI Federation feels sure that the current indexation mechanism, implemented in 2007, will help maintain the value of that effective increase into the future, presumably well beyond the life expectancy of every recipient.

The logic and articulation of these notional components that comprise the total TPI payment (i.e. 'pain & suffering' and 'economic loss') is not that of the TPI Federation's making. Instead, it is language that has been specifically used over a long period of time by past reviewing authorities such as Justices' Toose, Baume and Clarke, and in more recent times, by numerous MPs, Senators and believe it or not, a former Departmental Secretary as well⁶.

This together with the Department's own requirement to conduct an 'Economic Loss Test' to determine a Veteran's TPI/SR eligibility, clearly illustrates the concept that a 'economic loss' must exist in the gruelling determination and rightful provision of a TPI/SR compensation payment⁷.

This raises a serious question as to why there is now such an aversion by the current Minister and his Departmental executive staff to not describe, consider and address the clear inadequacy of the current total TPI/SR payment in exactly the same way.

Sadly, as the sun sets on 100 years of the ANZAC Centenary, instead of acknowledging the deficiency at hand, and taking the moral high ground as it should, the Government and Departmental agents have become increasingly disingenuous. They have done this by trying to conflate and defend the indefensible by explicitly suggesting that the eroded TPI/SR compensation is OK, as it forms part of a broader compensation "package". A "package", replete with a healthcare (Gold) card and the strict application of a welfare pension means-tested upon the tertiary income of the Veteran and/or the Veteran's spouse, the latter of which surely only underscores the very deficiency of the compensation at hand.

After the first tranche of such nonsense, the TPI Federation sought a solemn undertaking by former DVA Minister, Mr. Dan Tehan MP, that such offensive terminology stating a "package" would no longer be used. Mr. Tehan gave that undertaking, but, sadly, this terminology persists to this day in Ministerial correspondence, as it did in testimony delivered to Senate Estimates late last year⁸.

The TPI Federation has demonstrated that the healthcare (gold) card is nothing special, because members of the general community who suffer a similar compensable injury or disease are also entitled to receive full medical treatment and other concessions that the Department wrongly cites as being exclusive to that of TPI Veterans only. SafeWork Australia provides a very comprehensive breakdown of the facts in terms of compensable

⁵ This fortnightly increase reflects the latest determination in the Minimum Wage from 1 July 2018

⁶ Please see Annex C for some of those explicit statements

⁷ This test is specified and undertaken as per the DVA guidance at Section 4.1.6 of the CLIK. Please see [HERE](#)

⁸ Please see video evidence here: <https://bit.ly/2B1SDUx>

entitlements across each jurisdiction. However, more importantly, the provision of a healthcare card does not represent actual dollars and cents to put food on the table.

In addition, the TPI Federation remains appalled to have witnessed the highly misleading testimony tendered to Senate Estimates late last year, where a DVA official responsible for such matters, emphatically stated with conviction that “80-85%” of TPI/SR recipients receive “100%” of the Service/Age/Disability Income Support Pensions, as part of a conflated “package”⁹. Unfortunately, the Prime Minister also used (unwittingly?) the same unfounded notions in the Parliament when answering a question on this topic, posed by the Member for Dennison.

The Prime Minister’s response, and DVA’s testimony to the Senate, was, and remains, a falsity. DVA’s own publicly available data clearly shows that the 80% threshold is not where “80-85%” of TPI/SR recipients receive 100% of a welfare pension. Instead, the percentage threshold upon where TPI/SR veterans cease to receive at least \$1 of welfare supplementation to their eroded compensation payments is very well illustrated at annex D¹⁰.

Even though the Departmental Executives were informed of this very serious error, including the senior officer concerned, the Department after 6-7 months has not yet corrected the record. Why?

This very matter surely breaches the ‘values’ that underpin the ‘APS Code of Conduct’, where under Section 1.8.4 of the Code states:

‘Employees must behave honestly and with integrity. Answers to questions from parliament or its committees must always be accurate and any errors corrected quickly. Employees must never deliberately mislead the Parliament. ...’

Upon her recent appointment, the new DVA Secretary, Ms Liz Cosson AM CSC, stated that

‘Our greatest challenge is to rebuild the trust with our veterans and families’¹¹.

It is clear to the TPI Federation that subversive elements within the DVA and that of the “Central Agencies” DON’T subscribe to such noble virtues.

The TPI Federation asks the Productivity Commission to note that not all TPIs wanted to cease work but due to their Service related injuries, they had no choice. In many cases, the Veteran was in a high paying position with the ability to build on their superannuation for many more years. This ceased when they were classified as TPI by the DVA claims processes. Many had a strong work ethic and not being able to work is a cross to bear but exacerbated when the Government sees fit to pay only \$36,000 in compensation. DVA seem to group all TPIs in a convenient basket perceived as being the beneficiaries of Government largesse, which is insulting, and demeaning, on top of the inadequate economic compensation for involuntarily ceasing one’s career.

The TPI Federation would appreciate the Productivity Commission citing this serious concern and clearly articulating the TPI Federation’s rightful claim in its report to Government and the Parliament, so that the concerns of approximately 28,300 TPI/SR Veterans are once again put on the public record so that the Government and the Department is held to account.

Pat McCabe

Ms Pat McCabe OAM
President

TPI FEDERATION OF AUSTRALIA

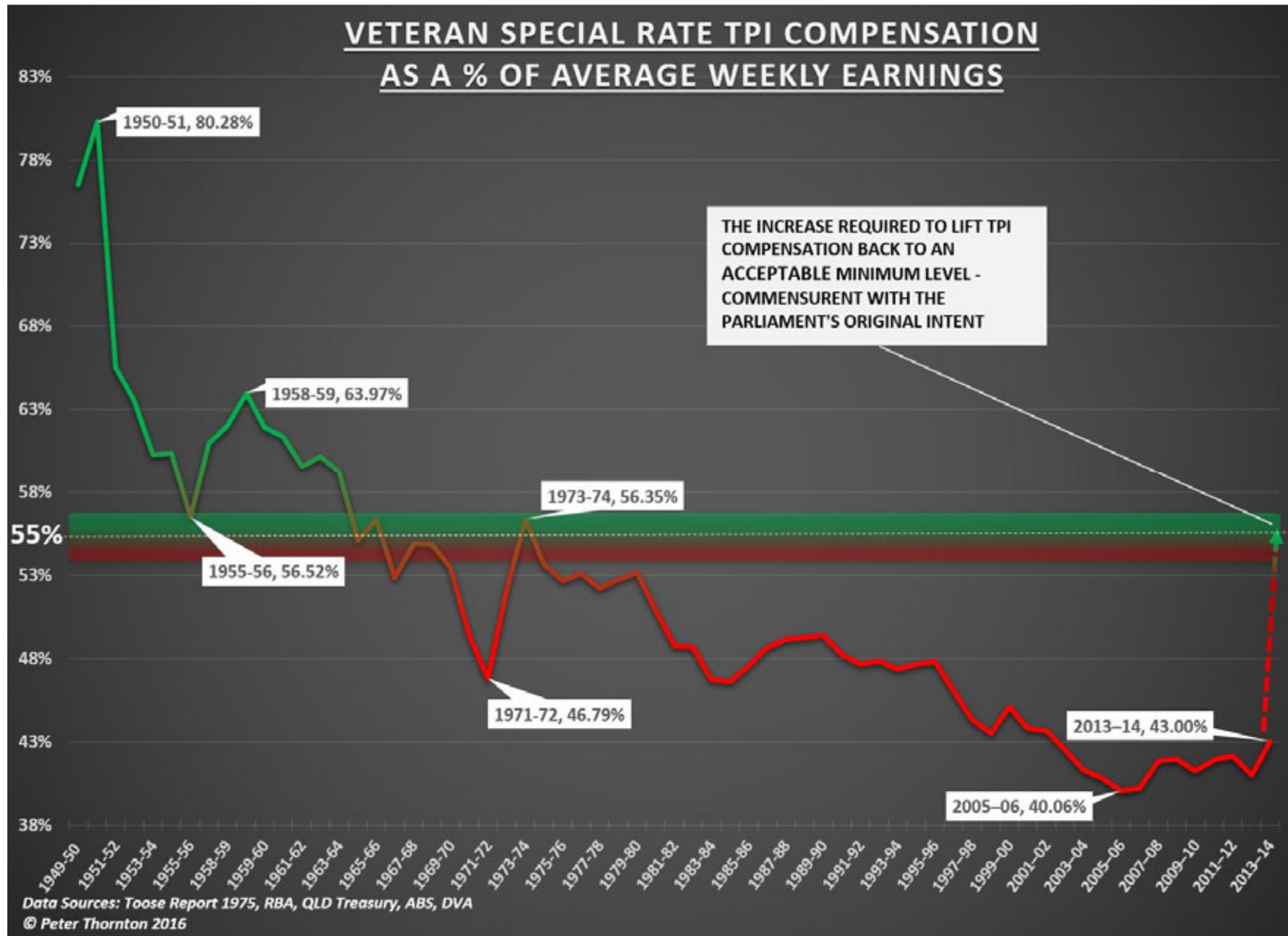
The TPI Federation comprises TPI and SRDP constituent Veterans who are formally represented by the:

New South Wales TPI Association;	TPI Association of Victoria;
Queensland TPI Association;	West Australia TPI Association;
Tasmania TPI Association;	Australian Capital Territory TPI Association.
South Australia TPI Association (including constituent Veterans from the Northern Territory)	

⁹ Please see that evidence here and note the continued use of the offensive terminology of the word ‘package’ when referring to TPI/SR compensation: <https://bit.ly/2B1SDUx>

¹⁰ For further details, please see the illustration at Annex D

¹¹ VetAffairs Vol34 No2 Winter 2018: <https://bit.ly/2M8FOWT>



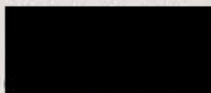


The Hon Darren Chester MP

Minister for Veterans' Affairs
 Minister for Defence Personnel
 Minister Assisting the Prime Minister for the Centenary of ANZAC

MC18-000448

16 MAY 2018



Dear Mr [REDACTED]


Thank you for your correspondence of 5 February 2018 to the Prime Minister the Hon Malcolm Turnbull MP, about the value of the Special Rate of Disability Pension (the TPI pension). As this matter now falls within my portfolio responsibilities your letter has been passed to me for response.


The Department of Veterans' Affairs (DVA) met with the TPI Federation on a number of occasions in 2017 and 2018 to discuss their concerns. DVA is continuing to analyse the TPI Federation's proposal and attempting to confirm the data supporting its conclusions. The former Minister for Veterans' Affairs, The Hon Michael McCormack MP, met with the TPI Federation in February 2018 to discuss this matter and I met with the TPI Federation in March 2018.

The value of the Special Rate of Disability Pension needs to be considered as part of a 'package' of entitlements which also includes the Gold Card, Service Pension, supplements and other concessions. The value of this package is currently estimated at up to \$83,246.80 per year, plus the value of any concessions available to the person.

The TPI Federation's proposal may change the character of the TPI pension such that it is more appropriately treated as an economic loss compensation payment. Most other economic loss compensation payments are taxable and cease at age pension age. They are also offset by superannuation and taken into account in calculating the rate of any income support payment payable. Applying these outcomes to the TPI pension would disadvantage many recipients. The Australian Government would need to consider all of these issues in reaching a decision on the TPI Federation's proposal.

Thank you for taking the time to write.


 Yours sincerely


DARREN CHESTER

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Justice Toose, ‘The Toose Report’, 1975 - Conclusions and Recommendations, page 305-6

‘The present war pension structure should be replaced by a new structure incorporating two separately identifiable components, namely: (a) disablement pension; and (b) income supplement’ ... AND ... the assessment should take account of the following other possible effects: (a) pain and suffering; (b) loss of amenities and expectation of life; and (c) economic loss.’

Mr Campbell – Acting secretary DVA (Tuesday, 1 June 2004 Senate Estimates – Foreign Affairs, Defence and Trade):

“..... The special rate is broken into two components: pain and suffering compensation, which is up to 100 per cent of the general rate; and economic loss, which is Above the General Rate.”

Mr Billson (Dunkley—Minister for Veterans’ Affairs and Minister Assisting the Minister for Defence) - First Reading (Thursday, 20th September 2007):

“.....Currently there are two components in the calculations for special rate and intermediate rate disability pensions. The general rate provides compensation for non-economic loss or pain and suffering, while the Above General Rate provides compensation for economic loss.”

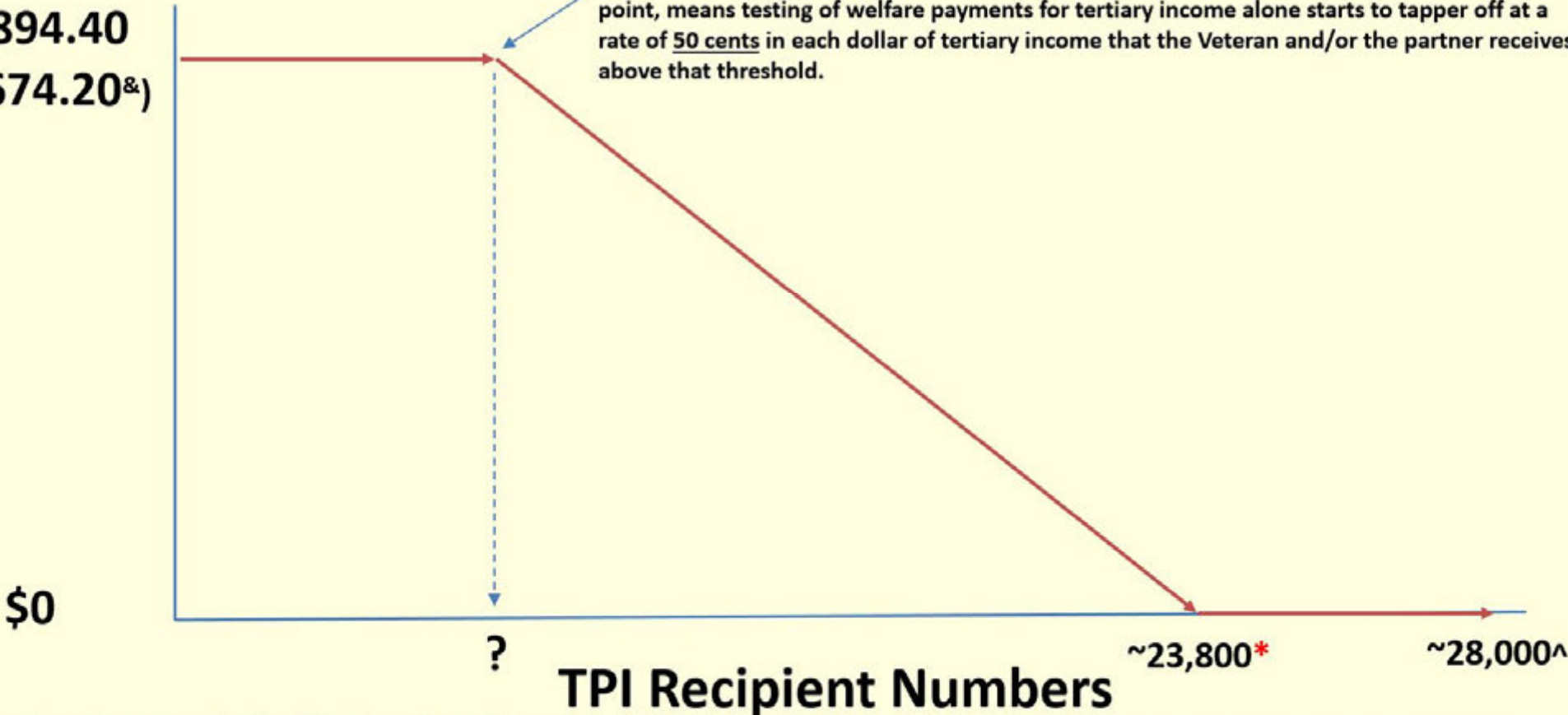
Senator Ellison (Minister for Human Services) Second Reading Speech (20th September 2007):

“... Currently there are two components in the calculations for Special Rate and Intermediate Rate disability pensions. The General Rate provides compensation for non-economic loss or pain and suffering, while the Above General Rate provides compensation for economic loss.”

TPI WELFARE PAYMENT DISTRIBUTION

Welfare \$
Per f/n
\$894.40
(\$674.20[&])

This point reflects the unknown number of TPIs who exist at the current tertiary income threshold point (i.e. \$4,368) – the point where only those TPIs would receive the full means tested welfare per fortnight[#]. Not discounting the threshold for assets held, beyond this point, means testing of welfare payments for tertiary income alone starts to taper off at a rate of 50 cents in each dollar of tertiary income that the Veteran and/or the partner receives above that threshold.



Notes:
Tertiary income from: private superannuation, share dividends, income/assets of the spouse etc
^{*} Contrary to DVA's Senate testimony, and that of the Prime Minister, the stated figure of 80-85% is in fact the total % number of TPI recipients who, at that point, cease to receive at least \$1 of Welfare supplementation per fortnight
[^] Total TPIs
[&] Partnered Rate of Service/Age Pension
Data Source: DVA - September 2017

Graph not to scale