

SUBMISSION TO THE PC INQUIRY INTO VETERANS COMPENSATION AND REHABILITATION
GRAHAM ZALEWSKA-MOON

As I live overseas and am therefore 'out of the loop' I have only just noted that submissions to this enquiry closed about 10 minutes ago.

I wish to make a number of points, accept them or reject them as you will.

First, the very point that you list a range of Acts which relate to this single issue is itself an indictment of the system. Three Acts simply confuse a very simple issue and allows the decision makers to 'play off' each Act against the others as to which Act is appropriate in a given situation.

Secondly I have not been able to check each Act against the others but I can assure you that the VEA is a mass of contradictions and ambiguity which allows the DVA to conjure up its own ideas of what the Parliament meant by particular sections. I identify Sections 52JC and 52JD as examples. My point is that where there is ambiguity and DVA decides upon one such opinion....and implements it, then they have usurped the power of Parliament.

My third point is that the VEA is being amended to replace legislative responsibilities with defacto 'guilty until proven innocent' sections such as Section 54.

My final point is that the VEA (and presumably the other legislation) is being diluted by a concept that equates Veteran Entitlements with Social Security benefits...that is, that veterans are 'charity/welfare cases'.

Each of these points is known to the DVA, copies of all relevant correspondence is on my DVA file. I would highlight that in this on-going matter the DVA has finally admitted that the calculations of over-payment are inaccurate, something I told them several years ago and which they assured the VRB and the AAT were in fact accurate. I will shortly be addressing the next issue outlined in my 'appeal' which is that the DVA assumed certain facts without bothering to question their own assumptions.

I will later be addressing the decisions of the VRB and AAT based upon inaccurate and misleading data provided by the DVA, and the usurping of legislative powers by the DVA, and finally my assertion that the DVA secretary should be dismissed for his failure (amongst other reasons) to comply with, or to adequately implement his legislated responsibilities

If you have any interest in the matter, this is my original letter to the Minister.

The Hon Darren Chester MP
Minister for Veterans' Affairs
Parliament House
CANBERRA ACT AUSTRALIA

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This letter follows upon my previous correspondence, however I will not reproduce the various Sections of the Veterans Entitlement Act, nor will I reproduce any previous document or appeal or letter or decision thereto.

Instead, I invite you to actually call for my file and read all the previous, relevant correspondence- do not rely on departmental staff as a significant thread within this 'appeal'/'complaint'/'accusation' is that DVA staff have novel interpretations of the legislation and are covering up mismanagement of several issues- bluntly put, read the file and make up your own mind as to what is fact and what is fiction.

I re- address the issue to you because I do not have the physical, emotional or financial strength to do otherwise particularly as the AAT decision and the follow-up report by your advocate were so delayed as to close of the option of appealing to a relevant court- indeed such an option would be a waste of time and money as the issue I raise can only be answered by the Parliament.

In previous correspondence, which clearly I did not sufficiently articulate, I wrote my reason for objecting to the DVA processes; simply put, my concern is that in implementing their opinion of what Parliament meant by specific clauses the DVA may have usurped the power of Parliament. I therefore seek from you the answer to this question.. what specifically did Parliament intend in relation to Sections 52E, Section 52JC, Section 52JD and 54. of the Veterans Entitlement Act?

Feel free to discuss that question with your parliamentary colleagues BEFORE responding.

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There are 5 issues discussed within this letter

1. BEFORE making their decision of 12 August 2016 DVA failed to seek evidence that Section 52E actually applied, and
2. That in making its decision DVA has implemented an interpretation of Sections 52JC and 52JD which in my opinion exceed the intent of Parliament, and
3. That in arriving at a figure of overpayment the DVA failed to seek confirmation as to the accuracy of their 'assumptions' of the amounts they claim have been overpaid, and
4. That in this process DVA has failed to accept their responsibility as outlined in Section 54, and
5. By so doing have contributed to the amount of overpayment and have covered up that mismanagement by deception.

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The intention of the various sections of the Act mentioned herein is clearly outlined in Veterans Entitlement Act 1986 Sect 52E c (i), (ii) and (iii). ; simply put, to prevent the veteran/veteran's partner from obtaining a benefit to which they are not entitled.

Before discussing the contentious Sections, let me add that the DVA has never been in a position to confirm that Section 52E (a), (b) or (c) apply in our case as they have not defined, or sought details that I did not receive 'money or money's worth' to the assessed value of the disposed asset. The DVA failed to ascertain the circumstances of the disposition. This matter (reliance on unsupported assumptions) was discussed briefly at the AAT hearing- but was quickly 'shut down' by the DVA advocate

Veterans Entitlement Act 1986 Sect 52JC outlines the processes to be followed in respect of disposition of assets in a single tax year. The DVA advocate has outlined his- and presumably the DVA- opinion that a series of dispositions totalling in excess of \$30,000 over a number of tax years are required before the limit (\$30,000) is used in defining the amount to be retained as the veteran's/partner's asset value. No such process is outlined in Sect 52JC, nor is the figure of \$30,000 mentioned.

It is my opinion that in drafting Sect 52 JC, the draftees did not contemplate that a veteran would dispose of an asset/s greater than \$30,000 either as a single disposition or as a series of dispositions in a single year so Sect 52JD was drafted to cover that situation

Veterans Entitlement Act 1986 Sect 52JD outlines the procedure to be followed if a disposition; that is, a SINGLE disposition either in a single year- or with the addition of ANY previous dispositions of assets made during the rolling period (I assume 4 prior years but I could not locate any such definition) - exceeds \$30,000. Note the singular 'disposition' and the word 'any' within Section 52JD'- simple unambiguous words. My opinion is that THIS Section outlines the process to be implemented if a veteran disposes of an asset valued greater than \$30,000 in a single year or over a series of years. That is, this section expands upon Section 52JC to cover encompass a situation not adequately explained by Section 52JC.

During our several discussions, the DVA advocate voiced his opinion that Section 52JC took priority over Section 52JD and implied that he knows what Parliament meant by the two Sections. I have no such delusions that in the face of ambiguity I can second guess what Parliament did or did not intend. My opinion, equally as valid as that of the advocate, is that Section 52JD is a statement of intent to cover the situation of a veteran disposing of assets valued in excess of \$30,000 either in a single disposal or by a series of disposals- a situation not adequately detailed in Section 52JC

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A further complication exists in relation to what " the following amounts is to be included in the value of the assets" really means. DVA opinion as expressed by their advocate appears to be that it is an amount of a 'financial asset' and therefore subject to deeming, which means in DVA's virtual world that, although the veteran has less assets and is in no position to gain a pension benefit from that act alone, his/her pension should be reduced - a financial penalty- a gift tax in all but name Guilty as charged. Is this really what Parliament intended? I don't know, perhaps Parliament should be asked if this was their intent.

There is another possibility (opinion). If the veteran holds physical assets with a value within the agreed asset value ceiling and disposes of a physical asset, in no way can the veteran or the

veteran's partner gain a benefit through that act alone. A benefit can only be obtained if the veteran and/or partner then obtain further physical assets which brings their total physical asset holdings in excess of the ceiling/limit.. To prevent any such benefit being obtained all that is required is for the numerical value of the physical asset to be retained against the veteran and/or partner's asset total. Problem solved. This is my opinion as to what Parliament meant when initiating Sections 52JC and JD.

As I wrote earlier, my opinion is that to change that numerical value of a no longer existent physical asset to an actual hard cash 'financial asset' exceeds the intent of the legislation and imposes a financial penalty-I re-iterate, a Gift Tax - upon the veteran; and by doing so, usurps the power of Parliament.

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Please excuse the rudeness but opinions are like arseholes...everyone has one.

However in the circumstance where there is ambiguity within legislation, and multiple interpretations are possible, the selection and implementation of a particular interpretation means that whoever selects that interpretation may have usurped the role of parliament. It is for Parliament - not me, not the DVA, not even a Court- to IMPLEMENT what they think Parliament intended by the legislation.

Allow me to put my objection to this Gift Tax into words that even a politician can understand. The day before I 'sold' our house to my step-daughter we received a part-service pension of \$313.08 per fortnight. If I had not been a Service Pension recipient and so applied for a Service Pension the day AFTER we sold the house we would receive the exact same pension (if the qualifying conditions are the same as in 2000).

Now explain to me why I should not describe the DVA process as a fraud.

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A further issue relates to actions required by the Secretary if a veteran fails to respond to a departmental request for information. action as described in relevant letters "If you do not respond to this request within 28 days of receiving the letter, we will be unable to complete the review of your pension and your payment may be suspended until the information is received".

A significant element within my appeal to the AAT was the 'contributory negligence' of the DVA

through their failure to action this (then) legislative requirement- not once, not twice, but after 3 successive non-responses - without any attempt to follow up any of those instances of non-compliance through email, telephone or mail- all options available to the DVA. My failure to respond is because these requests were never received, nor I believe is there any proof that they were actually posted, but that thought is irrelevant- the trigger

for the DVA to act responsibly is the non-receipt of a response within the nominated 28 days. This failure by the DVA to adequately administer the non-receipt of a response led to my accusation that the DVA had contributed to the overpayment through contributory negligence. As I stated in previous correspondence that accusation was sustained during the AAT hearing on 3 October 2017.

As a result of evidence supporting that accusation, the DVA advocate was requested by the Deputy President (presiding at the AAT hearing) to investigate and report on my accusation of contributory negligence. The report, when received in late January 2018, is a masterpiece of 'deception through irrelevance', concentrating almost entirely upon an issue that I have never disputed - that deception intended to cover up DVA's non-compliance with their legislated responsibility.

I note that Section 54 has subsequently been amended to remove the requirement for DVA to act if a response to a notice is not received , instead the onus of responsibility is shifted to the veteran to prove that DVA did not send the notice in default 6 months imprisonment. Guilty until proven innocent. What a disgraceful piece of legislation; whoever voted for this change should hang their heads in shame It appears (to me) that Sect 54 has been 'sanitised' so that DVA cannot be held accountable for any negligence in relation to the veteran not complying with a request for information.

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Finally, one aspect of the advocate's report is his insistence that the calculations of overpayment is accurate despite the considerable evidence to the contrary presented at the AAT hearing . If the advocate had taken sufficient interest in determining reality from fiction, a telephone call to the Department of immigration would confirm that my partner did not travel to Australia in 2015 and was not entitled to payment of the supplementary allowance at the Australian rate. In addition, the actual 'money only' amount received from the sale has not been included in the calculations- again a violation of DVA's legislative requirement- and despite several of the 'money's worth' items being identified and discussed during the AAT hearing (outstanding mortgage, rate arrears were discussed and dismissed by the DVA advocate - and these issues are not the only 'money's worth' involved in this disposal/calculation of overpayment) .

The calculation is flawed- and at this point I am prepared to say that it remains 'deliberately' flawed to cover up the DVA's incompetent management of this event.

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I find it interesting that neither the 'contributing negligence' by the DVA nor the miscalculations in the amount of overpayment are mentioned in the AAT decision. Nor do I in this letter list previous negligent acts and decisions by DVA.

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In concluding, several of the issues outlined above would have been resolved had the DVA staff bothered to ASK questions rather than ASSUMING 'facts' before making their determination of 12 Aug 2016; and/or by actually listening and checking facts given to them at the Pensions review Board and AAT hearings.

As the Minister 'responsible' for Veteran Affairs I leave this in your hands to bring to a just conclusion.

Graham Zalewska-Moon, for self and on behalf of
Bozena Zalewska-Moon

Addendum up-dating detail to 20 May 2019

In a letter dated 11 December 2018 DVA is requesting details of what 'money/monies worth' was involved in the sale 3 years after they published their decision that I had disposed of an asset. The DVA advised the VRB and the AAT that a disposal of assets had occurred without a shred of evidence (as required by Section 52E of the VEA) to support the decision and knowing (or ought to have known) that such evidence was misleading, and inadequate. The DVA on 12 August 2016 had NO information to confirm that a disposition had in fact taken place. ... nor did they make any effort to obtain such information.

To add to the confusion, Section 52JC and JD also state that when calculating pension entitlements after a disposal, for pension calculation purposes the value of the asset is held against the veterans account for a period of 5 years. In effect the legislation is saying that for pension calculation purposes NO DISPOSITION TOOK PLACE.

The second issue is the amount of overpayment. On 11 December 2018, DVA wrote to my wife and I confirming that the overpayment calculation was incorrect. "Furthermore, as a component of the overpayment in the amount of \$9,410.81 (notified to you on 12 August 2016) was attributable to service pension supplements, a further amount of \$1,823.57 will also be waived and monies already repaid will be refunded to your account. An amount of \$1,823.57 will be refunded to Major Zalewska-Moon on 12 December 2018. An amount of \$2,541.53 will be refunded to Mrs Zalewska-Moon on 12 December 2018."

In that same letter DVA also confirmed that there were tax implication which should be addressed (which was a further reason that the calculation was incorrect).

Other misleading and/or inadequate evidence given by the DVA to both the VRB and to the AAT are still being pursued.

So we have the DVA providing 'evidence' to the VRB and the AAT which they knew ... OR OUGHT TO HAVE KNOWN ... was false, misleading or inadequate.

Has the DVA advised the VRB and the AAT that such evidence given to them has subsequently proven to be false, misleading or inadequate? If not, why not?

Failure to provide the VRB and the AAT advice that their determinations/decisions were based upon inaccurate, inadequate, and misleading evidence raises questions about the independence of both

the VRB and the AAT; and also raises questions about the credibility of VRB determinations and AAT decisions .

Similarly, and although I highlighted these specific errors, inadequacies and misleading 'evidence' neither the VRB or the AAT sought to question the accuracy of the DVA 'evidence'..

Highlighted within the AAT decision is the comment "However the tribunal's power does not extend ... to compel enquiries into the management of such matters within the Department" (the matters referred to were the contributory negligence arising from departmental management processes/decisions). Why is the tribunal referred to as the Administrative Appeals Tribunal if it cannot consider appeals relating to administrative deficiencies within departments?