

30 July 2018

Veterans Compensation and Rehabilitation Inquiry
Productivity Commission
GPO Box 1428
Canberra City ACT 2604

Late Submission to the Inquiry - The Special Rate Disability Pensions under the VEA and MRCA

I regret that this submission does not meet the due date of 2 July 2018.

In this submission I wish to particularly respond to that section of the Terms of Reference that requires the Commission to;

- examine "...whether the system of compensation and rehabilitation for veterans...is fit for purpose now and into the future", and
- "assess opportunities for simplification."

The premise of this submission is that there is a lack of clarity as to the purpose and design of the special rate pensions provided to veterans who are unable to work and earn a living because of disabilities or illnesses due to service in the ADF.

The Special Rate of disability pension paid under the VEA (the TPI pension).

The rate of this pension is the subject of continuous debate between the Government, the Department of Veterans' Affairs (DVA), various ESOs and veterans. Despite significant correspondence over time between these parties there continues to be a percentage of disabled veterans whose attitude towards the government and DVA could be described, at best, as cynical and dis-trustful due to the confusion over the purpose of the TPI pension.

While it may well be that all of the critics will never be satisfied with some aspects of Ministerial and departmental responses I am concerned that a contribution to the dissatisfaction of many veterans has been a failure in communications to them by DVA and, from time to time, by its ministers on this subject.

I acknowledge that the whole matter of compensation for damaged veterans is complex, but my observation is that there seems to be a particular failing in recent years by all governments to clearly explain the logic behind the policies that underpin dollar the Special Rate. And attempts to justify its current level are clouded by references to other payments which are welfare based, not compensation based.

I suggest that it would be a worthy endeavour for the government to;

- provide a "plain English language" explanation as to the policies that underpin this disability pension;

- justify why the government believes the Special rate at its present dollar value is adequate and just; and
- explain, in the absence of the Special Rate being benchmarked, it intends to maintain the value of the Special Rate if structural changes occur in the economy such that adjustments due to the current indexation measures are ineffective in maintaining its purchasing power?

Because this topic is eventually decided on the basis of political considerations, permit me to note that while the recipients of the Special Rate may be less than 28,000 veterans (Table 05 of DVA statistics June 2017) the veterans' community is numerically much larger than those veterans currently in receipt of the Special Rate. Ultimately the community of veterans includes the whole ADF community and also those persons who the government of the day will hope may one day volunteer to commit to serve their country in the ADF.

The following discussion is in support of my suggestions above.

DVA Factsheet DP 29 – Special and Intermediate Rates

DVA Factsheet DP29 states (para 4) that *“the purpose of the Special rate (also referred to as an Above General rate (AGR) is to **provide** for severely disabled veterans (under the age of 65) who are unable to have a normal working life because of a permanent incapacity resulting from their war or defence service”.*

What is not clear is what the Special rate (TPI) pension is intended to **provide**. Is it;

- a. financial compensation to an individual for having to cease earning an income, that reflects the previous income of the individual? Because the TPI pension is the same for all veterans and does not have a relationship to the previous earning capacity of an individual that seems unlikely, or;
- b. is it to provide a minimum level of income, and if so, how was this minimum level calculated or benchmarked so as to provide an income that might have been earned from a normal working life? or;
- c. is it compensation for injury and/or on-going ill-health and if so, how was that calculated and/or benchmarked? or;
- d. is it a combination of b and c above?

The answer to the above question seems to be that it is sub-paragraph d above; that is, the TPI pension is a combination of compensation for injury and/or on-going ill-health **and** the provision of a minimum level of income because the recipient can no longer earn an income. That is, there are two parts to the Special rate pension.

The reasons for that conclusion are;

- on 1 June 2004 the then Secretary of DVA gave evidence to the Foreign Affairs, Defence and Trade Committee in respect to the TPI pension paid under the VEA. Mr Campbell stated that

“...the special rate is made up of two components: the general rate and the above general rate. The general rate is generally to be accepted to be compensation for pain and suffering and the above general rate is generally accepted to be income loss compensation.” and;

- on 20 September 2007, in his second reading speech for the Veterans’ Entitlement Amendment Bill 2007, (introducing new indexation measures for the TPI pension paid under the VEA), the Minister for Veterans Affairs (Bruce Bilson MP) stated “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.”

These two statements seem to be clear, and also reflect the words of the Clarke Report (see paragraphs 109 and 111 of the Executive Summary). However, two matters of concern arise from the above statements; firstly

1. do the statements above re the two components of the Special Rate made by, firstly, the Secretary of DVA and then, three years later, the Minister for Veterans’ Affairs, reflect the current policy of the government and of DVA?; and
2. what is the level of pension deemed by the government to be an adequate level of compensation for economic loss, which really means an inability to continue to earn an income due to injuries/ill-health due to war or defence service?

One. The two components of the Special Rate under the VEA.

In reply to an emailed query regarding the statement by Minister Billson quoted above, on 8 May 2015 DVA responded that “...*under the Veterans’ Entitlement Act (VEA), the Special Rate pension (TPI) is not split into economic and non-economic loss components.*”

This seems to be a direct contradiction by a spokesperson for DVA of the previous Secretary and a previous Minister.

I suggest that there are two components to the Special rate (TPI) pension, namely;

1. the 100% disability pension called the General rate, which is compensation for non-economic loss (pain and suffering); and
2. the Above General Rate (AGR) called the Special rate (TPI), which is compensation for economic loss, that is, income loss compensation.

Further, DVA Factsheet MRC 09, in paragraph 5, states that “...the SRDP is compensation for both “economic” loss and “non-economic” loss.

As you are aware, the Special rate pension paid under the VEA (TPI) is exactly the same dollar rate per fortnight or week as the SRDP paid under the MRCA. Because they are the same rate it is difficult to accept that the two component policy does not apply to both the Special rate pension (TPI) and the SRDP under the MRCA.

This matter has caused confusion amongst some veterans. Can the Commission seek a clear explanation of this matter?

Two. What is the level of pension deemed by the government to be adequate compensation for economic loss?

Factsheet DP 29 (para 2) states that “a disability pension is paid to compensate veterans for conditions (ie injuries or diseases) caused by or aggravated by war service or certain defence service on behalf of Australia.”

DP 29 (para 3) also states that higher rates of pension, such as the Special Rate are known as Above General Rate (AGR) pensions and are payable if a veteran is severely incapacitated “and unable to earn a **normal wage**” because of the effects of DVA accepted condition/s on a veterans capacity to work. In the terms of DP29, what is a “normal wage”?

In 2017 Factsheet DP43 shows that, per week;

- the Special Rate is \$686.90 and, less the Energy supplement, is \$676.15; and
- the General rate is \$244.20 and, less the Energy supplement, is \$240.85.

Excluding the Energy supplement the Above General Rate component of the TPI pension or the SRDP is therefore \$676.15 minus \$240.85 equals \$435.30 per week.

In other words, a veteran in receipt of the General rate (less the Energy supplement) receives a non-taxable amount of \$240.85 per week. That veteran can also continue to be in employment and earn whatever taxable income he or she can.

On the other hand, a veteran who is *unable to earn a **normal wage*** because of being severely incapacitated receives an additional \$435.30 per week only.

Does this mean, in the language used in DP 29, that the government and DVA consider that an after tax income of \$435.30 per week (well below the average weekly wage) is a **normal wage**?

As at May 2017 the Australian Bureau of Statistics has published that the full time adult average weekly ordinary time earnings is \$1,543.80. ATO tax tables show that income tax deducted on this amount should be \$371 per week, so full time adult average weekly earnings after tax at this time is \$1,172.80 per week.

If \$435.30 per week is considered by the government to be a “normal wage” can the Commission inquire if the government will agree that the relationship of this amount to current full time adult average weekly ordinary time earnings will be the benchmark for the purposes of the maintenance of the purchasing power of the Above General rate component of the Special rate in the event that the current indexation methodology does not maintain the current relationship?

The importance of having a benchmark for the Special rate against some other wage measure.

In its submission (307) to the recent Inquiry by the Senate FADT Committee into Suicide amongst veterans and ex-ADF persons, the TPI Federation, in its opening remarks, referred to previous benchmarks for the Special rate. The same matter appears in other submissions to that inquiry and other documents including the Clarke Report (para 29.15 on page 595). This seems to indicate that a benchmark has not only a primary value in establishing and maintaining a rate but also has a secondary value by providing an easy understanding of the value of the Special rate relative to other wage rates.

It is suggested that while the adoption of a benchmark will not be a panacea to all veterans who consider that the current level of the Special rate is unfairly low, it will be useful in debates about the relativity of the rate to other matters and may also lead to greater clarity in correspondence between the government and the community.

For example, on 2 May 2016 the Minister for Veterans' Affairs, the Hon Dan Tehan MP wrote to the spokesperson for the Alliance of Defence Service Organisations (ADSO) in response to a letter from the ADSO members regarding the erosion of the value of disability pensions. (Copy attached).

In his reply the Minister referred to the ADSO concern as "the perceived erosion" and noted that disability pensions are indexed twice annually against three measures. However, the Minister did not support his view of a "perceived" erosion with any numerical comparison of the value of disability pensions against a benchmark.

The letter noted that rates of disability pensions were considered by the Clarke Review, which also concluded that the Male Total Average Weekly Earnings (MTAWE) was a "...suitable benchmark for disability compensation payments."

In Table A15.1 the Clarke Report compares the TPI pension against the Basic Wage, (weighted average), per week from 1920 to 1966. During that period the percentage fluctuated from 93.57 in 1920 to a high of 124.8 in 1933 (an effect of economic circumstances), a low of 79.06 in 1953 and 1954 to close at 92.99 in 1966.

However, it is difficult to find in the Report where the Committee actually "benchmarks", as described by Clarke, page 595, and in a mathematical sense the Special Rate, or the economic loss component of that rate, against MTAWE. It is suggested that this absence of a mathematically expressed bench mark, particularly of the economic loss component (that is, the Above General Rate component) has led to an error in the logic of paragraph 104 of the Executive Summary of the Clarke Report, an error in logic also made by the Minister in the third, fourth and fifth paragraphs of his letter of 2 May 2016.

In paragraph 104 of the Executive Summary the Clarke Committee stated that "The Committee has found no basis for a retrospective adjustment of the special rate **to compensate for the reduction in its value as a proportion of the MTAWE since 1941.**" This is clearly an admission by the Committee that there has been an erosion of the special rate as a proportion of the MTAWE since 1941.

The Committee then went on to err by stating that the arguments for the acknowledged erosion of the Special rate did not take into account improvements in welfare provisions and "*...the total support package for special rate recipients.*"

This error is the conflation of payments made to veterans as compensation for injuries and diseases caused or aggravated by war service etc, including being unable to earn a normal wage because of those injuries or diseases, and other payments or benefits received by veterans that are actually welfare provisions applicable to a wide range of veterans and, in some instances, the general community.

The Minister's letter also makes the same error, in paragraph three, quoting the Clarke Report view above and referring to, as an example of the total support package, "*...the Gold Card and its associated benefits.*" DVA Factsheet HSV59 details the wide range of veterans and dependents who are now eligible for the Gold Card.

This error in reasoning is continued in paragraph four, where reference is made to the Service Pension. One of the reasons that a veteran receives the service pension is because his or her assets and income fall below the assets and income test. It is not part of the compensation for medical conditions that have been caused by war service, it is a welfare payment.

In paragraph five the Minister again argues that the Special rate has not been eroded because “...the total package of support for a single Special Rate recipient as at 20 September 2015 was greater than 100 per cent of MTAWWE after taking into account of adjustments for tax, Medicare levy and the cost of private health insurance for a wage earner.” It is suggested that these matters are irrelevant because they do not relate to the concept of compensation for injuries or diseases.

On each occasion, (that is, the Clarke Report and the Minister Teahan’s letter of 2 May 2016), the error is that the majority of “the total support package” for Special rate recipients is also enjoyed by veterans who are recipients of the General rate who are not limited to the number of hours per week for which they can be employed.

As noted in earlier paragraphs it seems clear that disability pensions are compensation for non-economic loss (pain and suffering) and the Above General rate pensions, such as the Special rate, are compensation for the veteran being unable to earn a normal wage because of an accepted disability/ies. As noted above this additional compensation received by a veteran on the Special rate, as compared to one on the General rate, is \$435.30 per week which equates to 37.12% of the MTAWWE at this time.

Appendix 15 of the Clarke Report contains data on wage indicators and pension levels used in analysis of erosion and adequacy of payments. Tables A15.3, A15.6 and A15.7 contain data, from 1972 to 2002 on the MTAWWE weighted average (after tax), the 100% General Rate and the Special Rate Disability Pension (TPI).

I have compared, using the data published in the Clarke Report, at five year intervals, the Above General rate component of the Special rate, (ie the economic loss component) with the MTAWWE after tax. The results are as follows;

Year	Special rate weighted average per week \$	General rate weighted average per week \$	Special rate less General Rate (the economic loss component)	MTAWWE after tax	Economic loss component as a % of MTAWWE after tax.
1972	45.42	12.83	32.59	71.90	45.3
1977	88.56	33.36	55.20	140.44	39.3
1982	140.19	52.72	87.47	251.30	34.8
1987	204.98	77.07	127.91	343.48	37.2
1992	280.17	105.95	174.22	456.57	38.15
1997	318.19	120.72	197.47	526.25	37.52
2002	365.69	138.30	227.39	634.53	35.83

This Clarke Report data shows clearly that the purchasing power of that component of the Special rate that compensates veterans for being unable to earn a normal wage has been, when compared to MTAWWE (after tax), subject to erosion from 45.3% in 1972 to 35.83% in 2002.

As at 22 September 2017 the after tax MTAW is \$1,172.80 per week and the difference between the Special rate, as compared to the General rate, ie, the economic loss component, is \$435.30, or 37.12% of the MTAW after tax, which is still a significant decline in that relationship since 1972.

It is suggested that if compensation payments are not erroneously conflated with welfare payments this data refutes the claims made in the Clarke Report and by the Minister that there has not been any erosion of the amount offered by the government in compensation to a veteran being unable to earn a normal wage. The erosion of value is real and is not "perceived".

It is further suggested that;

- the conflation of the two matters, the actual dollar value of the Special rate, as compared to the General rate, and the "total support package" enjoyed by recipients of both the Special rate and the General rate leads to an inflated view of the real value of the economic compensation paid to Special rate recipients; and
- use by the government of a benchmark between the economic loss component of the Special rate (the AGR) will lead to an improvement in the quality of communications between the government, DVA and the veteran community and better outcomes in the long term.

Is there any reason why the government would not consider expressing the Above General Rate component of the Special rate, whatever it may be agreed to be in dollar terms, as being a certain percentage of the MTAW, with a commitment to maintain it at that percentage?

The Special rate disability pension safety net payment (SRDP) paid under MRCA.

The details of disability pensions for younger veterans who fall under MRCA are more complex than under the VEA and are beyond the scope of this letter, apart from the comments below.

I suggest that the information provided by DVA in documents such as Factsheets MRC04 and MRC09 show that current policies continue to indicate that there is a mixing up of issues related to compensation (for people whose capacity to work has been severely restricted because of conditions due to military service) and welfare measures. Perhaps this is due to the complex nature of the relevant legislation.

Fortunately the recent report by the Senate Foreign Affairs defence and trade Committee "The Constant Battle: Suicide by Veterans" at page 69 (Recommendation 6) recommended that the government make a reference to the Productivity Commission to simplify the legislative framework for compensation and rehabilitation of service members and veterans.

In my view a simpler legislative structure is needed and a feature of it should be that it is based on clear and separate policies related to rehabilitation, compensation for pain and suffering and compensation for loss of income, and welfare in respect to matters related to the unique nature of military service.

Summary

In summary, I suggest that much of the difficulties in correspondence and attitudes between the government, DVA, ESOs and veterans generally could be reduced if there was a greater clarity as to the policy underlying the special rate disability pensions.

In particular I ask that the Commission consider the following;

One. The need for a “plain English language” statement as to what the Special rate is intended to “provide” (DP29, para 4).

Two. Clarification by government that its policy includes that there are two components in the calculations for the Special rate disability pension paid under the VEA, firstly, compensation for non-economic loss (pain and suffering) and, secondly economic loss, VEA and that;

- the non-economic loss is provided in the form of disability pensions up to and including the General rate; and
- the economic loss component is in the form of the Above General rates, including the Special rate.

Three. What does the government and DVA consider to be a “normal wage” and adequate compensation for a veteran who is unable to earn an income?

Four. That the accurate measure of this compensation (ie the SRDP/TPI Pension) is the difference between the General rate and the Special rate, all other benefits being welfare payments, not compensation.

Five. That, based on data contained in the Clarke Report, the economic loss component of the Special rate, expressed as a percentage of the MTAWWE after tax has declined from 45.3% in 1972 to 35.83% in 2002 and in 2017 was 37.12%?

Six. The need for the benchmarking of the economic loss component of the Special rate as a percentage of the MTAWWE after tax and maintain that benchmark should adjustments due to the use of indices not compensate for structural adjustments in the economy?

Thank you for the opportunity to make this submission and my apologies for its lateness.

Yours faithfully,

Max Ball

Att: Letter from the Minister for Veterans' Affairs dated 2 May 2016.