



COMMONWEALTH OF AUSTRALIA

# Official Committee Hansard

## SENATE

COMMUNITY AFFAIRS LEGISLATION COMMITTEE

**Reference: Compensation for Non-Economic Loss Bill 1999**

THURSDAY, 13 MAY 1999

CANBERRA

BY AUTHORITY OF THE SENATE

### **INTERNET**

The Proof and Official Hansard transcripts of Senate committee hearings, some House of Representatives committee hearings and some joint committee hearings are available on the Internet. Some House of Representatives committees and some joint committees make available only Official Hansard transcripts.

The Internet address is: **<http://www.aph.gov.au/hansard>**

**SENATE**  
**COMMUNITY AFFAIRS LEGISLATION COMMITTEE**

**Thursday, 13 May 1999**

**Members:** Senator Knowles (*Chair*), Senator Bartlett (*Deputy Chair*), Senators Denman, Eggleston, Chris Evans and MacGibbon

**Substitute members:** Senator Schacht for Senator Denman

**Participating members:** Senators Abetz, Brown, Colston, Crowley, Faulkner, Forshaw, Gibbs, Harradine, Lees, Margetts, Schacht, Stott Despoja and Woodley

**Senators in attendance:** Senators Abetz, Bartlett, Chris Evans, Eggleston, Knowles and Schacht

**Terms of reference for the inquiry:**

Compensation for Non-Economic Loss (Social Security and Veterans' Entitlements Legislation Amendment) Bill 1999

**WITNESSES**

<b>COOPER, Mr George Thomas, Director, Injuries Australia</b> .....	<b>1</b>
<b>WESTON, Mr William Michael, Director, Injuries Australia</b> .....	<b>1</b>
<b>FAULKS, Mr Richard Peter, ACT Branch President, Australian Plaintiff Lawyers Association</b> .....	<b>7</b>
<b>MURPHY, Mr Gerald Anthony, Former President, Law Council of Australia and Chairman, Accident Compensation Standing Committee</b> .....	<b>7</b>
<b>MULLINS, Ms Carla, Policy Projects Coordinator, Welfare Rights Centre</b> .....	<b>17</b>
<b>MITCHELL-TAYLOR, Mr Arthur Clive, Australian Veterans and Defence Service Council and National President, Vietnam Veterans Association of Australia</b> ...	<b>19</b>
<b>JIMMIESON, Mr Mark Alan, Assistant Director, Compensation Unit Disability Policy and Carers Branch, Department of Family and Community Services</b> .....	<b>27</b>

**McIVER, Ms Glenys Dawn, Director, Means Test Policy, Senior and Means Test Branch, Department of Family and Community Services ..... 27**

**MANN, Mr Evan John, Assistant Secretary, Seniors and Means Test Branch, Department of Family and Community Services ..... 27**

**HAY, Mr Robert James, Branch Head, Income Support, Department of Veterans' Affairs ..... 27**

**REECE, Mr Peter James, Divisional Head, Compensation and Support, Department of Veterans' Affairs ..... 27**

**RICKETTS, Mrs Jeanette, Director, Income Support Policy, Department of Veterans' Affairs ..... 27**

**Committee met at 3.33 p.m.****COOPER, Mr George Thomas, Director, Injuries Australia****WESTON, Mr William Michael, Director, Injuries Australia**

**CHAIR**—The committee is taking evidence on the Compensation for Non-Economic Loss (Social Security and Veterans' Entitlements Legislation Amendment) Bill 1999, and I welcome representatives from Injuries Australia. Witnesses are reminded that the giving of evidence to the committee is protected by parliamentary privilege. However I also remind witnesses that the giving of false or misleading evidence may constitute a contempt of the Senate. The committee has before it your submission. Do you wish to make any alterations to that submission?

**Mr Cooper**—No, Senator.

**CHAIR**—Thank you. I invite you to make a brief opening statement at the conclusion of which I will invite senators to ask you questions.

**Mr Cooper**—Thank you. We would like to stress to the committee that, firstly, Injuries Australia is not against structured settlements on a compensation claim per se. We believe that there needs to be a more thorough investigation into the effect, socially and financially, of injuries on individuals, whether they be motor car injuries, work injuries or domestic injuries.

As we read it and as our own experience shows us, it is a dreadful world out there for most of these people who are injured. I would like to stress to the committee that the chances of losing your employment, possibly for life, once it goes over three months are very strong. In New South Wales it is over 10,000 people a year. That is what we would like to really stress.

We commend the Commonwealth for looking at structured settlements and we believe that that is a fill-up of the good work that was done by the industries commission and the senior commissioner, Bill Scales, when they were looking at a national compensation scheme. We believe that is the right way to go. The states have had a go and they are not capable of handling it. That is the main thrust of what we would like to stress to this committee.

**CHAIR**—Thank you. Mr Weston, do you wish to make any comments?

**Mr Weston**—Only to add that there needs to be more input to this committee on the social and the economic impact of what you wish to do for people who have already suffered horrendous injury either in a motor vehicle accident or in the workplace or elsewhere. It is not a golden handshake. If you are looking at a component that is for economic loss, so be it, and it has to be addressed properly, but the section for pain and suffering needs to be left alone.

Most of these people by the time they get to that stage have spent quite a few years within a system that I would not wish on anyone. I personally spent nearly nine years in a system with an injury. I am now unemployable, as are most people who carry any sort of permanent injury. Regardless of what you were told, insurance companies will not allow people with permanent injuries any capacity to be re-employed because they run the risk of having to pay another claim. It makes it awfully hard for people like myself, and especially younger people.

I have one behind me—young Peter—who is now in his thirties. He was in his early twenties when he was injured. He has no prospects for work for the rest of his life. There are thousands and thousands of people like that. You end up basically drawing an amount the same as a social security payment when possibly you were earning two or three times that amount originally.

Reading through briefly what was the area that you guys looked at and the number of people that you interviewed, I think you need to open that inquiry up a lot more maybe and look at it a lot harder before you make any sort of firm decision on this. I agree with George. Perhaps social security and the federal government should stay well away from compensation altogether. Let the insurance companies handle what they take premiums for, and that is to cover people for an injury. It is not being done. It is too easy for them to shift cost and deny liability, and that puts people like myself and others onto the social system and onto the taxpayers' expense. You, in effect, are giving insurance companies tax free loans for the period of time that we are denied claims. Once it goes to court, 99 per cent of the time the claim is reinstated by a judge, the costs are then taken out of the person's award and given back to social security. The insurance companies are not paying it—we are. That is basically where I finish. I thank you.

**Senator CHRIS EVANS**—Perhaps I could start by getting it clear in my own mind what you are saying about non-economic loss compensation. As much as anything, the government seems to be trying to force people to take the periodic payment or encourage insurance companies to make what I think you called 'structured payments'—forgive me, I am not expert in this field. They seem to be looking to try to change the behaviour. What are you saying about whether that is a desirable goal or not? Do you think we ought to be moving away from lump sum compensation to the structured system or do you think we ought to leave open the possibility of lump sum compensation?

**Mr Weston**—Looking to what they do overseas in America, Britain and Canada, to a certain degree, structured settlements are fairly predominant and have been for the last 20 years. Generally, at the end of the case in a lot of cases, the amount awarded is considerable compared to what people here get, and generally there is a small component as a lump sum to offset any expenses that they need to fix up that they have incurred over a period of time from the injury to the award time. So a certain amount is awarded to them as a lump sum; the rest, with their permission, is then taken and looked at through a life assurance company annually. It is set up as a structure to award them. There have been tax changes made for these in both America and Britain that are not in place here at this time.

**Senator CHRIS EVANS**—What sort of changes?

**Mr Weston**—They are non-taxable payments. It is an award and, provided that they get their money on a monthly basis—I think most of those overseas are a monthly cheque—it is for the costs of their medical treatment or any modifications to their homes. They may need some sort of motor transport that needs to be modified to suit their condition and a certain amount, I would imagine, for their wages. Whether that wage component is looked at and taxed, I am not sure. I have not got that far with it. It is quite extensive overseas with the information that is available, and I must admit most of the information that I have got has come from the Internet at this time and has been sent to me from companies that I have requested it from.

**Senator CHRIS EVANS**—So what are you saying about the non-economic loss though? Are you saying that it ought to be taxed in this way or are you saying that—

**Mr Weston**—No. We are saying it should be left alone. By all means you can tax the wage component of any award and that is understandable. But any award that has been given for an injury for pain and suffering and for stress, not just for the person that has received the injury but also for the families who go through it, should be left alone.

You guys look at it and say, ‘Shit’—excuse me—‘but they go out and buy a new car and they go for a holiday.’ You put yourself through eight or nine years of what we have been through. You suffer. The families have suffered. You are generally trying to exist and drive around in something that is just barely registrable because you have lost everything. In a lot of cases a lot of our members lose their homes. They lose most of the things they have fought for for most of their lives and in a lot of cases they lose their lives because quite a large number of them are suicidal.

I am not a professional counsellor, I can assure you of that, but we have had to field numerous cases over the phone of people who say, ‘I have got the bottle of pills here in front of me. I am just about to take the lot. I have had enough.’ We have had to talk to those until such time as we can pass them on to a professional counsellor.

**Mr Cooper**—I would like to add to that. I am a qualified counsellor. That is one of the things I did after I was injured to get myself back to work. I went back to university and did a welfare degree and a graduate diploma in rehabilitation counselling.

I have brought with me, just to emphasise that point, a judgment on one of our members. This man is being harassed at the moment by an insurance company. Let us see what Justice Johns had to say. He said that one could only comment upon this matter and say that it was a sad case and that the consequences of the injury had been catastrophic to this family. In these circumstances it was clear to him that when one added together the underlying organic disability with a major depressive illness which was consequential, in his view, upon the injury and the subsequent circumstances, the applicant clearly still remained incapacitated as a consequence of the injury suffered in the employment of the applicant.

What that does is tell you that this fellow is ready to pop himself off—he is. We are trying desperately to get some help for him. His doctors and his wife—everybody—are on the phone to me. By the way, he does not live in the city; he lives in a country town.

I got as far as I could within New South Wales WorkCover. In desperation, I said, ‘Would somebody please ring this insurance company and tell them to back off until we can fix this up.’ All that they want to do is put him back in court again and try and cut him off. I was told I had to put it in writing. I said, ‘This fellow might pop himself off tonight.’ They said, ‘That’s bad luck. You’ve got to put it in writing.’ That is the extent of caring shown by the people who are paid to care for us. That is how much they care. They could not care less.

We have been very active in setting up branches in country areas of New South Wales. We are appalled at what we are finding in the suicide business. You may have read that suicide rates in the country are rising, especially for men aged about 45. Have a look at them. No record is kept. We are now slowly doing it. We are hoping to do some thorough research with the University of New South Wales. They have Professor Baume, who specialises in this. We have had lengthy discussions with him. He is quite interested in what we have.

This should not happen, but I will tell you why it does happen: because Social Security gets involved in the first place. The Commonwealth government should not be near it. It is none of their business. The insurance companies are paid a premium to do what they have got to do. What they do is dump people off the system onto social security, and then, years down the track, there is some settlement.

We have a member who was poisoned at work. He was a young man with three young children at the time. Nine years later, he got a settlement—not for pain and injury, just an economic settlement—of \$106,000. Social Security took back \$96,000. ATO walked in and helped themselves to \$6,000. He was left with \$4,000 compensation. He is unemployed,

unemployed and extremely ill. His medication bill per month is \$600. Where is the compensation? There is none.

If Social Security had said, 'It's none of our business,'—and that is what Bill Scales was pointing out in that Industry Commission report—the relevant WorkCover authority and the insurers would have to carry the people until the matter is fixed; better still, get him back to work, if possible.

**CHAIR**—Mr Cooper, I am sorry to interrupt. Much of what you are talking about at the moment has nothing to do with the bill. I am just trying to focus on the bill because we are short of time and you are covering a lot of broad areas.

**Mr Cooper**—We are trying to make the point that the economic amounts that people get are so small, anyway, even if you put a structured settlement in. We have another case for comparative purposes—this person, with X number of dollars, aged 42 years, compared to retirement age. If he was on a structured settlement, he would get \$40 a week. He would still be allowed to get the dole because he and his wife can earn that amount before they interfere with the payment, so these people do not end up with buckets of gold.

You may compare paraplegics and quadriplegics in common law cases; they may get a lot of money. Within the workers compensation system, that is not the case. That is why we are begging you to consider that this must be thoroughly looked at.

**CHAIR**—Mr Cooper, are you of the opinion that the bill somehow changes the existing compensation provisions relating to compensation payments that include a component for economic loss?

**Mr Cooper**—No, it does not change it. It will not save the Commonwealth any money. You would save the Commonwealth probably \$800 million a year if you never put any money into workers compensation in the first place.

Social Security print their figures out and they are worth having a look at. I think there are 35,000 people in New South Wales receiving social security payments while they are waiting for a settlement from some compensation claim. A lot of them do not get anything, so Social Security have lost what they have paid, anyway. But the insurance company has very effectively shifted the cost across and left them with nothing to put into a structured settlement. There is nothing there.

**Senator CHRIS EVANS**—For your information, the government claims to be saving an average of about \$12 million a year from these measures, so they obviously expect to. I am just trying to figure out how that is the case. That must mean that they expect they will save on social security measures because people will continue to take the lump sum payment. That is why I have difficulty with the government's proposition. The government says it is about changing the structure to encourage people to take structured payments but then they point out that they are going to save \$14 million a year by this measure. I am trying to understand what the government's logic is. I will be interested in the department's answer later. It seems to me that these are contradictory claims. They are admitting that the structure will not change because they are going to make a quid out of it. People will continue, in their view, to take lump sum payments, but will get taxed.

**Mr Cooper**—But it is peanuts compared to what they would save if they never got involved in the first place, if they would say to the state jurisdictions, 'It's your problem.' Then there would be some amounts of money that could be put into a structured settlement and the thing would not be dragged out like it is. That is where structured settlements may be the right

answer for everybody. But right now, once people can pass their problems to somebody else, you are not going to save any money. It is peanuts when you look at what is paid out.

**Mr Weston**—Ultimately, what it comes back to is that Injuries Australia is totally against any attack on non-economic loss payment at this stage, simply because it is there for a reason. It is there to cover a compensated person for pain and suffering.

**CHAIR**—Given the legislation that is before us today and given the proposal that was put by the previous Labor government in which they introduced a measure to expand the then compensation provisions to include all compensation—lump sum, including those made solely for non-economic loss, and that meant calculating a preclusion period using 50 per cent of every dollar of non-economic loss compensation paid—given the choice between the two—that is the position that was put earlier, knocked off by opposition parties, and a much more streamlined approach now, which is only looking at a very small percentage—which would you prefer?

**Mr Weston**—You are looking at anything over \$10,000 to be assessed as wages and to be treated as such, and there will be a preclusion period assessed for it.

**CHAIR**—This other one involved everything. It was the whole shooting match. I have not heard any different policy coming from the other side. All I am saying is that there is one option and there is another option. The problem is that I think all political parties believe there is a big problem with people blowing dough that they have been given as compensation. I have had many cases in my own electorate office where people have bought magnificent homes, \$50,000 four-wheel drives, and then they go back on social security.

**Mr Weston**—I read of a case recently where a chappie was awarded \$330,000. He blew the lot in six months. Obviously, you people have looked at structured settlements; you are continuing to look at them. As people who have been injured and representing people who have been injured, we agree there are a lot of people who are very poor at managing money. But given the stress and the problems that they encounter prior to receiving an amount of money, it is up to the—

**CHAIR**—So you think the taxpayers should still pick up the bill?

**Mr Weston**—After a period of time, yes, they will. But they will still have to do that at this stage. After some period of time, after they have received that money and they have had to live off that money, eventually it is all gone. They are still unemployable.

**CHAIR**—Do you fundamentally believe, though, that the taxpayer should continue to pick up a bill when someone has been given a compensation amount?

**Mr Weston**—It is a compensation amount if it is—

**CHAIR**—And they blow it and the taxpayer is then forced to pay. Remember that governments do not have any money of their own; they have only got what taxpayers give them.

**Mr Weston**—Fine; point taken. What we are saying is that that component of money is not assessed for economic loss. If it is assessed for economic loss, by all means, look at it and assess it accordingly, which you are doing at the moment. Fifty per cent of whatever is awarded is looked at purely as income, regardless of what it is awarded for. But leave the non-economic side of it alone. It is there for a reason. It is there for a person's injury. It is there for their suffering and their family's suffering. Regardless of what they get, let them have it. Let them live off it. Let them pay the bills that they have to pay. If they have got to go back onto social security—if they have to—they have to. Maybe we should look at the system with

insurance companies, whereby you fill out the little forms when you apply for employment that say, 'Have you ever had a compensation claim?' Once you fill that out, you are virtually unemployable. If you have had a claim, you are, to a certain extent, in the majority of cases, unemployable.

**CHAIR**—But that is another issue, completely separate from this bill.

**Mr Weston**—But you still end up back on the social security system.

**CHAIR**—But it is completely separate from this bill.

**Mr Weston**—Fine, but the bill, as you put it here, is to look at anything over \$10,000 as income, regardless.

**CHAIR**—Thank you, gentlemen, for giving us your time.

[3.56 p.m.]

**FAULKS, Mr Richard Peter, ACT Branch President, Australian Plaintiff Lawyers Association**

**MURPHY, Mr Gerald Anthony, Former President, Law Council of Australia and Chairman, Accident Compensation Standing Committee**

**CHAIR**—Witnesses are reminded that the giving of evidence to the committee is protected by parliamentary privilege. However, I also remind witnesses that the giving of false or misleading evidence to the committee may constitute a contempt of the Senate. We have before us your submissions. Do you wish to make any alterations to those submissions?

**Mr Faulks**—No.

**Mr Murphy**—No alterations, thank you, Senator.

**CHAIR**—I invite you to make an opening statement or two opening statements, if you would like, and at the conclusion, we will ask you questions.

**Mr Murphy**—We will certainly make separate opening statements, Senator. On behalf of the Law Council of Australia, firstly, I make the point that, while our submission has been prepared by the Law Society of New South Wales, it was at the request of the Law Council. The Law Council represents all lawyers in Australia. There are 12 constituent bodies. I would not like the committee to think—

**Senator SCHACHT**—Do you have compulsory membership? You say you represent all lawyers?

**Mr Murphy**—For example, Queensland Law Society, which is my body, pays a levy for each member of the society. So every lawyer who is a member of the Queensland Law Society is a member of Law Council of Australia.

**Senator SCHACHT**—But are there lawyers who are not members of the society?

**Mr Murphy**—Minimal.

**Senator SCHACHT**—Does that mean that, in Queensland, you cannot practise unless you are a member of the society?

**Mr Murphy**—You cannot practise as a solicitor of the Supreme Court of Queensland without obtaining a practising certificate which you obtain from the Queensland Law Society. I think I can say—

**Senator SCHACHT**—This is compulsory unionism.

**Mr Murphy**—No, it is not. It is open and there one or two members of the Queensland Bar Association, which is not my body, who are not members. But it would be no more than a few. I am not aware of any solicitor in my period of practice in Queensland who has not been a member of the Queensland Law Society.

**Senator SCHACHT**—Have you heard of Mr Little in Victoria?

**Mr Murphy**—I have.

**CHAIR**—Senator, I am hoping that there will be a major focus on the bill.

**Senator SCHACHT**—I just wanted to say that, when Mr Murphy says that he represents all lawyers, I do not think Mr Little would claim to be represented by the—

**Mr Murphy**—Can I say 99.9 per cent are lawyers.

**CHAIR**—Could I just draw the—

**Senator SCHACHT**—I am just intrigued by the compulsory unionism nature of the Law Society of Australia and the Law Council of Australia.

**CHAIR**—Mr Murphy, if you could come back to your submission.

**Mr Murphy**—Thank you very much, Senator. Every one of the 12 constituent bodies of the Law Council of Australia is unanimous in its opposition to this piece of legislation. There are probably only three comments that I wish to make to emphasise what we consider are the major points. The first is that, in the view of the Law Council, the legislation is clearly discriminatory, and it is discriminatory against the most disadvantaged section of the community. It is discriminatory against, as the submission says, the injured poor.

Secondly, in our view, the legislation is based on three major misconceptions. The first of those is a misconception that the vast majority of lump sum payments are dissipated. That is simply not so, and I can expand on that if the committee wishes me to do so. The second is a misconception as to the character of lump sum payments for what the legislation terms ‘non-economic loss’. The legislation characterises those payments as either asset or income. It is clearly neither of those. I do not wish to go through the details of our submission, but I think that spells it out. And the third is a misconception that structured settlements are in vogue and used quite regularly in accident compensation litigation in Australia. That is simply not so. Again, I can expand on that if the committee wants me to.

The third point that I wish to emphasise is that I view, and the council views, the legislation as paternalistic. Despite the statement by the minister in his second reading speech that it promotes self-reliance, in our view the legislation flies in the very face of what we regard as a very Australian trait of self-reliance.

Finally, on a minor point in the submission but a very real one—and I can speak, too, from my own experience if the committee wish me to do so—I am certain that, if this legislation is promulgated as law, some of the disadvantaged poor or the injured poor who are pensioners will not proceed with claims to which they are justly entitled. I do not wish to make any further opening comments on that but, as I say, I am happy to answer any questions that the committee may have or to expand on any points that I made.

**CHAIR**—Thank you. Mr Faulks?

**Mr Faulks**—I can probably say that APLA’s position is fairly closely aligned to that of the Law Council. We are very concerned about the effect of these proposed provisions upon, as Mr Murphy said, the most vulnerable groups in our society. They really will have a more serious effect in many ways on the poor—those who are on social security benefits and receive a small lump sum for non-economic loss. And that is a matter of significant concern.

It is our submission, as set out in more detail in the written document, that the whole tenor of the amendments comes about from a basic misconception that somehow treating non-economic loss in a different way from economic loss is inequitable. The reality is that these amendments would bring about significant inequity by treating non-economic loss in the same way as compensation which is designed specifically to deal with financial issues.

The whole idea, as set out in the Law Council’s paper and in ours, of compensation with non-economic loss is not to provide financial assistance as such, not to provide income support. It is to compensate for specific items such as pain and suffering, interruption to lifestyles and those sorts of things. And even though it was perhaps not quite clear from all of the evidence provided by our colleagues from Injuries Australia, what they were conveying is that there are many people who suffer significantly during the period up until the receipt of a

compensation payment; and to then treat them in what Mr Murphy has correctly described as a discriminatory manner often removes from them the opportunity to regain some of the things that they have lost during that period.

I think it is wrong, and APLA thinks it is wrong, to confuse the concept of structured settlements with the attack on uneconomic loss. In that regard, I return to something that was raised in the last session by Senator Knowles. The idea of structured settlements in relation to economic loss type of settlements or large composite awards may be something that should be investigated further. APLA, as it states in its submission, is not necessarily against that. But the two concepts of structured settlements and somehow attacking the non-economic loss component, or an amount that is given solely for non-economic loss, are two completely different issues and should not be mixed up. Simply to oppose, as the Law Council and APLA do, the attack on non-economic loss should not be seen as somehow suggesting that all structured settlements are wrong.

What we see say is that structured settlements need further investigation, that there has been no proper examination of how they can be set up—the cost of them, who is going to manage them—and, as Mr Murphy said, there has been no proper investigation of the role of insurance companies and all those sorts of things in those issues. So our basic position is to say: leave non-economic loss alone. It is inequitable and wrong to attack it.

The provisions, as they are structured at the moment, will have a most unfair effect on certain individuals, as set out in our submission. We have given some case studies which show that it can lead to a situation where two people can get exactly the same amount for exactly the same injury, and because one happens to be an 80-year-old pensioner, that person will have a financial detriment as against someone else who has had exactly the same injury but is able to return to work.

My final point in opening is to perhaps visit a matter that was also raised in the last session, and that is the point raised by Senator Knowles about the current social security provisions dealing with undissected lump sums. It is, with respect, currently the law that, if someone receives a lump sum payment, 50 per cent of that sum is automatically assessed for the purpose of either repayment of social security benefits, or calculating a preclusion period. Those provisions are in place and affecting everyone today.

If someone receives a dissected judgment, which has a component for economic loss, that is automatically taken into account in total in assessing a repayment of social security benefits or preclusion. So these provisions are not, with respect, an alternative to that system. It is already in place. What we are looking at here is imposing an unfair burden on people who receive a sum solely for loss of a part of their body or pain and suffering, or something of that sort, and that is unfair and unwarranted, and that is our position.

**Senator CHRIS EVANS**—Mr Murphy, I would like to take your first point about a demonstrated significant problem of lump sum dissipation, because I think that is a fairly critical issue. I think you made the point that there is a bit of a nanny state feel to this legislation. And I have a bugbear that I had when I was on the superannuation committee for a number of years, and this is about the urban myth of dissipation of lump sum super. Everyone accepts it is true, but no-one can ever prove it. I just wanted to ask you what hard evidence there is for this lump sum dissipation argument. I will ask the department the same question later because I think it is a key issue.

**Mr Murphy**—We would say that there is not any hard evidence at all. The Plaintiff Lawyers Association, in their submission, refer to the Rush report, which talks about interviewing 120

recipients. I have practised in this area of accident compensation exclusively for almost 40 years now. I would have acted for thousands of people who have received compensation in various forms.

Our firm takes a personal interest in what people do with their moneys. I can say categorically that the number of those people—thousands of people—that we acted for who have dissipated their moneys you could count on the finger of one hand. What they do with it are just classic examples, and the Australian plaintiff lawyers committee gave two or three examples of this.

The people that I have acted for who have received lump sums pay off mortgages on their home. The young people purchase land. They set themselves up in business. They use it for the purpose for which it is intended—that is, to try and retrieve what it has been paid to them in compensation for.

**Senator CHRIS EVANS**—But your key point is that it is compensation for non-economic loss in any event, and what they do with it is a question for them, is it? That is a philosophical point.

**Mr Murphy**—Yes, certainly. It is solatium, a payment for that. But the number of instances where it has been dissipated is simply absolutely minimal. The only further hard evidence that I have heard of is that its stages are one of the numerous inquiries into accident compensation. I think the New South Wales Law Reform Commission did a survey. Again, they only surveyed about 70 or 80 people, and again they did not produce any hard evidence to justify what is normally known as the windfall myth, where somebody gets a windfall out of someone else receiving the money.

**Senator CHRIS EVANS**—At page 6 of your submission, section 2.1.3, headed ‘Prevents proper use of non-economic loss damages’, you talk about the minister’s second reading speech which referred to the provision of an exemption for certain modifications, meaning that those payments are to be disregarded for the purposes of this initiative. Can you take me through what your argument is in relation to that section?

**Mr Murphy**—As I understand the legislation, what they have said is that if the payment is made direct by the insurer or the person paying the compensation to a third party, that is exempted from the provisions of this act. What the submission raises is the question of non-assignability of compensation payments. It is developed later on—the issue of insurers agreeing to do that and the mechanics and the bureaucratic cost involved in the paying of it.

**Senator CHRIS EVANS**—I want to put this question to you, and I am playing the devil’s advocate. It sounds patronising but some of my best friends are barristers involved in workers compensation law—at least one of them is. I will discuss this legislation with him. One of the arguments put to me about lawyers’ support for lump sum payments is that that allows them to get paid. I am not trying to be rude, but it is an issue that is raised here—that you have an economic interest, as lawyers, in lump sum payments because it is easier to get paid. You often have agreements with clients that it is paid on receipt of the lump sum—or, as I understand it, in some jurisdictions people get a percentage or there is some other arrangement—maybe not a percentage. I wanted you to explain what the link was and whether or not that was a fair criticism.

**Mr Murphy**—I do not think it is a fair criticism. The paper touches on structured settlements. I emphasise again that they are just not on in Australia. There have been avenues in different legislation for some time in Australia. In your home state, for example, under the

Motor Vehicle Insurance Act or its equivalent, there has been provision for periodic payments for years and years and it has never been utilised.

In answer to your question, I suppose superficially it could be said that it is easier for lawyers to be paid if their client receives a lump sum. Virtually all this litigation in Australia is conducted on a speculative basis—that is, the lawyer receives payment only if the client receives money, so that is when he is paid. What I was about to say before was in regard to the jurisdictions where structured settlements do apply, such as in England. The paper touches on that. They talk about big sums there; there is a classic example of £625,000, and £350,000 of that goes on a structured settlement. So there is still a lump sum available from which the lawyer receives his fees.

We have recently been involved in a couple of significant settlements for English tourists. In fact, that is how each of them took it—in roughly that sort of proportion. About half the money was invested in an annuity and the other half was taken as a lump sum. One of the reasons why structured settlements have never taken off in Australia is that they have never got the taxation arrangements right. In England, the income from the part of your settlement which you take in an annuity is non-taxable. That makes an enormous difference to the settlement.

**CHAIR**—On that question, can I seek a few points of clarification. How would income for solicitors vary from the current system to the proposed system?

**Mr Murphy**—I would say virtually not at all. The figure which I recollect here, which the department calculated, was that something over 4,000 people would be affected each year. I can only speak for myself; I cannot speak for all the other solicitors in Australia. If somebody took, instead of \$10,000, five lots of \$2,000, a solicitor would still be paid in a reasonable amount of time.

**Mr Faulks**—The other issue that you have got to remember is that, in most cases and in most jurisdictions, the award of damages is something that is given in addition to legal costs. In most types of claims, the plaintiff recovers not only the compensation we are talking about but a sum for party and party legal costs. The only issue that could possibly arise from the change to the way in which the damages are paid is any additional or solicitor-client type costs that are payable. As Mr Murphy said, in most cases, I would think there would be very little difference, if any, in terms of the ultimate outcome for the solicitor.

**CHAIR**—How much of the fee is relative to the settlement?

**Mr Faulks**—It depends. Certainly, I can only speak for the ACT, because that is where I practise. Our costs are determined entirely by a scale which is set down by the court. I think that is basically the situation in most Australian jurisdictions. You have a capacity to enter into an agreement with your client, but as far as I am aware no jurisdiction authorises any arrangement whereby you can charge a percentage of the overall total lump sum received.

**Mr Murphy**—I meant to make that point in answer to your question before, Senator Evans. I did not quite understand your point, Senator Knowles. Was that really what you were getting at?

**CHAIR**—Yes, it was.

**Mr Murphy**—I have been chairman of the statutory committee of the Queensland Law Society for the past 15 years. It is not only illegal to charge a contingency fee; it is professional misconduct and a solicitor would be struck off for doing that.

**CHAIR**—I asked a question in relation to particular cases of which I am aware. One involved a payment to a person who received quite a large payment and it had been appealed by the solicitors and so forth but they were going to make an advance payment. It was actually held up, waiting for the solicitors to get their \$200,000 cut out of a \$520,000 up-front payment. Therefore, you say, ‘Hold on, there’s big money here.’

**Mr Murphy**—I cannot comment on that without knowing the facts of the case, but certainly the whole payment of the \$500,000 should not have been held up. The solicitor would have waited some considerable time. I do not want to get involved in an argument about solicitors’ costing but it may be of assistance to the committee. The solicitor would have waited for some time and he is entitled to a lien over the funds to the extent of his money, subject to his client agreeing and the client exercising the rights.

**CHAIR**—In this case his client was not agreeing to it.

**Mr Murphy**—The solicitor could still then exercise a lien to the extent to which he has claimed but the client has rights and the solicitor has to prove his cost. But the whole of the \$500,000 should not have been held up—at the most, just the extent to which the solicitor claimed for his own costs.

**Senator CHRIS EVANS**—We will get off the question of lawyers’ fees before we get—

**Mr Murphy**—Thanks, Senator!

**Senator CHRIS EVANS**—You started to look uncomfortable, Mr Murphy. I wanted to ask Mr Faulks a couple of questions. I think you made the point, which I found interesting, that this question of structural settlement, as far as you are concerned, is a separate issue to the question of how you treat non-economic loss and they do not need to be tied together.

**Mr Faulks**—I think that has got to be right. The way these provisions are set up, it is saying, ‘We’re going to access non-economic loss payments.’ That is the first issue. Then it is saying, ‘We may not do that, depending on how you receive that sum of money.’ All I am saying is that, before you even get to the second issue of structured settlements, you have to decide whether it is appropriate and proper to attack that non-economic loss component. For all the reasons that you do not need to hear again from us orally, in that we have set them out in our papers, it is just inappropriate, because that money was never awarded to compensate for a person being unable to work and therefore potentially being reliant upon social security payments. As it says, someone could get a sum of money and he is already on social security for a completely different reason. That money is to compensate them for a specific bodily loss or other injury.

**Senator CHRIS EVANS**—They become intertwined in this proposal. That is helpful for my thinking, because I think there is this idea of a carrot to get people onto structured payments. But what eats away at me is the \$14 million a year revenue raising. There is another issue at stake here. The Commonwealth is going to get \$14 million that it would not have otherwise received. That seems to indicate to me that the carrot is not expected to work.

**Mr Faulks**—Also, they have never in the past attacked non-economic loss payments, and this provision is designed to do exactly that. It is not a provision which is designed solely to encourage structured settlements or some sort of periodic payment. They are provisions to attack a component of damages which has never in the past been attacked.

**Senator CHRIS EVANS**—That takes me to the second point you raise, which is the bit I raised earlier which worries me, about the government’s justification. The explanatory memorandum says:

Applying the current treatment of economic loss payments to payments awarded purely for non-economic loss would be unduly harsh, given that these payments are not made in respect of any loss of income, but are typically for pain and suffering, loss of limbs etc.

Nevertheless, disregarding these lump sums is inequitable and inconsistent with government policy.

It seems to me that they are having a bob each way.

**Mr Faulks**—That is exactly right.

**Senator CHRIS EVANS**—I wonder whether the ‘inconsistent with government policy’ is not the most pressing demand. I would like you take me again through your argument that that does not provide for more equitable treatment. The tenor of the government’s approach is to say this provides a more equitable treatment for these people.

**Mr Faulks**—Perhaps I could say my bit and Mr Murphy might add to it. At the moment the current scheme looks at trying to prevent double-dipping, that is, it looks at preventing someone receiving a sum of money as compensation for economic loss—loss of wages, loss of ability to go to work—and then being on social security. That system works either by the department or Centrelink looking at the economic loss component of a judgment where there is a specific sum for those items—it is quite proper to do that; no-one here today will argue against the properness of that—or by looking at an undissected lump sum, which is where someone settles their case, say, for \$100,000 inclusive of non-economic loss and economic loss. It has a formula that applies to that. It takes half of that sum and uses that to prevent the double-dipping. In some cases, that is harsh and unfair. But I think there is general acceptance that it works reasonably well.

What this is doing is taking a completely new approach and saying, ‘Yes, that’s there. But when someone just gets a sum of money for non-economic loss—that is nothing to do with not being able to work or loss of wages—we want to have a share of that, too. Just because they have got that sum of money, we want to treat that in the nature of income or an asset.’ As the Law Council set out in detail in their submission, the law makes it clear it is nothing like that; it is not what that payment is for.

That is why I say that if anything is inequitable, it is this new attack on this area. It can only be a revenue raising exercise; it is exactly what it is. It is not trying to treat those people more equitably all of a sudden. They are still being treated in exactly the same way as everyone else. It is just attacking that one part of their compensation which has nothing to do with economic loss. That is why I say it is unfair.

**Mr Murphy**—I would support that. I do not want to go over Richard’s arguments, but that is one of the misconceptions of the government when they talk about it being equitable. It is clearly not. They talk about people becoming self-reliant. The minister’s words sort of enforce that. He said, ‘We will ensure that people become self-reliant.’ That is a paternalistic approach, as I said before.

I will give you an example of the injustices it will work. I have acted over the last 12 months for two or three elderly women pensioners who have received sums. Could I also make the point here that in our paper we are not talking generally about lump sums. Those 4,000 people that the department talked about would generally be old age pensioners receiving sums in the vicinity of \$15,000 to \$25,000. Each of those people that I acted for only received sums in that order. They were terribly concerned throughout—every time I saw them they asked me whether it would affect their pension. If I had said to them at any stage, ‘You could lose your pension for a day,’ they just would not have proceeded with their claim—and that was something that they were entitled to.

**Senator CHRIS EVANS**—What were they pursuing compensation for?

**Mr Murphy**—Two were car accidents and I forget what the third one was.

**CHAIR**—So they would prefer to get a pension than actually get a payment that is potentially due to them as compensation?

**Mr Murphy**—No, they were actually petrified that their pension could be stopped.

**CHAIR**—That is what I am saying. They would prefer to get a pension than actually get the insurance company to pay something out.

**Mr Murphy**—I do not think they were in a position, Senator, in relation to that. They were just petrified by what they perceived—

**Senator CHRIS EVANS**—Fear.

**Mr Murphy**—Yes, fear—exactly.

**Senator CHRIS EVANS**—Is compensation for crimes affected by this as well?

**Mr Murphy**—Yes, as I understand the legislation, it is—any compensation payment at all which does not include a claim for loss of income or loss of earning capacity.

**Senator CHRIS EVANS**—So a measure whereby someone received compensation for pain and suffering caused by a crime could affect their pension?

**Mr Faulks**—Absolutely.

**Senator CHRIS EVANS**—Thank you for that.

**CHAIR**—I have a few questions of clarification, basically. First and foremost, do you accept the logic of the periodic payments? Do you accept that there is a logic behind having periodic payments vis-a-vis lump sums?

**Mr Murphy**—No, I do not. No-one has ever been able to explain it to me rationally.

**CHAIR**—So you do not think that the dissipation of lump sums should be discouraged?

**Mr Murphy**—I do not think lump sums are dissipated, except in very minimal circumstances. I have already referred to my experience on that. I am happy to go over it again. I can only talk from my own experience on that. There is no hard evidence, as I advised Senator Evans, that I have been able to find on that.

**CHAIR**—There has been considerable evidence over the years, so much so, as you would have heard earlier, that the previous government decided to clamp down on this area as well. Do you appreciate that a beneficial treatment in this legislation is proposed for periodic payments over lump sums?

**Mr Murphy**—I do.

**CHAIR**—I have a few questions in relation to your particular submission. In paragraph 2.1.1, you state:

. . . any injured person normally dependent upon Social Security benefits . . . would lose these benefits during the proposed preclusion period.

What preclusion period? There is no preclusion period in the bill. What preclusion period are you talking about?

**Mr Murphy**—What they are talking about is that if they took it in a lump sum, the pension would then be lost for a period of time. That is quite clear from the legislation, isn't it?

**CHAIR**—But if a lump sum solely for non-economic loss is over \$10,000, and if the recipient does not take advantage of concessions in the bill, then—only then—it may reduce—

**Mr Murphy**—Loses the pension altogether, as I understand the legislation. You can correct me if I am wrong.

**CHAIR**—But only if those other things happen. You are saying that there is just this compulsion there.

**Mr Murphy**—They are probably assuming what I said before would happen, and it was certainly the intention of the government—and the minister made that quite clear in his second reading speech—to force people to take it that way.

**CHAIR**—You state that compensation payments, when paid periodically, continue to be assessed as ordinary income and, as such, are justifiably subject to social security means testing. This statement, to me, ignores a few facts—first of all, one of the most crucial features of the bill, namely, the periodic payments of up to \$2,000 in 28 days. Why does it ignore that fact?

**Mr Murphy**—It did not mean to ignore that fact. I think as a general statement of principle it is correct.

**CHAIR**—There is that fact that it ignores, and that the proposed Victorian payment will be completely exempt from the income test. I just cannot understand why there are certain statements being made here that are completely at odds with the bill. I will give you another example. You say, ‘It raises the issue of compulsion to take out income streams.’ There is no such compulsion.

**Mr Murphy**—But the intention of the government is clear. The minister uses the word ‘ensure’. That is one of the pieces that I find particularly objectionable about the bill.

**CHAIR**—But are you aware that, should the customer purchase an income stream within 21 days, the original lump sum would not be assessed as income?

**Mr Murphy**—Yes, I am aware of that, but—

**CHAIR**—Well, what is the problem with that?

**Mr Murphy**—That is forcing a person to choose to receive their payments in a manner that they may not want to. It is forcing them to receive it in periodic payments. The whole—

**CHAIR**—So you think the taxpayer should just keep paying up?

**Mr Murphy**—No, I do not think the taxpayer should keep paying up. I think if an elderly pensioner is injured and receives a serious disability to a leg for which she is entitled by law to receive a lump sum, that should not then be characterised, as this legislation does, either as income or an asset and therefore affect her pension or affect the way in which she should deal with that.

**CHAIR**—So it just should be treated as a windfall?

**Mr Murphy**—No, it is treated the same way as if you or I receive the money. If the same thing happened to us and we received the money, it does not affect our income.

**CHAIR**—But we are not asking the taxpayer to support us.

**Mr Murphy**—But the person is in a position where the taxpayer is supporting them at the moment. The fact that that happens does not entitle the government to say to them: you have to take your money in this way.

**CHAIR**—So philosophically the lawyers are of the opinion that the taxpayer should support someone on welfare even though they have a considerable amount of money that they could support themselves with?

**Mr Murphy**—Could I say again that, when you use the term ‘considerable amount of money’, generally what we are dealing with is payments of the order of \$15,000, \$20,000 and \$25,000. Could I also raise another point, that if you impose on people who are receiving sums of money of that size a forced annuity you are putting into place arrangements which those sums of money do not justify. I should have made the point before that if this legislation was made the \$10,000 is a ridiculously low threshold to apply. It is just not worth while putting in place complex arrangements for annuities and having the department provide investment advice for a sum of that order which will only run over a few weeks anyway.

**CHAIR**—In paragraph 3.3 of your submission you refer to payments where non-economic loss is the major component of the compensation.

**Mr Murphy**—Exactly.

**CHAIR**—This initiative only applies where the payment is solely for non-economic loss.

**Mr Murphy**—With respect, Senator, that is not correct. The bill specifically says that it applies to any compensation payment which does not include payment for loss of capacity or loss of income.

**CHAIR**—Solely non-economic loss.

**Mr Murphy**—That is not solely non-economic loss.

**CHAIR**—What else is there?

**Mr Murphy**—There are about 15 heads of damage that you recover in an ordinary damage claim: loss of wages, loss of earning capacity—one of those—and damages for pain and suffering is another one. Another is for past care, future care or medical expenses.

**CHAIR**—That is not non-economic loss.

**Mr Murphy**—Well, it is.

**CHAIR**—That is exactly what I am saying. It is precisely what I am saying.

**Mr Murphy**—Can I just repeat again, without wishing to be rude, that that is not a correct reading of the legislation, certainly not as I understand it.

**CHAIR**—I will seek clarification from the department later on because I think you will find that that is so.

**Mr Murphy**—They should then look at seriously amending the legislation to make that quite clear, because it is certainly not clear in that principal section of the legislation at the moment. Really what this legislation will be dealing with is pensioners who receive small sums of the order that I am talking about, and they will strictly be for pain and suffering. They will be, even in those small amounts, a few thousand dollars perhaps, for matters that are not properly categorised as pain and suffering.

**CHAIR**—Thank you, gentlemen, for your time.

[4.35 p.m.]

**MULLINS, Ms Carla, Policy Projects Coordinator, Welfare Rights Centre**

**CHAIR**—I welcome Ms Carla Mullins, who will be giving evidence to the committee by teleconference. As you know, I remind witnesses that the giving of evidence to the committee is protected by parliamentary privilege and also that the giving of false or misleading evidence to the committee may constitute a contempt of the Senate. The committee has before it your submission. Do you wish to make any alterations to that submission?

**Ms Mullins**—At this stage, no.

**CHAIR**—I invite you to make any comments that you wish and then senators will be asking you questions.

**Ms Mullins**—Essentially, the concerns of the National Welfare Rights Network are such that the idea of making a compensation settlement effective on a periodic basis is essentially a good one but it is one that should be applied to economic loss components of compensation and not to the non-economic loss components.

We acknowledge that there has been a history of problems with the payment of lump sum payments to compensation recipients but the problems have resulted from the application of the compensation preclusion period formula contained in the Social Security Act. If there are to be reforms they should be to apply this proposal to the economic loss component of a compensation settlement and not to the non-economic loss components. Thank you.

**CHAIR**—Thank you. I invite Senator Evans to ask any questions.

**Senator CHRIS EVANS**—What is the rationale for excluding non-economic loss from this treatment? Why should that be treated differently?

**Ms Mullins**—Essentially, it is because when you go back to the way in which compensation was treated in 1987—it might even have been earlier—when compensation rules were changed for social security, the underpinning rationale was that people were being treated for their loss of income and were being doubly compensated. The argument of double dipping was always used. That was the rationale that underpinned the changes to compensation and social security relationships back in May 1987. It was always accepted that it is income that will affect the social security payment and that is why we are saying that the non-economic loss component here should not be affecting people. It is like saying that the compensation people are getting for the GST package should be treated as income for social security purposes. It is nonsensical in our view.

**Senator CHRIS EVANS**—I want to make sure I have got this right: you maintain in your submission that the effect of having compensation taken through periodic payments might result in some families actually being worse off than they might otherwise have been?

**Ms Mullins**—It is quite a complex area of the law so I will walk you through it in the sense that a family who gets a period payment for economic loss is affected by the dollar for dollar income test that highlights this economic loss at the moment. This is the reason why, in the case study I have given, these families are worse off.

If you are really interested in encouraging people to take periodic settlements you actually have to address that issue first and you have to acknowledge that they are the problem areas and not try and introduce what we see as a cynical exercise for those people who receive compensation for injuries and disability and loss of pleasure of life. It is not income, and to treat it as such is nonsensical.

**Senator CHRIS EVANS**—My major concern with this—I have put this to other witnesses—is that, if it is really about getting people onto structured payments, one would address that in a holistic way, but this measure is designed to raise the government \$14 million a year. So, clearly, the carrot is not, in their view, going to work, because they are going to continue to raise more money out of people from these payments.

**Ms Mullins**—It is affecting the poorest of the poor. That is my concern. I have not had the opportunity to listen to the evidence given by other witnesses here today, so I am not sure of their responses. Our view is that if you want to fix it through the economic loss component, don't do it through the non-economic loss component, because the people are receiving this money to help them meet capital expenditures that they need that money for.

**Senator CHRIS EVANS**—Are you saying that the encouragement of periodic payments has already been achieved through the 50 per cent rule, or do you think more needs to be done?

**Ms Mullins**—No. I think that encouragement of the periodic payments has not been achieved through the 50 per cent rule or through the application of the dollar for dollar income test. What it has meant, though, is the punishment of those people who receive compensation payments. I think you would encourage more people to adopt the periodic payment alternative if what you were doing was introducing an income stream arrangement and the normal income test arrangements for those people, and facilitating the income stream arrangements for those people who receive compensation for economic loss. You would get your desired result, if what you were interested in was actually helping people who have had workplace or motor vehicle injury.

**Senator CHRIS EVANS**—This is very hard to do over the phone, but I draw your attention to the third dot point on page 1 of your submission, which says that the government's purpose of encouraging the acceptance of periodic compensation payments has already been achieved through the introduction of the 50 per cent rule.

**Ms Mullins**—Let me go back to where I was coming from. If what you are saying is that you want people to take periodic compensation, you can achieve that because of the 50 per cent rule. We acknowledge that that occurs and that people want to try and get periodic payments through that system. The problem is that there are not the structures there for income stream arrangements or which facilitate people taking those options. Many of those people still end up in a lot of trouble because the operation of the compensation preclusion period has become tougher and tougher, and they have to wait longer periods of time before they can receive social security payments. Very often, they have completely used up all of their resources before they can access income support.

**CHAIR**—Dot points 2 and 3 on page 1 of your submission are actually outside the scope of the bill. I think you realise that, don't you?

**Ms Mullins**—I do, but I think that why we have the overall problem has to be taken into consideration. The scope of the bill has to be understood in the broad concept of how compensation and social security operate.

**CHAIR**—Thank you very much, Ms Mullins, for your time.

**Ms Mullins**—Thank you.

**Proceedings suspended from 4.44 p.m. to 4.57 p.m.**

**MITCHELL-TAYLOR, Mr Arthur Clive, Australian Veterans and Defence Service Council and National President, Vietnam Veterans Association of Australia**

**CHAIR**—Welcome, Mr Mitchell-Taylor. I remind witnesses that the giving of evidence to the committee is protected by parliamentary privilege. However, I also remind witnesses that the giving of false or misleading evidence may constitute a contempt of the Senate. The committee has before it both submissions. Do you wish to make any alterations to either of them?

**Mr Mitchell-Taylor**—Not really. Perhaps some explanation might be in order.

**CHAIR**—You can certainly do that now. At the conclusion of that, senators will ask you questions.

**Mr Mitchell-Taylor**—The issue that the Australian Veterans and Defence Service Council, AVADSC, wanted to get across was simply that the nature of service in the Defence Force—whether people are veterans or simply have served—is different from the nature of employment for most other people. It is very difficult for them in most cases to settle down and put roots into the community. Those who do receive lump sum payments of whatever sort generally tend to use those to settle themselves into the community, to purchase houses or businesses. Rather than frittering away lump sums which are derived in this manner, they are used for what most of us would see as a good purpose. That is the main thrust of the submission.

The second point is that where people gain compensation for pain and suffering—and this is a point that the Vietnam Veterans Association will take up—the fact is that they do not see that as income. They see that as a one-off payment for pain and suffering rather than an income stream. I think all of us in the veterans community see that the government's move towards encouraging people to have an income stream is much better in the long term than having lump sum payments. Certainly, as a general rule, that is a thing that they support. In this particular case, they have a bit of a problem with it.

They also bring up the issue of the military compensation and rehabilitation scheme, which has recently been reviewed by Mr Noel Tanzer. In fact, I think the minister for defence personnel is now considering that report and seeing which way it will go. That particular report, its recommendations and the current situation are such that the military compensation scheme actually does encourage lump sum payments rather than providing income over a long period of time. Having covered the civilians and the veterans with this new legislation, it would appear that there is an anomaly because those members of the Defence Force who are not covered by the VEA, but are covered by the military compensation scheme, have a loophole that others do not.

In terms of the Vietnam veterans' submission, we took a slightly different tack on that. I have to say that for those of us who are not trained in legal affairs, it took a bit of getting to the issues for us, particularly as we do not have any full-time staff. Essentially, the problem for the Vietnam veterans is that for all payments under the Veterans' Entitlements Act 1986, whether compensation or not, they do not pay lump sum. In fact, they pay regular payments each fortnight as disability pensions, and Social Security actually takes that as income whereas, in fact, within the act it is defined as being external to income. It is a pension by way of compensation to the veteran rather than an income stream. That is the major problem we have with this. Someone who is getting a disability pension because he or she is disabled then has that disability pension taken into consideration for social security, should he or she be eligible, and the entire payment then is reduced to the same level as everybody else. It really does take

away from the purpose and intent of the Veterans' Entitlements Act. I think that is probably about it.

**CHAIR**—Thank you, Mr Mitchell-Taylor.

**Senator SCHACHT**—Mr Mitchell-Taylor, firstly, the issue of dissipation has been raised as a justification generally for this bill. People have got lump sums—

**Mr Mitchell-Taylor**—I understand that.

**Senator SCHACHT**—and you refer to this in your opening remarks—and they have dissipated them and then have gone back on normal pension after they have supposedly spent the money on the fleshpots of the Riviera, or wherever else. Do you have any evidence, in either the Vietnam Veterans Association or the other organisation representing it, the Veterans and Defence Services Council, of where this has happened—where you have evidence that there has been significant consistent dissipation of the lump sum, and then people have gone back and asked for the normal pension and normal other benefits after they have, as the vernacular would say, blown the money on a good time for a while?

**Mr Mitchell-Taylor**—That is a good question. In fact, we do not have any evidence to support that at all. As I said before, because the Vietnam veterans that we deal with do not receive lump sum payments through the Veterans' Entitlements Act, those who do receive, for separate injuries, perhaps, lump sums through their service in the Defence Force, but not for qualifying service, are generally those who are, for whatever reason, then unable to work. They use that money to settle themselves into the community, generally one with which they have the most ties, either the home town, the wife's home town or a long-term posting. Lots of people, for example, settle in the Albury-Wodonga area. It is quite new, but it is an area that many of them have a great familiarity with.

I served 25 years in the Defence Force and another seven years in the reserve, and I know of no single instance where someone has, as you say, blown the money on the fleshpots of Albury-Wodonga and then fallen back on to social security. It is generally used, in fact, to set a person up in a small business or with a home.

**Senator CHRIS EVANS**—I would like to find those fleshpots in Albury-Wodonga; they were not there last time I was in the town!

**Senator SCHACHT**—As far as you are concerned, any definition of dissipation, if they are using the lump sum to buy a house, to secure themselves for the rest of their lives or establish a small business, pay for their kids' education, pay for things for the home, a car, those sorts of things—

**Mr Mitchell-Taylor**—That is very true.

**Senator SCHACHT**—But you do not consider what I just described as a definition of dissipation of the money—the other side of it—like this colourful description of blowing it on the fleshpots or throwing it all on the races, gambling and so on, the implication of which is that people have a good time for a couple of years and then go back on social security.

**Mr Mitchell-Taylor**—I understand that and I have certainly seen that in the civilian community. I would like to think, and I would hope that it would be supported by the facts, that those who have served in the Defence Force have a greater degree of responsibility which has been inculcated into them. I have not seen any instances of people who have not.

**Senator SCHACHT**—You have not seen any incidents in the 20-odd years plus you have been involved in the services of somebody who did get a lump sum payment blowing it and then queuing up for normal social security benefits?

**Mr Mitchell-Taylor**—Absolutely not.

**Senator SCHACHT**—In the letter from the Vietnam vets, and in your opening remarks, you make it very clear that the compensation paid must be not counted in the definition of income. The second paragraph, on page 2, says:

The proposed legislation places a veteran in a position of disadvantage when compared with a non-veteran receiving a compensation pension of exactly the same rate. The member of the National Council believes that this does not reflect the heretofore beneficial nature of veterans' legislation enacted in this country.

What you are concerned about is that they get the pension, the benefit, the disability pension and then, when they are eligible to get old age pension and so on, this pension is counted for income and then they get, accordingly, a reduction in their old age pension.

**Mr Mitchell-Taylor**—That is correct.

**Senator SCHACHT**—I do not suppose your organisation has any figures on the number of people who have been hit by this?

**Mr Mitchell-Taylor**—We do not. I can certainly try to obtain some.

**Senator SCHACHT**—I would not mind if you could. This is a question that I will put to the Department of Veterans' Affairs myself; I think they should have the records. I would be interested if you have any evidence. Clearly you have got anecdotal evidence of it happening to members of the association.

**Mr Mitchell-Taylor**—In my case, for example, I receive an 80 per cent disability pension because of problems with my hip, having weighed about 100 pounds and carried a 110-pound pack, which makes it difficult sometimes. If, for whatever reason, I have to fall back on social security, then that pension will be counted as income and whatever I get from social security will be discounted by that amount.

**Senator SCHACHT**—So presumably, when you get to the age where you are eligible for an old age pension, in relation to the 80 per cent disability pension you get now—that X amount of dollars per fortnight—your old age pension would be reduced by the equivalent amount or proportionately?

**Mr Mitchell-Taylor**—I do not think that is the case with the service pension.

**Senator SCHACHT**—Not for the service pension. The disability pension you are getting now, if you were not eligible for a service pension, and you were just getting the old age pension—

**Mr Mitchell-Taylor**—Yes, it would be discounted by that amount.

**Senator SCHACHT**—By the full amount?

**Mr Mitchell-Taylor**—Yes, by the full amount.

**Senator SCHACHT**—By the full dollar for dollar?

**Mr Mitchell-Taylor**—Yes, that is my understanding.

**Senator ABETZ**—Isn't it 50 cents in the dollar after you get your tax? You get your \$100 free first of all, the threshold, and then after that it is 50 cents in the dollar, as I understand it?

**Mr Mitchell-Taylor**—I am not sure of the exact amount. But it is offset against the—

**Senator ABETZ**—There is a nod from the audience suggesting that I might be right.

**Senator SCHACHT**—Even after the first \$100, it is 50c.

**Mr Mitchell-Taylor**—That is right.

**Senator ABETZ**—So it is about 20 bucks a week.

**Senator SCHACHT**—That you would have knocked off your pension?

**Mr Mitchell-Taylor**—Yes.

**Senator SCHACHT**—I know the service community has been arguing this for a long time, and it only applies to those who get a disability pension. If you are eligible, as I understand it, for a service pension, it is not discounted, is it? Have I got that correct?

**Mr Mitchell-Taylor**—My understanding is that that is not the case, that the service pension is separate.

**Senator SCHACHT**—Have you served in Vietnam?

**Mr Mitchell-Taylor**—Yes.

**Senator SCHACHT**—As a Vietnam veteran, therefore, you are eligible for a service pension.

**Mr Mitchell-Taylor**—Yes.

**Senator SCHACHT**—As well as your disability pension. You do not suffer any loss because you get the service pension.

**Mr Mitchell-Taylor**—Yes, that is correct.

**Senator SCHACHT**—Fine. You get the service pension in lieu of the old age pension. Is that correct?

**Mr Mitchell-Taylor**—That is correct. And there is a five-year advance, in fact, because it cuts in at 60.

**Senator SCHACHT**—So people get the service pension. In terms of veterans, there is a discrimination between two types of veterans.

**Mr Mitchell-Taylor**—Yes.

**Senator SCHACHT**—Those who served in an allotted war or danger zone, or something, get the benefit of not having it discounted.

**Senator ABETZ**—Those who have qualifying service.

**Senator SCHACHT**—Qualifying service, which means serving in an area where you could be in some danger. Right?

**Mr Mitchell-Taylor**—Yes.

**Senator SCHACHT**—Whereas, if you served in Australia at the time of the Vietnam War but did not leave Australia and therefore you did not qualify for the service, but you suffered a major disability—for instance, if you had a tank run over you or something—you would still be hit with losing part of your old age pension when you are not eligible for the old age pension because you had not qualified for service.

**Mr Mitchell-Taylor**—Correct. It also encompasses those people like me. For example, I am 51 now and not eligible for the service pension for another nine years. So if I were to become unemployed, for whatever reason, I would then be in the position of having to draw social security which would be discounted—

**Senator SCHACHT**—Accordingly; on the same proportion.

**Mr Mitchell-Taylor**—with the formula that we have already learnt of, and not receive the full benefit of the disability pension.

**Senator SCHACHT**—I asked before about numbers of people for the Vietnam vets. Not all people who went into the service at the time of the Vietnam War went to Vietnam—

**Mr Mitchell-Taylor**—That is correct.

**Senator SCHACHT**—but they could have suffered a disability.

**Mr Mitchell-Taylor**—That would come under the military compensation and rehabilitation scheme. Some, in fact, have defence service, which qualifies under the Veterans' Entitlements Act. It is quite a complex formula.

**Senator SCHACHT**—But there would be others who suffer what the veterans community say is an injustice where they lose part of their social security pension—

**Mr Mitchell-Taylor**—Yes.

**Senator SCHACHT**—because they do not meet all these various formulae.

**Mr Mitchell-Taylor**—That is right.

**Senator SCHACHT**—I have got that clear. I know this legislation has a different purpose, but the opposition's view is that this legislation could have been used to amend the veterans act to change this discrimination—that might be too strong. It has operated back through several governments, so it is not a matter of getting stuck into this government right at the moment. But I have to say that I accept the fact that this discrimination has operated through several governments for many years.

The opposition's view is that this may have been an opportunity for a simple amendment to this legislation, and that is what we will be looking at when it gets into the Senate to take account of this discrimination, because it is actually moving to improve the ability for the non-veteran area. It seems odd that the same opportunity has not been taken to improve it for veterans and ex-service people.

I do not know whether it has been brought to the attention of your organisation but, in the submission of the Department of Veterans' Affairs, it is estimated that, to meet the requirement of what your organisation has suggested, an extra \$19 million per annum would be the cost. It is not an insignificant sum of money.

**Mr Mitchell-Taylor**—It is certainly not, but I would like to see the basis on which it was calculated, too.

**Senator SCHACHT**—Yes. That is a question when the Department of Veterans' Affairs turns up. In view of the fact that clearly there is some liberalisation in the civilian area, it does seem to me that this is an opportunity that could be addressed. Thank you, Mr Mitchell-Taylor. That is all I have got.

**Senator ABETZ**—Just very quickly, I think it is 40,000 veterans that may be impacted at \$20 a week multiplied out. I do not know whether that would give your \$19 million figure per annum.

**Senator SCHACHT**—I am only going on the department submission, at paragraph 23:

The current estimated cost of exempting such pensions is \$19 million per annum with other small flow-ons to other departments, for aged care benefits for example. The average increase to single age pension if such an exemption were to be made is estimated at \$20 per week.

**Senator ABETZ**—I suppose you can divide the \$19 million by 52 weeks, then divide that by 20, and that ought to give you the number. Hopefully that gives you \$40,000, if what I was talking about was correct.

Mr Mitchell-Taylor, it is good to see you in Canberra. Last time we saw each other was in Tasmania.

**Mr Mitchell-Taylor**—That is true.

**Senator ABETZ**—Thanks for your submission and for the letter. Can I try and get my head around exactly what you are proposing, because I think there may be a potential flow-on effect which may not necessarily be beneficial to the veteran community. That is what I want to explore with you. As I understand it, the disability pension can be from 10 per cent to 100 per cent rate of disability.

**Mr Mitchell-Taylor**—That is correct.

**Senator ABETZ**—Then, on top of that, you can have TPI or the special rate, which is divided into two, being TPI or the intermediate rate.

**Mr Mitchell-Taylor**—That is correct.

**Senator ABETZ**—What do you say that the TPI or intermediate rate is paid for? Is that for economic loss?

**Mr Mitchell-Taylor**—I am not an expert in this particular area, I am an administrator of the organisation, so I am going to choose my words very carefully. Up to the 100 per cent rate we are actually looking at compensation for disability, which is a non-economic compensation. At the rate above 100 per cent, whether that is the special rate or the intermediate rate, that is—

**Senator ABETZ**—If I may interrupt, you did put that in your submission on the second page: ‘Special rate and intermediate rate’. In fact, the special rate is inclusive of TPI and intermediate rate—is that right?

**Mr Mitchell-Taylor**—Yes. The element above 100 per cent contains an element for economic loss or compensation for economic loss, for the fact that people cannot work.

**Senator ABETZ**—Because for TPI you have a maximum eight hours per week work and for the intermediate rate the cut-off is 20 hours per week work.

**Mr Mitchell-Taylor**—That is correct. There is a rehabilitation scheme in place but, over and above that, yes.

**Senator ABETZ**—Would you then agree, if that is the test for the special rate of payment, that that really is for economic loss and that if we are going to be pure about the way we allocate the disability pension, then the TPI and intermediate rate ought be seen as economic and therefore should be taken off or taken as income? Isn’t that the corollary of what you are saying? Not that I am advocating that, might I add; I am just saying if we were to follow through the logic of what your organisation is suggesting.

**Mr Mitchell-Taylor**—The logic is flawless, but unfortunately the circumstances are such that, if you receive the TPI or the special rate, you actually do not get a social security pension at all.

**Senator ABETZ**—At all?

**Mr Mitchell-Taylor**—At all.

**Senator ABETZ**—You cannot get part intermediate rate—is that what you are telling me?

**Mr Mitchell-Taylor**—What I am telling you is that if you get the special rate of pension then you are not eligible for the social security because you already have a stream of income provided by the Department of Veterans’ Affairs which is outside the social security.

**Senator ABETZ**—Yes, but for income purposes it is like if you are on a special pension—you get your money from DVA, don't you?

**Mr Mitchell-Taylor**—That is correct.

**Senator ABETZ**—Rather than Social Security?

**Mr Mitchell-Taylor**—Yes.

**Senator ABETZ**—And the income test does apply. And if we were to apply the economic and non-economic, wouldn't you have a difficulty there?

**Senator SCHACHT**—Don't you get the TPI irrespective—it is not means tested, is it?

**Mr Mitchell-Taylor**—The TPI is not means tested at all.

**Senator SCHACHT**—The special rate is not means tested, is it? So you would get it—

**Mr Mitchell-Taylor**—It has to do with disability rather than economic circumstances—Senator Schacht is correct. But the situation is such that your pension is paid at that special rate by DVA and not by the department of social security.

**Senator SCHACHT**—And if you get the full rate you do not get a social security pension on top of that, do you?

**Mr Mitchell-Taylor**—No.

**Senator SCHACHT**—Therefore it cannot count for discounting a social security pension?

**Mr Mitchell-Taylor**—That is correct. It is those who are less than 100 per cent who are affected by this, not those who are above 100 per cent.

**Senator ABETZ**—What if you are on the special pension?

**Mr Mitchell-Taylor**—If you are on the special rate, again, you are not eligible for social security, because that is sufficient. In fact, I think you will find it is more than the social security rate.

**Senator SCHACHT**—And you do not get that discounted by a means test on your other income?

**Mr Mitchell-Taylor**—No.

**Senator SCHACHT**—That is recognition of your service, in a sense.

**Mr Mitchell-Taylor**—That is correct.

**Senator SCHACHT**—Not 'in a sense'—in full recognition of your service.

**Mr Mitchell-Taylor**—Again, if I can draw a parallel, if I were to succumb to other injuries and be assessed as being eligible for TPI, the fact that I have a pension from the Defence Force would not be included at all. That would be over and above anything else that I got from TPI.

**Senator ABETZ**—The proposed legislation will treat everybody equally in relation to the non-economic component?

**Mr Mitchell-Taylor**—Yes, it will, except, as I say, that the Social Security Act defines those regular payments made by DVA differently to the act under which the veterans entitled—

**Senator ABETZ**—So the entitlement to the disability pension, and the anomaly—for want of a better word at the moment—or differential between a service pension and an age pension, the treatment of that, exists now and has existed or started to exist from 1973?

**Mr Mitchell-Taylor**—I am not sure of the date, but it has been around for some time.

**Senator ABETZ**—I think it was 25 per cent and then it was ratcheted up to 100 per cent in 1983, I think. This legislation does not impact on that at all, does it?

**Mr Mitchell-Taylor**—No, it does not. It does not impact for the simple reason that DVA does not pay lump sums. Therefore this legislation in its impact will be minimal. It will have no impact because there will be no lump sums from DVA under the present circumstances.

**Senator ABETZ**—But what if it is a third-party lump sum payment? In a car accident you get payment for pain and suffering. The way the non-economic compensation is going to impact on an age pension as opposed to a service pension is exactly the same, isn't it?

**Mr Mitchell-Taylor**—That is correct.

**Senator ABETZ**—So what we are doing is using this legislation to highlight what has been an ongoing beef for some number of years?

**Mr Mitchell-Taylor**—Correct.

**Senator SCHACHT**—Your organisation wants to use this opportunity to amend the legislation, though it is not in the government's proposal, to get rid of what you would see is the discrimination?

**Mr Mitchell-Taylor**—Absolutely. We see that as a flow-on.

**Senator SCHACHT**—And that could cost, accordingly to the figures of DVA, \$20 million. If Senator Abetz's calculation is correct, it is about 40,000 people.

**Mr Mitchell-Taylor**—I calculated it on 45,000 people, which is about the surviving rate, and it works out to about \$400 per annum, if you call it \$20 million. So it is about \$350 a year per person. That is, of course, if everybody was on a pension, and they are not.

**CHAIR**—Thank you very much, Mr Mitchell-Taylor, for your time today.

**Mr Mitchell-Taylor**—Thank you for the opportunity.

[5.25 p.m.]

**JIMMIESON, Mr Mark Alan, Assistant Director, Compensation Unit Disability Policy and Carers Branch, Department of Family and Community Services**

**McIVER, Ms Glenys Dawn, Director, Means Test Policy, Senior and Means Test Branch, Department of Family and Community Services**

**MANN, Mr Evan John, Assistant Secretary, Seniors and Means Test Branch, Department of Family and Community Services**

**HAY, Mr Robert James, Branch Head, Income Support, Department of Veterans' Affairs**

**REECE, Mr Peter James, Divisional Head, Compensation and Support, Department of Veterans' Affairs**

**RICKETTS, Mrs Jeanette, Director, Income Support Policy, Department of Veterans' Affairs**

**CHAIR**—I will remind witnesses that the giving of evidence is protected by parliamentary privilege. However, the giving of false or misleading evidence may constitute a contempt of the Senate. You will not be required to answer questions on the advice you may have given in the formulation of policy or on any personal opinions. The committee has before it the departments' submissions: do you wish to make any alterations to either submission?

**Mr Reece**—No, we do not.

**Mr Mann**—No, thank you.

**CHAIR**—I will invite each department to make an opening statement and then, obviously, there will be questions for you after that.

**Mr Mann**—Our submission is quite long, reflecting both the complexity of the subject and that we thought it important that we tell the committee about the results of the consultation we had on the discussion paper. I will not go over all of that now, other than just to pick up a few things I think are important in understanding our submission. My colleagues and I also will take the opportunity to clarify a couple of things, because this is a complex area and we, like others, have some trouble with it sometimes.

**Senator CHRIS EVANS**—Compared with the next bill we have to deal with, this matter is dead simple.

**Mr Mann**—No, it is not simple, I assure you. It is important I restate the purpose of the bill to encourage the take-up of periodic and ongoing payments by recipients of non-economic loss comp payments, and there are roughly two ways that the bill seeks to do this. One is to change the structure of the means test, to actually invert the incentives to make the treatment of periodic payments more liberal and to make less concessionary the treatment of lump sums. The second way is to actually to give people a choice—that is, to ensure that, if a periodic payment is not available from a comp authority, people are actually able to purchase an income stream. I will get on to the income stream a little more in a second, but I will just say here that, in terms of the coverage of the bill, it does not cover victims of crime.

**Senator CHRIS EVANS**—Since when does it not cover the victims of crime?

**Mr Mann**—The bill itself is a little bit ambiguous, we must admit. If you read the bill, the term 'criminal injuries' does not appear, and that is probably our fault. We acknowledge that. The minister has made it quite clear, however, that 'victims of crime' is not covered by the bill. In fact, the current beneficial treatment of victims of crime will continue.

**Senator CHRIS EVANS**—So are you telling me you are going to amend the bill? We have legal advice in submissions that it is affected. You say it is not clear. Are you saying to me that you are now going to amend the bill or not?

**Mr Mann**—Yes, the submission proposes that to clarify this the bill be amended.

**Senator CHRIS EVANS**—Has that been submitted as yet. Sorry to interrupt you; I just wanted to get it clear.

**Mr Mann**—Yes. The department's submission was submitted, and it does say that.

**Senator CHRIS EVANS**—Has the amendment to the bill been submitted?

**Mr Mann**—No, it has not.

**Senator SCHACHT**—Has it been drafted?

**Mr Mann**—No.

**Senator CHRIS EVANS**—So that will be forthcoming some time shortly: is that right?

**Mr Mann**—Could I say that it is the government's preference to actually amend the bill to clarify it. Currently, with victims of crime, the preclusion rules in fact apply to victims of crime but there has been a longstanding beneficial treatment to disregard them. What we are proposing is that that beneficial treatment continue. It would be best, I think, to clarify it to remove any ambiguity by actually amending the bill. As the submission says, that is the government's intention.

**Senator CHRIS EVANS**—I just want to make it very clear about this. I think that added to the ambiguity almost. I am not criticising you but will the government be introducing an amendment to make it clear that the 'victims of crime' compensation is excluded?

**Mr Mann**—That is what it said in the submission, yes.

**Senator CHRIS EVANS**—When will that be done?

**Mr Mann**—I cannot say at this point, I am afraid.

**Senator SCHACHT**—I would not be surprised if there were government amendments at any stage on a bill that is complex and difficult for everyone to get their head around. Are there any other government amendments proposed now that the bill has been out in the ether for a while and there has been some debate? People have obviously written to the minister—they might have had a query. Is this the only amendment you have proposed to your own bill?

**Mr Mann**—No, there is one other amendment that is proposed, and I will go on to that shortly. That is also explained in our submission.

**Senator CHRIS EVANS**—I did interrupt you. I just wanted to be clear about what you were saying about that.

**Senator SCHACHT**—We would appreciate having the amendments as soon as possible—before we do the committee's report back to the Senate. It would be easier for the government if you actually gave us the amendments before the committee completed its considerations, so that we can actually comment on it. It will just make the system work better.

**Mr Mann**—Yes. In relation to the reason why the government is keen to encourage periodic payments, this has been much discussed this afternoon. One should not see this in isolation only in relation to non-economic loss. You would be aware of government initiatives in the area of income streams in the retirement incomes area, for example, where the desirability of having a reliable regular income stream is seen and accepted by this government.

In relation to compensation payments, the same reasons apply. It is seen that having reliable regular income is desirable. One reason for that is that we in fact do believe that compensation lump sums are not used well in many cases. They are poorly managed or invested in some cases—and, indeed, not spent well. My colleague can shortly go through some evidence that we do have of this actually taking place. The evidence we have is in relation to people who receive lump sum payments for compensation: preclusion rules are applied and they actually come and appeal the application of the preclusion period because they have no money. They actually come in on hardship grounds. We will take you through that evidence shortly.

An issue which the committee asked to be addressed and which has also been discussed this afternoon is why the bill proposes to treat non-economic loss compo as income where these payments do not contain any loss of income. The matter was discussed by the people from the law society, for example. Our answer to that is that in our view the Social Security Act is quite clear on this. Firstly, there is, and always has been, a wide definition of income under the Social Security Act. Income is defined as an amount earned, derived or received by a person by any means from any source for the person's own use or benefit. So that is a wide definition.

In relation to compensation—that is, to these particular payments—the current act in fact treats periodic payments for non-economic loss as income. It also treats mixed amounts—that is, a combination of economic and non-economic—as income in the sense that preclusion periods are calculated. Even in the case of lump sum purely non-economic payments, an allowee could lose one period's payment. It is not a significant amount of money, but the principle is there: these are not special amounts of money which are not seen as income. They always have been seen, consistent with the broad definition of income in the Social Security Act, as in some respect income—treated differently, certainly, from matters of, say, pure economic loss, where there clearly is a difference; being treated in a concessionary way relative to that.

The bill does not therefore depart in any way from the longstanding treatment under the Social Security Act of this sort of payment. It does jiggle it around, it inverts the means test, but in principle there is no change in that regard.

We attached to our submission a copy of our discussion paper that we put out for consultation on income streams. The origins of that were that we were concerned that people had a real choice; we were listening to people out there. We did a round of consultation last year. We talked with people, including those in the financial sector. We thought it was important that we provide a genuine choice to people where a comp authority was not going to provide a periodic payment.

The results of the discussion paper confirmed in our mind that this income stream option is a viable option. In particular, we were pleased to see that the products that we were suggesting would be appropriate for this sort of use are in some cases available now—that is, they are fairly conventional annuities or they might take a little bit of adaptation. I guess the important point is that there is no major product development here for annuity providers. They are fairly straightforward instruments. They are also reasonably well understood by people. So it does not require any great change on the part of providers to produce these particular financial products.

We believe that the availability of choice does go some way to meeting the committee's concern about hardship on people. However, it is recognised—I refer here to the second area where the submission suggests that some amendments to the bill might be appropriate—that

it would not be fair in all cases to expect a person to take an income stream. This would be in situations where a person faces a cash flow problem. Bear in mind that an income stream will not remove resources from somebody, because the attraction of the income stream rules is that, because the purchase price is disregarded under the income test, it is really very similar to the way we treat lump sums now. So the actual resources available to a person would not be significantly affected. However, it does mean that money is only available in amounts over a period. There would be some people for whom this would constitute hardship because they need money up-front now to meet costs that relate to their injury.

We have looked at this. We acknowledge that, even with the \$10,000 threshold, the income test free areas and the things that are mentioned in the bill now about where a comp authority makes a third-party payment—say, directly to a builder, to allow someone to fix up their bathroom and so on—those things are already allowed for in the bill. But there will be situations where a comp authority does not allow for that sort of thing or a court decides on a lump sum of money and makes no provision for this sort of thing.

There will be a provision under the bill whereby the secretary or his delegate could decide in certain circumstances that a certain part of a lump sum would not be required to be invested in an income stream; hence we think that certainly addresses what in some cases is certainly a hardship.

**Senator SCHACHT**—That is delegated to the head of the department?

**Mr Mann**—That is right.

**Senator SCHACHT**—And he will delegate it to a number of appropriate officers?

**Mr Mann**—That is right. The submission proposes that the criteria—

**Senator SCHACHT**—Do you expect there would be 50 of those a month, a year, or 500?

**Mr Mann**—I do not think there would be 500 a year. The circumstances under which it would be used are described in the submission.

**Senator SCHACHT**—I just want to get an idea of what you think the numbers are.

**Mr Mann**—So these will be set down in the criteria. The codification of this particular discretion will be set down in a disallowable instrument and submitted to the parliament.

There are a couple of things that I would like to respond to in terms of things that were said earlier. In relation to the costing of this proposal, Senator Evans mentioned that there were savings that accrued because of this initiative. There are savings. The savings taper off in the out years and, consistent with the purpose of the measure, we would be delighted if they tapered off even further. We have assumed a take-up of income stream of 50 per cent of the actual population—that is, our customers who have these lump sums. We have assumed 50 per cent by the end of the forward estimate period.

We have assumed that not all people will take up the option. I will explain the reason for that. Remember that the maximum penalty here if a person chooses to continue with a lump sum is one year's allowance or pension. Where a person has a very large lump sum, that may not be a significant consideration for them. Some people will decide that, no matter the penalty for losing the pension, they want to carry on with their lump sum. For many others, the penalty is only a loss of part of a pension. Many of these people have part pensions now. So even though their lump sum may be smaller, they still may elect not to take the income stream option. We think that over time the take-up will improve. We think it will improve beyond the 50 per cent.

**Senator CHRIS EVANS**—Even on your estimates, you are still making \$12 million in five years time.

**Mr Mann**—That is right.

**Senator CHRIS EVANS**—I will let you finish your introduction, but it seems to me that when you tell me this is all about getting people into structured payments, if you were not making money in five years time in the order of \$12 million I would be more inclined to accept that that was the only rationale. But when the lawyers and others tell me it is a revenue raising measure and in five years of out years you are still making \$12 million, I tend to believe that they have got a case.

**Senator SCHACHT**—It is much more believable that this is Finance's view.

**Senator CHRIS EVANS**—The rhetoric does not fit the economic take-up. The first thing that strikes me—and I read the rhetoric; I understand what the rationale is—is that this is not about structured payments. Everyone else tells me you can have a system of structured payments, you can change the policy, without doing what you are doing in terms of non-economic loss. Then I look at the budget measure and I see that in five years time you still have a \$12 million take and I say, 'Hang on.' Maybe I am a cynic, but perhaps this is more about revenue measures. I made it clear to you earlier that that is the hurdle I am having trouble getting over. I hear the rhetoric, but what the other witnesses tell us and what your own drawback, revenue wise, tells us is that this is an ongoing revenue measure.

**Mr Mann**—As I said, we think it will slowly come down. Maybe our assumption is wrong. Maybe that 50 per cent is too high.

**Senator CHRIS EVANS**—Maybe it is too low as well.

**Mr Mann**—We have discussed this with Finance and have agreement on the assumption.

**Senator CHRIS EVANS**—But like any other assumption, you could be 10 per cent up or 10 per cent down. I am not going to argue about that.

**Mr Mann**—You could be right.

**Senator CHRIS EVANS**—You had to make a best guess.

**Mr Mann**—That is the underlying assumption behind the costing. In conclusion, this is a difficult area of policy. We have learnt from discussions with comp authorities, with the financial sector and with other groups. In a number of ways, we have responded to that. In particular, I refer to the development of the income streams option, which I think does provide choice, and most recently, as I have just mentioned, the development of a discretion which the secretary would exercise where we think it is unreasonable to expect a person to put all of their funds into an income stream. We think those two things in particular do address some of the choice and equity issues. We think they improve the measure which fundamentally still is true to the measure announced last year which promoted periodic payments or income streams. There were two points of clarification which I might ask Glenys to elaborate on in terms of definition.

**Ms McIver**—The first one is in relation to the issue of dissipation which has been much discussed this afternoon. Evidence that a high proportion of compensation lump sums are not being used for ongoing income support is actually quite readily available. Under the provisions of section 1184 of the Social Security Act, customers who have been awarded a lump sum and a consequential preclusion period—I am talking about a lump sum containing a component of economic loss—and who are serving their preclusion period, can lodge appeals on the ground of financial hardship. About 13,000 preclusion periods are imposed every year. The

latest statistics that we have indicate that we are having about 880 appeals per year, about seven per cent, on the grounds that people have encountered financial hardship.

**Senator CHRIS EVANS**—You get 13,000 preclusion periods a year and you get 180 appeals?

**Ms McIver**—Eight hundred and eighty. There would be others who did not pursue the matter to appeal—I am not talking about the ones who just get reviewed internally—and there will be others who will return to work before their preclusion period ends.

When we look at the reasons these appellants cite for being in financial hardship, sometimes only 18 months after they have got hundreds of thousands of dollars, the common ones are large, unrecoverable gifts to family members, failed business ventures, gambling, and regular use of recreational drugs. In many cases, the money has just disappeared and they do not know what happened to it.

They also frequently cite the purchase or extensive renovation of homes, apparently having ignored the impact of a large capital purchase on their ability to generate an adequate income to last for that preclusion period. I should clarify that I am talking about settlements which contain an economic loss element. We have not had access to similar sort of information for purely non-economic loss payments. But these are people who know that they are expected to use this money for regular living expenses and this is still, unfortunately, what has happened to it. The fact that people do spend this money unwisely is something that has been extensively commented on by tribunals. I am happy to answer questions later on this issue.

**Senator SCHACHT**—With regard to the earlier evidence that there were no real figures available to suggest there was widespread dissipation, you feel that those figures dispute that evidence of earlier witnesses?

**Ms McIver**—I think that this is evidence that these lump sums are being used unwisely.

**Senator CHRIS EVANS**—Those are lump sums relating to economic loss?

**Ms McIver**—Yes.

**Mr Mann**—To a mixture of economic and non-economic loss. They can be very largely non-economic loss.

**Senator SCHACHT**—You said, colourfully and obviously correctly, that many of these are several hundred thousand dollar payouts. Can you provide us with the range of payouts that people have got? For example, I would be concerned—I agree with you—if someone had got a payout of \$300,000 or \$400,000 and in two years blew it on gambling, recreational drugs, et cetera. It would be a matter for considerable concern that they can clearly, irresponsibly dissipate a very large amount of money which, if they had invested it in a bank, interest bearing bonds, et cetera, would provide them with more than enough income on which to live.

**Senator CHRIS EVANS**—Sounds like they had a good couple of years!

**CHAIR**—Senator, I suggest that the officers complete their opening statements because many of the questions that you are asking might be answered.

**Senator SCHACHT**—I am not sure.

**Senator CHRIS EVANS**—With due respect, Madam Chair, I think we have had about 30 minutes of opening statements and we are running out of time. Perhaps we could make it a bit shorter.

**CHAIR**—I think it has been a mixture of questions as well.

**Senator SCHACHT**—I have not even tackled Veterans' Affairs yet.

**CHAIR**—DVA have not had a go yet, so can we just wrap up some of the opening statements and then we will go to questions on anything that is left unanswered.

**Ms McIver**—Certainly. I will be very brief about my other point, which is in relation to what we classify as economic loss and what is classified as non-economic loss. The distinction in the Social Security Act is very simple. In our legislation, for the existing compensation provisions to apply, the sum has to comprise some element of lost earnings and/or lost capacity to earn. If it has that, it is treated under the existing compensation provisions with preclusion periods or direct deductions for periodic payments. If not, it is not taken into account under those provisions. These provisions could apply to it. There would be circumstances where the discretion could apply. I am happy to take questions on that at a later stage. That is a very brief outline of what is and is not economic loss within the social security system.

**Mr Reece**—I will be brief. The main policy thrust for this proposal is from my colleagues in Family and Community Services. As a general rule, the formula for veterans as part of the aged population is about one-seventh; nevertheless, we try to follow on wherever we can to get consistency in the treatment of income support means testing for the aged.

Having said that, there are some issues connected with veterans which I have heard the committee put to Mr Clive Mitchell-Taylor. We are happy to go straight to questions, if you like. It might assist if the questions were divided between the major issues of policy relating to the bill as they affect non-economic loss and then separate questions for us. That might facilitate the hearing.

**Senator SCHACHT**—Can you provide us with a list of the 800, or a sample of how many were what you might call the big amounts of money—several hundred thousand dollars—that were dissipated. How many were much smaller amounts—\$10,000, \$20,000 or \$30,000—where the money, even if they invested it, would provide only a small supplementary income and it might well be better that they spent the \$20,000 doing the house up, creating a capital value in their house or paying off the car or getting a decent car and so on.

**Senator CHRIS EVANS**—Senator Schacht, I think the Law Society mentioned a figure as an average of about \$25,000. What does the department say about an average?

**Ms McIver**—They were talking about non-economic loss. The evidence that I was talking about with the appeals was much higher amounts for mixed settlements.

**Senator CHRIS EVANS**—I accept that evidence, but I do not think we want to get stuck on that evidence because that is a separate category, in a sense.

**Ms McIver**—Sorry, I thought that was what Senator Schacht was asking about.

**Senator CHRIS EVANS**—It is important, when you are talking to us about this, to be clear about what you say is the average payment for economic loss. What are we talking about? My understanding from what the lawyers were saying was that we are talking about \$20,000 to \$25,000 as the average.

**Ms McIver**—We are talking about figures for non-economic loss now, are we?

**Senator CHRIS EVANS**—Yes.

**Ms McIver**—We do have some figures on that.

**Senator CHRIS EVANS**—They were talking about small payments and you used the example of the large payments. I want to be very clear as to what it is we are talking about.

**Senator SCHACHT**—Where did the large payment come from?

**Ms McIver**—I have got an example here: \$280,000 spent within a year. That was one that had economic loss. That person purchased a car for \$53,000 for his girlfriend and spent \$14,000 on a ride-on mower, so we have got instances—

**Senator SCHACHT**—For a ride-on mower?

**Ms McIver**—Yes. There was the purchase of a bed for back injuries, an airconditioner, washing machine, computer and software, and he lent \$30,000 to his brother. The money has not been repaid; the brother's whereabouts are unknown. The brother is now saying that he was only lent \$5,000. So this is a case where \$280,000 has disappeared in a year.

**Senator CHRIS EVANS**—So the lawyers then say they have got a dear old lady who hurt her leg in a car accident and she got \$20,000 which she wanted to use to pay off her home. I discount both, to be honest, and I ask: what are we actually talking about here? Not the best example to suit your case, not the best example to suit their case: what is the factual position with compensation payments, non-economic loss, affected by this bill?

**Mr Mann**—A typical, average sized lump sum?

**Senator CHRIS EVANS**—No, what are we talking about?

**Senator SCHACHT**—What does it mean? Who is this addressing?

**Senator CHRIS EVANS**—What payments is this supposed to be addressing? What is the average or the mean?

**Senator SCHACHT**—The average will be different from the mean.

**Mr Mann**—That is right, because most of these payments are quite small. Typically, you are talking about \$10,000 or \$15,000, so we are ignoring the large tail, which come below, say, \$10,000. The ones that are affected by this bill are in the ranges above, and we can give you figures for the ranges from \$10,000 up.

**Senator CHRIS EVANS**—I would appreciate any information you can get for us. What is the minimum that you need to take out an income stream product? From my dealings with income stream products in the superannuation areas, we are generally talking about figures of \$100,000 to \$200,000 to provide an income stream. At what point is an income stream product viable?

**Mr Mann**—The products we are looking at are relatively simple products. They are not like superannuation pensions and so on where you are talking about very large amounts. We are talking mostly about annuities offered by, say, insurance companies. At the moment, insurance companies offer things from \$10,000 up, giving normal sorts of conservative returns of interest. We have been talking to a couple of providers about providing annuities of an even lesser amount—that is, from \$5,000 to \$10,000.

**Senator CHRIS EVANS**—Do you know what the costs involved in taking out those sorts of streams are?

**Mr Mann**—If you purchased an annuity for, say, \$15,000, if you took it over a couple of years, your return might be three per cent. That is a return after all costs. Even if you get an investment adviser, who the insurance company would pay, that is included in that return. So there are no up-front costs to a purchaser of an annuity like that.

**Senator SCHACHT**—They get three per cent on the \$15,000?

**Mr Mann**—Yes.

**Senator CHRIS EVANS**—You have got an ongoing relationship with the insurance company?

**Mr Mann**—Yes. You get a regular payment from the insurance company. The things we have been looking at are monthly payments.

**Senator CHRIS EVANS**—Why is the insurance company still involved if you are purchasing—

**Mr Mann**—I am talking about National Mutual or AMP. Let me explain the process. The compensation insurer makes the lump sum payment to the individual. The individual then makes a choice. If they want to take an income stream, they make that payment. They purchase an annuity from AMP, a friendly society or whatever. That provider then pays—in the products we are looking at—a monthly amount of the annuity. Depending on the draw-down, it would be exhausted after, say, three, five or however many years. So it is a typical annuity product.

**Senator CHRIS EVANS**—So we are generally talking about quite small amounts, it seems. I just want to understand what your rationale is, because it is for non-economic loss and you say they may not use it well; they may not spend it well. I guess my question to you is: what business is it of yours? That is the key philosophical question here. If an old age pensioner gets \$15,000 for non-economic loss for pain and suffering, what business is it of yours?

**Senator ABETZ**—But isn't that a policy question?

**CHAIR**—That is a government policy decision.

**Senator SCHACHT**—No, hang on; it is not a policy question.

**CHAIR**—It is a government policy decision.

**Senator SCHACHT**—Do they have a list of the dissipation to say, 'Spending it on a house renovation is okay; buying a new car is not; putting it in some—

**Senator ABETZ**—That is different.

**CHAIR**—That is a different question.

**Senator SCHACHT**—That is the question.

**CHAIR**—No, that is a different question.

**Senator SCHACHT**—We just want to know what is on the list and how you would describe dissipation. You gave us an example of how they blew \$250,000, and most of us would not disagree with some aspects of that. If they get \$10,000 and they do the house up and make it more livable for a longer period or they buy a car that helps them with their disability, then the money is gone, true. Is that included in the definition of dissipation and what you are considering as a waste of money? If it is, I would have to say that I think it is a bit rugged.

**Senator ABETZ**—As I understand, dissipation does not include compensation for specific items where specific compensation has been given for certain disabilities and they are set out—

**Senator CHRIS EVANS**—It is only paid direct by the insurance company, not at your discretion.

**Mr Mann**—There are several questions I should respond to. The submission does use the word 'dissipation'. It also uses the words 'poor investment or an investment that does not generate any income'. There are a variety of categories there. You will find that the information from the tribunals, for example, talks about all of these things. I would not use the word 'dissipation' to describe an investment in something which does not generate an

income. It might in the long run be a sound investment and a bit of capital, but it does not provide an income to live on, and that is what some of these cases are about.

**Senator SCHACHT**—But it might improve their quality of life.

**Mr Mann**—Yes, it may do.

**Senator SCHACHT**—What is the bottom line? Is quality of life going to be included? How do you judge quality of life? So you are telling me that dissipation definitions are actually coming out of the tribunal's experience—or is there a list in the department?

**Mr Mann**—We do not have a list of dissipation, but we do have evidence from the tribunals—

**Senator CHRIS EVANS**—So we have to have a disallowable instrument which determines the secretary's discretion about what you think they should be allowed to spend it on.

**Mr Mann**—Yes. Let me explain that. As I said earlier, the idea of the secretary's discretion is that it is accepted in some circumstances that it is not fair to ask a person to put all their money in an income stream. The instances where we believe that would be a fair thing would be, for example, where large—and it is similar to what comp authorities do, basically—amounts of money are spent up front on matters that relate to an injury. A typical example might be where it is necessary, for example, to renovate a bathroom. There may be aids and appliances that need to be purchased that relate to the injury. We believe it is fair enough to consider the sorts of things that a comp authority would make direct provision for as matters that could be taken into account by the secretary in exercising his discretion.

**Senator CHRIS EVANS**—I have a question on a separate issue. I know we are running out time, and I want to let other people have a go. You make it clear now that there will be an amendment to exclude criminal injuries compensation payments. I want to understand what is the difference between a pensioner who hurts their leg in a car accident and gets non-economic loss compensation of \$12,000 and a pensioner who hurts their leg in a criminal attack and gets compensation of \$12,000. Why do you say one should be taken as an income stream and the other ought not?

**Mr Mann**—The injury could be actually identical. The reason is that this sort of differentiation has applied for many years. Currently, under the Social Security Act, as it is interpreted by the department over many years, we do not treat criminal injury compensation in the same way as other injury compensation. There is a qualitative difference in terms of the association of the criminal act in the experience of injury compared with one that is not a criminal act. That is probably as good as I can do. Certainly, that distinction has been accepted for many years. What the government is proposing is to continue with that distinction. If something is criminal injuries compensation, then that is good enough to keep it out.

**Senator CHRIS EVANS**—What about a motor vehicle accident where there might have been criminal activity? If it was a hit and run in a motor vehicle accident, how is that treated?

**Mr Mann**—If compensation is paid out under criminal injuries legislation, then that is out.

**Senator CHRIS EVANS**—This might be testing your background but do you know what the original basis for that distinction was?

**Mr Mann**—I have sought to find out, but I cannot. I can only assume that what I said to you earlier was true. It may also have been that, in past years, this was not a particularly important area. There may have been small bits.

**Senator ABETZ**—How long has that applied for?

**Mr Mann**—A long time.

**Senator ABETZ**—What is a long time—20 years?

**Mr Jimmieson**—We have got officers that have been around for at least 10 or 12 years and it has been in place since then.

**Senator CHRIS EVANS**—Why the \$10,000? Why not \$20,000; why not 5,000?

**Mr Mann**—I do not think there is any objective answer I can give to that. Inevitably, there is an arbitrary thing here. \$10,000 is roughly what the single pension is over a year. I have no strong grounds.

**Mr Jimmieson**—I can add that some of the data that we saw from workers compensation and motor accident authorities showed that the average size of the lump sum purely for non-economic loss was in the realm of \$10,000.

**Senator ABETZ**—Can I move on to another topic?

**CHAIR**—You certainly can.

**Senator ABETZ**—I want to go to the Department of Veterans' Affairs to see whether Mr Reece can assist in relation to the matter I put to Mr Mitchell-Taylor from the Vietnam Veterans Association about the possible impact on entitlements. I was just wondering whether you might have some comment to make on that, Mr Reece?

**Mr Reece**—As I understand it, Mr Mitchell-Taylor is suggesting that the general rate up to 100 per cent be treated as non-economic—that is his definition—and the bit above that is economic. The TPI rate at present in total is \$645 per fortnight. That comprises the general rate element which he is saying ought to be non-economic. It is \$244 at present. That would be completely disregarded under this legislation. The economic bit for the special rate is about \$400, and that would be treated under the existing test for economic compensation on a dollar for dollar basis. The existing service or age pension is \$361, so it will wipe it out. At present a TPI, on the current income test, gets about \$90 of pension after the income test. That is the difference that distinction would bring. He would actually go from \$90 to nothing, if you made that distinction, but that is pure application of the policy if you were going to be perfectly consistent.

**Senator ABETZ**—Has this sort of legislation relating to the treatment of lump sum non-economic loss payments been considered before?

**Mr Reece**—For veterans, we do not pay lump sums at all. We only ever pay periodic payments.

**Senator ABETZ**—No, this legislation dealing with non-economic loss payments—

**Mr Reece**—I will defer to my colleagues.

**Senator ABETZ**—This type of legislation that we are dealing with—has this fallen out of the sky or has it been around in the policy pots of the departments for some time?

**Mr Mann**—Compensation is a difficult area and there have been a variety of changes to compensation policy over the years. There was a proposal of the previous government back in the 1993 budget that did bear on non-economic loss lump sums. It was actually quite a different proposal and had a different purpose. The purpose was to address cost shifting from state jurisdictions to the Commonwealth, and it did it by essentially extending the preclusion rules to all compensation lump sums.

**Senator ABETZ**—To all?

**Mr Mann**—To all, including purely non-economic loss. That means that a person can lose a pension for some years. In contrast to this one, which has a \$10,000 threshold, there are a number of ways in which, either through the treatment of periodic payments or through the income streams option, there is no significance. The answer to your question, Senator, is that, in relation to the area, yes, there was a proposal some years ago, but it was quite a different proposal.

**Senator ABETZ**—Without trying to describe it, does it look as though the 1993 proposal was a bit harsher than this one?

**Mr Mann**—It was certainly harsher than this one, yes.

**Senator ABETZ**—Can the Department of Veterans' Affairs confirm for the record when the anomaly was created to exempt disability pensioners' income for the service pension from DVA but not for the age pension which is paid by the Department of Family and Community Services?

**Mr Reece**—It started in 1973 at the level of 25 per cent and was progressively increased over the next 10 years to total exemption.

**Senator ABETZ**—What is the cost of fixing this anomaly? We have heard the figure from the DVA point of view of \$19 million. Are there any additional consequences that might flow besides that \$19 million?

**Mr Reece**—It is a savings option, as you understand, for Family and Community Services. For us, though, to extend the exemption to disability pensioners being paid age pension is about \$19 million per year in full. There are some other flow-on costs in terms of nursing homes to Health and Aged Care—a small amount—because it changes the means test there.

We also believe we should be addressing the issue of rent assistance because the way in which we means test rent assistance and the way in which Family and Community Services treat rent assistance are different. We would need to bring those in line because it would automatically be anomalous if we did not. We think it would cost an extra \$6 million a year to remove that anomaly as well. That would be to fix that issue completely.

**Senator SCHACHT**—So that is, all up, about \$25 million.

**Mr Reece**—Yes, per year.

**Senator SCHACHT**—The government promised when it got elected in 1996 that there would be a review of this matter and other matters, et cetera. Has that review been completed?

**Mr Reece**—Yes, it has. It was a review by my colleagues and ourselves to look at all of the issues surrounding this, which has been done now for some time.

**Senator SCHACHT**—Has the review been released?

**Mr Reece**—No, it has not.

**Senator SCHACHT**—Do you know whether the government has given any indication that it will be released?

**Mr Reece**—My understanding is that the ministers are reluctant to do so at this stage.

**Senator SCHACHT**—This is a matter for the ministers, and they are not at the table. It seems to me that this issue that has been raised by the veterans community, as well as by the opposition, about this so-called anomaly, as Senator Abetz has described it, has been around

for a long time in the veterans area. I ask you to take on notice to the minister whether that review could be released, to give us an indication of what the government is thinking with regard to that review.

Although I have considerable sympathy that finally this anomaly can be addressed in the veterans area, I would also like to get as much information as possible about the whys and wherefores of it. Also, is there a philosophical issue as to why there should be discrimination, if you want to call it that, between a person getting a disability pension who has not served overseas and therefore does not get a service pension and those that do go overseas and get a service pension and therefore do not suffer the discrimination? In regard to the philosophy or theology of the Department of Veterans' Affairs, why is there that separation?

**Mr Reece**—I am happy to convey that request to the ministers. In respect of the last point about the policy approach, the differential applied to those with service pension and those without, that has been a policy ever since the war for all governments. They get a different set of benefits, and this is just one. For example, recently the overseas people with qualifying service also received the gold card. The differential has in fact increased. The report, as I recall it, does not go to those policy differences. They are taken as a given.

That is the policy background. The report, and the work that we did, really examines all the complexities of that, and the connected issues like rent assistance. With regard to the implication identified in our submission about the definitional issues which you apply to veterans' benefits, as you will understand, they were derived at a time before social security benefits were even considered. They have developed in tandem with social security benefits. The meshing of those has never really been addressed.

The difficulty we face in the review is trying to apply the modern definitions of non-economic and economic retrospectively to a benefit where the distinction was never drawn. That applies to war widows, and to TPI, in particular, because at the time those benefits were designed to provide for the person's total life needs. There was no distinction drawn between pain and suffering and the need to replace the breadwinner or to replace work. They are modern distinctions. It is very difficult. So the review rather agonisingly goes through that detail, but without clear conclusions, if you like. They end up being government decisions about applying those definitions.

**Senator SCHACHT**—I appreciate that. I can understand that, to use a phrase, the theology or the philosophy of veterans issues going back to 1919 is all mixed in. Therefore, that probably strengthens my request. The review brings together a lot of information which I think it would be useful for the veterans community to see.

**Mr Reece**—Certainly. I am happy to convey that back.

**Senator SCHACHT**—I have to say that I do not think this bill is going to get through the Senate before 30 June, in view of what else we are dealing with, even though it is an important bill and the government may wish to push it along.

**Senator CHRIS EVANS**—No, it is not on the list they have given us.

**Senator SCHACHT**—In that case we are not going to be dealing with it until we come back in August, at the earliest. Therefore, I think the government does have an opportunity to consider the review and release it in a timely manner for the community, particularly the veterans community, to consider it.

The other issue I wanted to raise with the Department of Veterans' Affairs, as I have raised with the other department and with colleagues, is about this dissipation. Mr Mitchell-Taylor suggested that in his personal experience there was no anecdotal evidence that there had been dissipation of lump sums from disability because, first of all, a large number are not paid as a lump sum, et cetera. Are there any lump sums that you have come across where people have got lump sums in the veterans area from other departments or in the area of lump sum payments?

**Mr Reece**—Not that we are aware of. There obviously would be cases where veterans have received a lump sum for a third-party compensation award stemming from the courts or an insurance settlement of some kind. We would not necessarily know about it, except to the extent that it was declared as an asset or income derived from an investment showing up in a service pension. I have not made that inquiry. All I can say is that there is a concern about dissipation. Our view, though, is probably currently more concerned with the military compensation scheme, which, as you understand, runs in parallel with the veterans scheme, where lump sums are paid. That concern is equally shared there, because they equally can dissipate that lump sum and come back to social security benefits.

**Senator SCHACHT**—With regard to the military compensation scheme which the defence department is currently reviewing, does the veterans' affairs department have any role in administering the military compensation scheme?

**Mr Reece**—Not per se. We do have a sizeable client group, though, who do have eligibility for both schemes. Those who enlisted between 1972 and, in general terms, 1994 have dual eligibility under both schemes. If they claim in both places, we have an arrangement to offset one against the other.

**Senator SCHACHT**—In the submission from the Australian Veterans and Defence Service Council, the second last paragraph reads:

. . . the Department of Defence is reviewing the existing Military Compensation Scheme. The Scheme tends to favour lump-sum payments.

It goes on to comment:

This action appears to be quite contrary to the Government's commitment to a broad policy objective of encouraging self-reliance through the security of a steady income stream.

Can either department get information from the Department of Defence, which administers the scheme specifically, about the dissipation issue under military compensation—the lump sums they pay?

**Mr Reece**—Yes, certainly.

**Senator SCHACHT**—In terms of what we raised with Ms McIver, not just about the average, the mean, the numbers, et cetera, but as to what is economic and non-economic loss, et cetera, I think that would be useful.

**Mr Reece**—I would have to say by way of qualification that the lump sums payable under the military compensation scheme relative to third-party settlements are much smaller.

**Senator SCHACHT**—Yes.

**Mr Reece**—The maximum at present for a widow is just over \$200,000, and she gets in addition to that a superannuation stream from her—

**Senator SCHACHT**—If the widow got, under the compensation scheme, the maximum amount of \$200,000, that is hers to spend how she likes at the moment?

**Mr Reece**—Yes.

**Senator SCHACHT**—Is there any indication that what the department is doing here in the civil area—about trying to income-stream—is being considered or suggested by people for this review of the military compensation scheme?

**Mr Reece**—It certainly would be applied. My colleagues can correct me, but if that was a lump sum paid for pain and suffering, as was the widow's payment which I just mentioned, it would be treated in the same way.

**Senator SCHACHT**—We have been given an example of someone blowing \$200,000 as a mixture of payment. At the moment, a widow under the military compensation scheme could get \$200,000, the maximum payment, and blow it—dissipate it frivolously—and there is no control over her doing that or stopping her from doing that, is there?

**Mr Reece**—Absolutely not.

**Senator SCHACHT**—This submission raises the point: are we being consistent, because under the review of the military compensation scheme, there is a view that that should also have the same procedures of encouraging people to go into an income stream?

**Mr Jimmieson**—Under the Social Security Act, compensation lump sums paid to surviving dependants—say, to a widow of someone who died as a result of a personal injury—are not assessed as compensation under our act. It is assessed primarily as an asset. It is disregarded for pension purposes and assessed in the fortnight of receipt for allowance purposes.

**Mr Reece**—I probably misled you, Senator.

**Senator CHRIS EVANS**—So it is not picked up under this amendment?

**Mr Jimmieson**—No, because it is not a personal injury of that recipient. The bill applies only to personal injury compensation payments to the person who suffered the personal injury.

**Mr Reece**—I am sorry, Senator, I have misled you. I should have allowed my colleagues to answer those questions.

**Senator CHRIS EVANS**—Just so that we are clear: the distinction, therefore, is that if it is your compensation, you are hit by this amendment; if it is a surviving relative or dependant, they are not hit.

**Mr Jimmieson**—That is right.

**Senator SCHACHT**—Let us take it under military compensation: if the person who gets it is not the widow but the person who has lost a leg—a tank ran over them or something gruesome like that—

**Senator CHRIS EVANS**—You have got this thing about tanks!

**Senator SCHACHT**—I can understand that if a tank ran over your leg, you would have a fair chance that it would disappear.

**Senator ABETZ**—Dissipate!

**Senator SCHACHT**—Rather gruesomely, I should imagine. That person gets lump sum compensation under the military compensation scheme. They do not have any restriction on how it is going to be income streamed. Is that correct?

**Mr Reece**—No, it is not treated, as I understand it.

**Mr Jimmieson**—If there was no component for economic loss, if they lost earnings or lost capacity to earn, if it was from the personal injury of the person, then it could be caught under the bill, I would imagine. The military compensation scheme is a compensation scheme on par with the state workers compensation schemes generally. So a payment purely for non-economic loss where there are no lost earnings or lost capacity to earn would be caught.

**Senator SCHACHT**—From now on, such people who get the payment would be told, instructed or advised that they should be income-streamed, otherwise they suffer some penalties.

**Mr Reece**—If they then applied for a benefit from Social Security, which would be unlikely if they have got income support at 75 per cent of their final salary until they are aged 65. So they have an existing income stream which does not make application for a benefit relevant.

**Senator SCHACHT**—There is no move under this review, instead of paying lump sums, to do what DVA do and pay fortnightly or monthly pensions?

**Mr Reece**—It was considered in great detail for all the issues we have discussed. In fact, the reverse is equally true. It was also suggested that the DVA ought to pay lump sums where the pensions are small and the administration cost is excessive. For example, we are still paying pensions to people of 81c a fortnight. This is just not economic. There is a redemption provision also in the military compensation scheme for the same reason.

**Senator SCHACHT**—Was that for a small wound in the Boer War?

**Mr Reece**—No, it is just a little foible. They were called dependants pensions and it was an amount awarded to wives to care for children. It was, of course, overtaken by family benefits when they came in. This is one of the few times where you get government addressing this interaction of veterans and social security benefits. They were frozen at that level at the time.

**Senator CHRIS EVANS**—So you think a lump sum would avoid the economic loss to the department on this occasion?

**Mr Reece**—It would in this case. We did offer a cash-out many years ago and a proportion did take it. They took a year's pay of their benefit, but we were left with a lot who opted not to, and that was a wise decision on their part.

**Senator SCHACHT**—Fifty-two times 81c.

**Mr Reece**—It rises to \$8.10. That is the maximum they can get under that benefit. That is one of the absurdities you get when you freeze things.

**Senator ABETZ**—I think it has been agreed that this legislation does not adversely affect veterans; rather, it looks at overcoming an anomaly that has existed for some considerable period of time. Is it possible to compare the non-economic loss lump sum payments to that of the DVA disability pension?

**Mr Reece**—Yes, you can. We have to do that when we offset them. The actuary provides us with a set of tables calculated by gender, age, length of life span and so on, and converts a lump sum to a periodic payment. Where we have to do that, we do offset them. So yes, it is possible actuarially to do that. That is a regular practice.

**Senator SCHACHT**—You could take this on notice, Mr Reece: to achieve what I have shown some sympathy for and what the veterans' organisations have raised here, what drafting of an amendment to this bill would be required? I presume a simple amendment could achieve

the outcome of what Mr Mitchell-Taylor has raised. Maybe this anomaly should now be addressed.

**Mr Reece**—The amendment would have to be to the Social Security Act.

**Ms McIver**—At present, it is 17B of the bill, subsection (2); subsection (1) does not apply to—

**Senator SCHACHT**—What page?

**Ms McIver**—Page 4 of the bill, line 21. It specifically excludes payment of a disability pension from this bill. I am not sure whether we have understood your question correctly. At present, DVA disability pension is treated as income under the Social Security Act. To amend that, we would have to put something in section 8 of the Social Security Act, stating that DVA disability pension is not income for the purposes of the act.

**Senator SCHACHT**—You would not have to amend it there? You would have to delete (b)?

**Ms McIver**—Yes.

**Senator SCHACHT**—You would delete (b) and then put something in—

**Ms McIver**—If you wanted to protect it both from this and from the—

**Senator SCHACHT**—Can I ask you to take this on notice: I am not asking the government to agree to this, but it would be helpful if you could provide us with the amendment that would achieve the outcome that Mr Mitchell-Taylor wants done. I have some sympathy for it. That would be useful.

**Mr Reece**—You would then have to decide, with TPI, for example, what distinction you would make, if any, between the two elements, because under that model, TPIs would lose all pension. Are you going to distinguish between—

**Senator SCHACHT**—You mean they lose all of what pension?

**Mr Reece**—At present, as we said before, a TPI with no other income, just his TPI pension of \$645 a fortnight, is still capable of earning about \$90 of age pension.

**Senator SCHACHT**—I want it drafted in a way that no-one goes backwards.

**Mr Reece**—In that case, you would come to Mr Mitchell-Taylor's definition of 'non-economic', which would be that bit of the general rate up to 100 per cent. You would exempt that and define that as non-economic. You would then have to go on and say that the element above that is going to be not treated as economic.

**Senator SCHACHT**—That is why I am asking you and the department, having regard to all the accrued institutional memory and the 400 lawyers working down there. You could get this right quicker than I could. Can I put that to you on notice? I am not saying that this in any way means you should support it. It is just a technical thing so that in a debate in the Senate we know what we are talking about and we know that it is technically correctly drafted.

**Senator CHRIS EVANS**—Do you want the cost as well?

**Senator SCHACHT**—You do not disagree about anybody going backwards. With the flow-on of bits and pieces, it is \$25 million?

**Mr Reece**—Give or take. I think the simple number for the increase in pensions at Family and Community Services was about \$19 million. There was \$6 million for rent assistance and

there was some for nursing homes—about another \$1 million. It is probably closer to \$26 million, with some running costs, no doubt.

**Senator SCHACHT**—The running costs—that is what I want. I want the department to provide what the cost is. The minister could release the review with this information and a properly drafted amendment which in no way commits him or the government to accepting it. It is just a matter of getting it technically correct. Otherwise, if you have a brawl in the Senate and it is drafted at the last moment, you usually come back three days later and say, ‘Oops, sorry, we’ve missed something.’

**Ms McIver**—If I can clarify: what you are asking for is a table of what sections of both the existing act and the bill—

**Senator SCHACHT**—I want you to use your parliamentary counsel, whoever it is, or Veterans’, to draft the changes required to achieve the outcome, with no disadvantage accidentally to any other veteran—that the anomaly as we have described it is overcome, that those who have a disability pension are no longer having it counted.

**Senator ABETZ**—I think this is a very good try on your part to get the government to provide opposition amendments, but, in fairness, I do not think it is appropriate for you to ask the government to do it.

**Senator SCHACHT**—When I was a minister we did it regularly, because it was simple. It made it simple. I am not asking them to support it. I could ask the Senate legal office; that is true. But these are the people who have the expertise. It is no use winning the argument, getting a vote in the Senate and then finding, three days later, that you have got to recommit the bill to overcome an anomaly. This is just good management. I am not asking people to automatically support it. I am just saying that you have given an indication of where you think the amendments are that cover this. I do not think that is an unreasonable request on notice.

**Mr Mann**—We will take it on notice, Senator.

**Mr Reece**—We accept the assumption that you do not want it to flow on to above the special rate of TPI?

**Senator SCHACHT**—Yes, because I do not want them to lose the \$90, et cetera.

**Senator ABETZ**—But in that way you create another anomaly, don’t you, logically? You are getting rid of one anomaly and thereby creating another.

**Senator CHRIS EVANS**—I think what Senator Schacht is doing now is putting the department on notice that that is an issue that at some stage, other than this bill, may be pursued, and any advice that the department could provide which would ensure that we did not have unintended consequences would be useful to have. It is up to the minister whether or not he wants to then—

**Senator SCHACHT**—If the minister comes back and says, ‘You’re making such a mess of this, the bad consequences . . .’—

**CHAIR**—Senator Schacht, the issues have been raised; the department will take them back. I do not think there is any point in pursuing it any further. Are there any questions which have not been asked?

**Senator ABETZ**—Mr Reece, do you agree with this proposition that the veterans disability compensation is different from third-party settlements in that the modern distinction between economic and non-economic purposes was never a consideration in the formulation of the benefit, except for the special rate pensions? If you agree with that, are you able to put on

record anything in relation to the Baume report and its attempt to distinguish between economic and non-economic loss in terms of the disability and the service pension?

**Mr Reece**—Only very generally, Senator. Professor Baume was asked to do a review of our compensation policy and program and the law. He stumbled across this issue of trying to distinguish those elements of the special rate pension in particular, with respect to whether one was income support and one was compensation.

He came up with a model which is contained in his report called *A fair go*. I think it is probably easier for me to give you a copy of that and you can have a look at his attempted model. Justice Toose, I think, in 1977, also tried to do something similar and came up with a model. Governments on both occasions did not pursue it because inevitably in situations like this it involves a very dramatic change of benefits to a fairly static population of clients. There would inevitably be losers. It is very difficult to make those adjustments to such longstanding benefits. I will send you a copy of Professor Baume's report. I think that is the quickest answer.

**ACTING CHAIR (Senator Bartlett)**—There being no other questions on this bill, thank you very much for your time and input.

**Committee adjourned at 6.31 p.m.**