



**Senate Standing Committee on Community Affairs
Legislation Committee**

inquiry into

**the Social Security and Other Legislation Amendment
Bill 2011 Schedule 3 (Disability Support Pension
Impairment Tables)**

APMA Supplementary Submission

September 2011

A critical issue

In the submission lodged by the Australian Pain Management Association Inc. (APMA) in August, a critical issue identified by APMA was ensuring that the Minister's commitment that the revised Impairment Tables would only apply prospectively to new applicants seeking payment of the Disability Support Pension was honoured.¹

The submission stated:

The final, but perhaps most important, issue APMA wishes to raise is how the undertaking by the Minister that people currently in receipt of DSP will not be affected by the new Impairment Tables will be guaranteed. In an ABC interview on 30 July, Minister for Families, Housing, Community Services and Indigenous Affairs Jenny Macklin MP said "This will start on the 1st of January for people who are eligible from the 1st of January. So not people who are currently on the Disability Support Pension, that's a very important point to make...." The only means by which this assurance can be given effect is to 'grandfather' the entitlement of current recipients to either be assessed against the current Tables and tests, or alternately retain eligibility even if found to be ineligible against the new Tables. We would expect the drafting of the new Instrument to reflect this undertaking.

This is a critical issue for APMA – many people with persistent pain and other medical conditions where pain is a seriously disabling element who are currently receiving DSP will be reviewed at some stage over the coming years. The possibility that the new assessment standards might be applied to them – with the associated requirement to attempt to return to work, or as is likely accept the lower payment of an unemployment benefit - will cause significant anxiety for many until and unless a clear commitment that current recipients are exempted from review under the new Tables is provided.

The need to protect existing DSP recipients

It has been suggested that the numbers of existing DSP recipients likely to be reviewed and disadvantaged in coming years is likely to be very low. APMA understands that in 2010-11, some 2.2% of DSP recipients were medically reviewed (18,105 of 818,850). Of these 18,105 reviews, only 1.6% of the reviews resulted in cancellation (298).

If the rate of review and cancellation continues at these rates, the number of recipients at risk is small. If however the rate of either review or (more likely) cancellation increases, the number of current recipients at risk is potentially much higher. In either case, in the absence of either reduced impairment (consistently measured) or misrepresentation cancellation because the method of assessment has been changed is unfair and discriminatory.

A suggested means to protect existing DSP recipients

A legislative instrument comparable to the proposed revised Impairment Tables is the instrument utilised to determine the eligibility of veterans to receive invalidity service pension (equivalent to DSP) and determine the rate of disability pension, both of which are paid under the *Veterans' Entitlements Act 1986* (the VEA).

¹ The Hon Jenny Macklin, Interview with ABC News 24, 30 July 2011
http://www.jennymacklin.fahcsia.gov.au/transcripts/2011/Pages/disability_pension_impairment_abcnews_30072011.aspx

The instrument is prepared by the Repatriation Commission and approved by the Minister for Veterans' Affairs pursuant to section 29 of the VEA, and is known as the Guide to the Assessment of Rates of Veterans' Pensions Fifth Edition (GARP V). It is the fifth version of this legislative instrument, which was first introduced in 1988.

The most recent version of the Guide (which commenced in 1998) has 'grandfathered' the (adverse) effects of the new version by including in the instrument of revocation a variation of the form of words used on each occasion a new Guide has been introduced to ensure that existing recipients of pensions determined by the Guide are not disadvantaged by the application of the new Guide. A similar approach can and should be used in the legislative instrument which incorporates the revised Impairment Tables currently under consideration by the Committee.

The wording is as follows:

Application

- (2) The Guide to the Assessment of Rates of Veterans' Pensions, instrument No.9 of 1997 (as varied by Instrument No's. 2 and 3 of 1998 (the new *Guide*), applies to any decision by the Repatriation Commission, the Veterans' Review Board, or the Administrative Appeals Tribunal on or after 18 April 1998, whether the proceedings relating to the decision commenced before, on, or after that date.
- (3) In the course of re-assessing or reviewing the assessment or re-assessment of the rate at which a pension is payable, the degree of incapacity of the person to whom that pension is payable shall not be a percentage that is less than the percentage of the general rate of pension constituted by the rate at which that pension was, immediately before 18 April 1998, payable unless:
 - (a) the degree of incapacity of that person from war-caused or defence-caused injury or disease has decreased (as assessed under the old *Guide*) since the rate of pension was previously assessed or last assessed; or
 - (b) the previous assessment or last assessment would not have been made but for a false statement or misrepresentation of a person.

Conclusion

The drafting and application of the revised Impairment Tables in the way suggested above would ensure that the new method of impairment assessment is only implemented prospectively, sensitively and with the potential for positive support and assistance to be provided to those seeking to 'work through' – literally and figuratively - their persistent pain. APMA does not want the changes to result in merely moving people from a disability support pension onto the lower payment level and insecurity of an unemployment benefit.