

To. Committee Secretary  
Senate Foreign Affairs, Defence and Trade References Committee  
PO Box 6100  
Parliament House  
Canberra ACT 2600

## **Inquiry into TPI Payment (Special Rate of Disability Pension)**

### **Submission on behalf of, 'Disabled Veterans of Australia Network'**

#### **'Providing Equal Compensation Payment to our TPI Veterans'.**

Dear Senators

#### **Summary**

The Compensation payments for incapacity leading to loss of earnings paid to thousands of TPI Veterans is exposed to a system of 'Compensation Theft by the Commonwealth' no less abusive than Wages Theft by an Employer. Department of Veterans Affairs (DVA) defines as 'Welfare' two fifths of the Compensation, the Invalidity Service Pension (ISP) component. DVA then Means Tests the ISP amount against the TPI Veterans and Veterans Wife's, savings and or earnings and or superannuation and or assets. The Commonwealth thus evades paying the full cost of Compensating the TPI Veteran for their insured losses. The KPMG study into TPI Veterans Compensation demonstrated that no other supplier of Loss Insurance in the Financial Industry reduces or withholds compensation for loss of earnings based upon other finances or assets the insured person or a family member may have. A single TPI Veteran is compensated at \$1,208 per week a married TPI Veteran whose wife has earnings can have that reduced to \$732 per week. The Commonwealth thus operate a Compensation system for TPI Veterans not based upon their insured losses but on their finances and marital status. This submission contends that the Commonwealth adopt a system of equally Compensating our TPI Veterans based on 'their' incapacity and loss of earnings and that payment be no less than \$1,208 per week.

## Purpose of TPI Compensation.

PM Hughes: Repatriation Compensation:

In 1920 Prime Minister Billy Hughes described the purpose of, and reason why the Commonwealth pays Compensation to the Disabled Veterans of our nation's wars thus.

*"They went forth willingly to do their duty to Australia; Australia must be equally ready to do its duty to them. **It is the intention of the Government, so far as is humanly possible, to see that the debt is paid in full.** Complete reparation can never be made, for their sacrifices are beyond price. But we can at least make certain that the maimed are not left to struggle on, nor the grieving widow tortured by the cruel pinch of want. We owe it to ourselves as a nation that the wounds of war shall not entirely rob our soldiers of their efficiency as citizens, **nor add one tittle to their burdens as individuals**". PM Billy Hughes 1920.*

The 'Special Rate (TPI) Payment', Department of Veteran's Affairs:

*"The Special Rate of pension is to compensate severely disabled or injured veterans who are unable to ever go back to work, support themselves or their families, or provide for their old age through paid work".*

<http://clik.dva.gov.au/compensation-and-support-policy-library/part-4-disability-compensation-eligibility/41-disability-pension-eligibility/416-special-rate-tpi-or-tti-eligibility>

The Special Rate (TPI) Payment in the VEA 1986 Div. 4 Sec 24, (c):

*"The veteran is, by reason of incapacity from that war caused injury or war caused disease, or both, alone, prevented from continuing to undertake remunerative work that the veteran was undertaking and is, by reason thereof, suffering a loss of salary or wages, or of earnings **on his or her own account**, that the veteran would not be suffering if the veteran were free of that incapacity".*

<https://www.legislation.gov.au/Details/C2018C00013>

The 'Invalidity Service Pension' Department of Veteran's Affairs:

*"Invalidity Service Pension VEA legibility criteria. A person is eligible for 'Invalidity Service Pension' if the person is Permanently Incapacitated for work". (TPI) <http://clik.dva.gov.au/compensation-and-support-policy-library/part-3-income-support-eligibility/31-service-pension-eligibility/313-invalidity-service-pension>.*

## Adequacy of TPI Compensation.

The **‘TPI Rate’ at \$732 weekly** when compared to the after tax ‘Full-Time Adult Average Weekly Total Earnings’ **‘FTAAWTE’ at \$1,358** fails the adequacy test i.e., to compensate for loss of ‘salary or wages’. The Commonwealth recognises that compensation of \$732 weekly misrepresents the description of adequacy, correcting the misrepresentation by the addition of the ‘Invalidity Service Pension’ **‘ISP’ at \$476 weekly**. The single TPI Veterans compensation for loss of earnings now becomes **\$1,208 weekly**.

The Commonwealth thus honours the principles of Repatriation, defines the purpose of the Compensation, and sets the adequacy of Payment made to a TPI Veteran by design and practice for loss of earnings with a value they believe to be fair and just at \$1,208 weekly.

## Structure of TPI Compensation

TPI Veterans Compensation payment is comprised of two parts. The ‘TPI Rate’ and the ‘Invalidity Service Pension’ (ISP). The ISP is contingent upon the Veteran being designated as TPI. The TPI Rate is a straight payment of \$732 weekly while the ISP is subject to a means and asserts test reducing the full amount of \$476 weekly by increments to zero dependent upon not only the TPI Veterans other income and asserts but also the earnings, assets and retirement superannuation of their wives or partners.

All 27,500 TPI Veterans under the VEA 1986 are medically examined by the Department of Veteran’s Affairs to the same criterion and all are characterised equally by the same incapacity to earn a waged income. However not all TPI Veterans are equally compensated for this incapacity or as the VEA describes for ‘suffering loss of earnings’ on their own account. However, they are not equally Compensated.

In round percentage our nation’s 27,500 TPI Veterans are Compensated with amounts thus:

Forty percent with the TPI Rate and Full ISP, **\$1,208 weekly**.

Forty percent with the TPI Rate and a Part ISP, between **\$750 and \$1,150 weekly**.

Twenty percent with the TPI Rate only, **\$732 weekly**.

All have the same insured compensated loss of earnings resulting from their incapacity.

NB. for simplification Partner Service Pensions have not been separated out but included within these round percentages.

## Previous reviews into TPI Compensation. KPMG

In 2019 DVA contracted the Financial Audit and Accounting Firm KPMG to undertake a Study into TPI Veterans Compensation. Though DVA believes the ISP to be a means tested welfare payment while the KPMG Study informed that it is Compensation for insured losses when considered against Insurance Loss Industry standards and practices. KPMG Findings:

- “The Service Pension is also considered an income replacement benefit for TPI Veterans (i.e., compensation)”. Page III
- “The table illustrates that the Service Pension is also considered an income replacement benefit i.e., compensation.” Page V
- “Service Pension: This benefit is considered 'Income Replacement'”. Page 32
- “First Principals Approach ... Common principals underlying compensation. Maintain a lifestyle that aligns with their per-impairment lifestyle... Insurance benefits are not means tested”. Page's 25/26
- “Means testing of insurance benefits dose not commonly occur”. Page 28
- “The Service Pension should operate to avoid the possibility of members having to rely on charity”. Page 79

**The KPMG study was prevented by the terms and conditions laid down by DVA from making recommendations. “the scope did not extend to”. KPMG Page iii.**

- Providing policy recommendations to DVA”.
- Rather the focus will be on providing structural information to DVA to assist it in assessing the validity or otherwise of the Disabled Veterans of Australia Networks proposals.
- Interviewing TPI Veterans to understand their views regarding adequacy of benefits. P. iii.
- Interviewing the Disabled Veterans of Australia Network.
- Comparing total and permanent benefits received under VEA and the other two applicable Acts. **(Note. The Repatriation system comes under three Acts, VEA, MCRA & DRCA. The latter two unlike the VEA provide equitable compensation for TPI Veterans unrestricted by marital status discrimination.)**

**KPMG findings were published in November 2019. DVA have yet to correct our TPI Veterans exposed Under-Compensation.**

## **Commonwealth evades Responsibility for Compensation.**

Compensating our TPI Veterans for their disability and losses is unquestionably the responsibility of the Commonwealths acting on behalf of the collective Australian people. Australians recognise our Servicemen and Servicewomen defend their freedom, way of life and ability to prosper. They understand that in wounding and illness they have a mutual responsibility to the Veteran and their family to provide for a life's outcome not less than could be expected as far as possible without disability.

By applying a means test to the ISP the Department of Veteran's Affairs in the case of many TPI Veterans transfers the financial responsibility for Compensation from the Commonwealth and Australians collectively onto the individual TPI Veteran or the Veterans wife and family.

This form of garnisheeing the TPI Veterans prudent savings, investments or assets and his wife's already taxed earnings and retirement superannuation to reduce the Compensation paid by the Commonwealth to the TPI Veteran is morally bankrupt and indefensible considering practices within the 'Losses Insurance Industry' exposed in the KPMG study findings.

## **Recommendation on Equal Payments of TPI Compensation**

The 'Network' contends that all TPI Veterans under the VEA 1986 be Compensated for their losses equally. This is not a claim for an increase in Compensation. It is an appeal to the Commonwealth to compensate all TPI Veterans with the minimum of \$1,208 weekly. A payment the Commonwealth considers adequate to sustain a single TPI Veteran. This without detriment to those on Partner Service Pension arrangements.

The 'Network' recommends the Commonwealth remove the means testing of two fifths (that part described as the ISP) of the Compensation payments made to TPI Veterans under the VEA 1986 from legislation.

**Thus, creating a compensation system based solely upon the TPI Veterans insured 'medical impairment and incapacitated losses' and not as it is currently based upon the Veterans 'marital status, wife's earnings or superannuation, family savings, inheritance, or assets.**

## **Costs of Equally Compensation for our TPI Veterans**

The question is not a matter of how much it cost. **The question is who pays for the current cost.** The costs of providing a home, clothing, and sustaining our TPI Veterans does not disappear just because the Commonwealth shirks its responsibility. The human needs of a TPI Veteran to survive if not thrive must be paid by somebody. In the case of those the Commonwealth under-compensates that cost is paid by the wives and the families already caring for the needs of the Disabled husband and parent.

## **Costs Offsetting**

Where Veterans Affairs or Dept. of Finance are concerned with accurately accounting in forward estimates for costs of rectifying the under-compensation, they must attend to the positive flow to the whole of Commonwealth budget offsetting these costs when the wife is encouraged to engage in the workforce against income tax, Medicare levy, employer's superannuation contributions and foregoing of Age Pension.

## **Relevant information**

The average engagement in our ADF is seven years. For the rest of a person's employable life, they are a worker and when injured at the workplace they are covered for their loss of earnings under Workers Compensation paid by the Employers Insurer, unencumbered by reduction against the employees' savings or their wives' earnings etc.

A soldier is a worker who carries a rifle for some years however when they are wounded the Commonwealth transfers the responsibility of two fifths of the Soldiers Compensation on to the TPI Veterans family thus avoiding the full cost of the Insured Loss.

An Employer would not be allowed to operate a workplace without full Employees Loss Insurance. The Commonwealth is the Soldiers Employer and as such has an obligation to fully compensate for 'suffering loss of earnings' resulting from wounding during their employment and not leave the family to pay for or accommodate the loss of earnings of one parent or partner within the family while also caring for the disabled.

Workers Compensation is not treated as Welfare or Social Security. Neither should TPI Veterans Compensation be treated as Welfare or Social Security. It is what it says on the box, Compensation.

## **Gender Discrimination in ISP means testing.**

Partners of TPI Veterans are predominantly female. Therefore, the burden of replacing the Commonwealths under-compensation falls on the female gender. This discrimination on grounds of gender disadvantages the female partner and is contrary to the Commonwealth and State anti-discrimination laws.

*"The Sex Discrimination Act 1984 - unlawful to discriminate against a person on the ground of sex, marital or relationship status, gender identity, sexual orientation".*

State and Territory 'Equal Opportunity' legislation reinforces the understanding that discrimination on grounds of marital status and gender is unlawful. This of utilising the wife's earnings, superannuation or savings as a means tested 'consequential loss' reducing or cancel the TPI Veterans ISP is discrimination.

## **Gender Discrimination re Wives Earnings or Superannuation**

Compared to males' earnings and superannuation, females have a lower dollar for dollar amounts to sustain them and retire with. Notwithstanding access to this lower financial resource than males the Commonwealth is content to transfers the nations collective responsibility for compensating the loss of earnings suffered by our TPI Veterans on to their caring wives.

"Women on average earn \$25,534 less than men every year. 43% of women work part-time. Women working full-time earn 18% less than men. Women take on average five years out of the workforce to care for children or family member which can cause their super savings stagnate and begin to fall behind those of men. The current 9.5% Superannuation Guarantee does not enable most women to accrue sufficient savings for a comfortable retirement".

## **Human Rights Abuse in ISP means testing.**

The unrestricted right of a citizen in Australia to marry is enshrined in national and international 'Human Rights' conventions. The imposition of a 'marriage tax' by the Commonwealth in the form of withdrawing compensation from the married TPI Veteran compared to a single TPI Veteran by up to two fifths of their previous compensation is an impost and a barrier to entering marriage. Thus, denying the TPI Veteran the love and comfort of another human being, 'it doesn't make him a good catch'. For the wife to replace the previous Commonwealth compensation she must work longer hours to not just make up the withdrawn ISP amount but also to pay for the additional income tax that is attendant to extra earnings. The wife's earnings over \$8,216 gross per annum reduces the TPI Veterans compensation. Earnings of \$83,000 gross per annum (\$10,000 less than the average wage) causes the total withdrawal of the ISP 40% of TPI Veterans Compensation.

Australian Human Rights Commission. Right to marry and found a family.

*"Right to Respect for the Family". "The family is the natural and fundamental group unit of society and is entitled to protection by society and the State". ICCPR Article 23.1*

*"There shall be no restriction upon or derogation from any of the fundamental human rights recognised or existing in any State Party to the present Covenant pursuant to law, conventions, regulations or custom on the pretext that the present Covenant does not recognise such rights or that it recognises them to a lesser extent". ICCPR Article 5.*

## What DVA count as income to reduce TPI Veterans Compensation

The following are the common types of income that are counted as income for pension purposes:

- deemed income from financial assets;**(wife's assets is not specified)**
- salaries and wages; **(wife's earnings is not specified)**
- the monetary value of non-income benefits paid in lieu of salary and wages, including salary sacrifice amounts;**(wife's salary sacrifice is not specified)**
- superannuation fund;**(wife's superannuation is not specified)**
- income from purchased superannuation pensions, annuities;**(wife's superannuation is not specified)**
- income from estates and life interests; **(wife's income is not specified)**
- Gross income from wages and earnings is counted for pension and payment purposes. Your gross income is the total amount you earn before tax and personal deductions are taken out.

## Defrauding the Commonwealth

With DVA designating two fifths of our TPI Veterans Compensation, the Invalidity Service Pension, 'Welfare' comes compliance and penalty measures attendant with welfare payments. DVA have their own 'Investigation Branch' with unrestricted powers to interrogate a TPI Veterans and his wife's financial, business and property transactions without the Veterans knowledge. They also have powers to seek information from the Veterans neighbours and acquaintances. If any transgressions are found the Veteran is accused of 'Defrauding the Commonwealth'. No mitigating circumstances are accepted by the Department 'Welfare' rules, neither mental instability, hospitalisation or dementia are excuses for infringing the Departments rules. A TPI Veteran has fourteen days to inform the Department of any and every \$2 change in your circumstances. This for many PTSD TPI Veterans is the last thing they attend to and thus fail the compliance and have the charge of 'Defrauding the Commonwealth' on their record. All for serving the nation in times of War and claiming Compensation for loss of earnings. These punishing compliances and rules for receiving Compensation should be discarded.

DVA s Welfare Compliance measures

"You will be required to tell us within 14 days (28 days if you live overseas or receive remote area allowance) of changes to your circumstances that might affect the rate of income support pension you receive or your eligibility to receive that pension. These obligations apply equally to trustees. In relation to the income test the sorts of things you would need to tell us about within 14 days (28 days if you live overseas or receive remote area allowance) are as follows:



- you are receiving a reduced rate of pension and your total income from all sources increases by more than \$2.00 for singles or \$4.00 for couples per fortnight.
- you are receiving a maximum rate of pension and your total income from all sources exceeds the income free area by more than \$2.00 for singles or \$4.00 for couples per fortnight.

Usually, an over-payment of pension will not occur when you have met your obligations. However, sometimes even if you have met your obligations, an overpayment can occur because we have not been able to process the change before the next payday.”

## **Impact of Means Testing on Family and Veterans Mental Health**

The ‘Network’ believes that from TPI Veterans experience the Commonwealths policy of means testing the Invalidity Service Pension against other finances or wives’ earnings or superannuation or savings has a detrimental effect upon family resources and well-being. Contributes to the Veterans feeling of worthlessness by being unable to provide for the family equally and adequately, undermining their dignity by having to rely on their wives’ earnings or superannuation. This worthlessness exasperates already compromised mental health and leads to suicide.

Means Testing is a disincentive to workplace participation by the wife, either continuing in or returning to work, to utilise their skills, education, and experience to benefit the family and community while removing the positive role modelling for the children seeing at least one family member actively engaging in paid employment.

Financial stresses on a family with a Disabled Veteran contributes to dysfunction, substance abuse, child neglect and breakdown and on too many instances suicide. Eliminating the stress caused by applying a ‘Welfare Means Testing’ to Compensation for loss of earnings would save on health care and family support services.

**Unfortunately, none of the three recent Reviews into TPI Veterans Compensation considered or investigated the effect on family and individual’s well-being/health/thriving of means testing leading to under compensation or of the negative fiscal consequences on the Commonwealths overall budget or loss of skills to the community.**

## **Disadvantage in Indexation of TPI Rate. Network Observation**

In September of 2009, the Commonwealth increased structurally 3.7 million Government payments. Increasing their base index calculation from 25% to 27.7% of the Average Wage. 27,500 TPI Rate payments were excluded from the 2.7% structural increase and thus lost value when compared with other Government payments by \$65 weekly. While the new base line was applied to the twice-yearly CPI etc. indexation adjustments the TPI Rate will forever be that \$65 weekly behind other government payments. The War Widows Pension did receive the structural increase. Including the TPI Rate in the structural increase would raise the combined TPI Rate/ISP Compensation to near after-tax amount of the FTAATWE.

## **Cancellation of Commonwealth Rail Travel Concession. Network Observation**

In the budget of 2016 concession fares for TPI Veterans their Carers and War Widows over 'Commonwealth Government Rail Track' was withdrawn. The concession fare had been in place since WW2. In modern times the concession allowed Disabled Veterans who found air travel difficult due to physical or mental wounding to visit their children and grandchildren living interstate. This withdrawal of concession was done without consulting Veterans or understanding the negative impact of cancellation upon the Veterans life. The withdrawal of a generation old concession negatively impacts TPI Veterans and War Widows where their State or Territory owned rail network has no adjoining State or Territory owned rail network. I.e., Western Australia and Northern Territory. These travellers therefore must rely upon Commonwealth owned rail networks.

## **TPI Veterans Compensation and War Widows Pension**

When the TPI Veteran dies, his wife is entitled to a War Widows Pension of **\$484 per week**. While the TPI Veteran is alive and under-compensated with only the TPI Rate of **\$732 per week**. It costs more than the \$248 per week difference to feed, house, clothe and maintain a TPI Veteran. The Commonwealth ascribing 'Welfare Means Test' to the Compensation for losses ensure thousands of living TPI Veterans are a financial liability on their families.

## **Conclusion**

An unmarried TPI Veteran is compensated for their 'loss of earnings' at **\$1,208 per week**.

A married TPI Veteran with a spouse who is engaged in the workforce, paying income tax, Medicare levy with employer superannuation contributions, or who relies upon her own built-up superannuation or savings is compensated for their 'loss of earnings' at **\$732 per week**.

Were a married TPI Veteran to divorce or separate DVA restore the compensation for 'loss of earnings' to the previous **\$1,208 per week**.

NB. The medical conditions, disability, or incapacity resulting in loss of earnings of the single or married TPI Veterans for which they receive compensation in has not changed. The only change is in their financial or marital status.

**This submission seeks the removal of this peculiar financial impost by the Commonwealth of 'Means Testing' our TPI Veterans Compensation a particular liability upon the wives and families who care for our Disabled of wars. The Commonwealth needs to do its duty to our TPI Veterans as it demanded of them while in uniform.**

**Our Diggers did the right thing by Australia giving service in wartime. We ask that that giving should not now extend to the wives and families. Let them have their own earnings, savings, and assets unhindered by Commonwealth tribute.**

## Sources

Summary of pension rates, limits, and allowances | Department of Veterans' Affairs 01.04.2021

Average Weekly Earnings, Australia, November 2020 | Australian Bureau of Statistics

Simple tax calculator | Australian Taxation Office

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The Facts About Women and Super - Women in Super

‘Disabled Veterans of Australia Network’

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