

Chapter 1

Introduction

1.1 The Senate Foreign Affairs, Defence and Trade Legislation Committee inquired into aspects of the *Veterans' Entitlements Act 1986* and the Military Compensation and Rehabilitation Scheme (MCRS) under its general power to inquire into matters relating to the operations of portfolios arising from its examination of departmental annual reports.

1.2 The Committee took evidence in two hearings it conducted at Parliament House, Canberra, on 16 and 23 June 2003.¹ It also received sixteen submissions from ex-service organisations, individuals and government bodies². The submissions are available on the Committee's website.³

1.3 The Committee would like to thank everyone who contributed to the inquiry with their written submissions and participated in the hearings.

1.4 Members of the Australian Defence Force (ADF) are entitled to claim compensation from the Commonwealth of Australia where their employment in the ADF causes or aggravates illness or injury.⁴

1.5 The inquiry focused on the dual eligibility arrangements and the offsetting calculations applied to veterans and ex-service personnel who receive a pension as well as a benefit by way of a lump sum, under the *Veterans' Entitlements Act 1986* (VE Act) and the *Safety, Rehabilitation and Compensation Act 1988* (SRC Act). The aim of the inquiry was to examine the perceived anomalies in the current arrangements.

1.6 The capacity for veterans and veterans' widows to be eligible to claim under two compensation systems has resulted in confusion. Much of the misunderstanding appears to have been caused by lack of information and misinformation. Especially about the ongoing effects on a pension arising from a payment of a lump sum benefit—effects which persist for as long as the person is in receipt of that pension.

1.7 Many veterans and veterans' widows were unaware that the offsetting amount deducted from their pension was a 'whole of life' commitment. Many assumed that

1 See appendix 2. The transcripts to the hearings are available from:
<http://www.aph.gov.au/hansard/senate/committee/s-fadt.htm>

2 See appendix 1.

3 See the VEA/MCRS inquiry page:
http://www.aph.gov.au/senate/committee/fadt_ctte/vea/submissions/sublist.htm

4 *Submission 9*, pp. 1–2 (Department of Veterans' Affairs)

with the passing of time, the original lump sum would be ‘paid off’, and deductions would cease. Moreover, they are at a loss to understand why the continued deduction of the offset amount, has, in many cases, exceeded the original lump sum amount.

1.8 Bill Maxwell, Head of the Compensation and Support Division, Department of Veterans’ Affairs, described the issue succinctly at the first hearing:

The subject ... is one of the conceptually more simple tenets of the repatriation legislation. Unfortunately, though, it is also one that is perhaps least understood both by veterans and indeed, from time to time, members of DVA’s own staff. The principle is very simple: one should not be compensated more than once for the same incapacity. The difficulties arise, in the main, from the fact that we are trying to merge the impact or the effects of two quite distinctly different compensation regimes.

...The *Veterans’ Entitlement Act 1986* ... embarks upon a compensation philosophy that seeks to compensate for the incapacity of an individual due to their service. It does so by means of single compensation payment which is designed to encompass both the pain and suffering and the economic loss aspects of that incapacity. It is markedly different from most compensation jurisdictions where a pain and suffering—or non-economic loss—component is usually paid as a lump sum and then there is also an income maintenance payment to reflect economic loss, which is usually paid as a periodic payment.

It is the clash of those two quite differing philosophies and approaches to compensatory law that gives rise to a lot of problems that are besetting certainly the Department of Veterans’ Affairs, the Department of Defence to a lesser extent and, indeed, our veteran clients.⁵

Historical context

1.9 In August 1914, on the eve of Australia’s involvement in The Great War, Major-General Bridges advised the government ‘that pensions should be guaranteed to enlisted men, and to their dependents in case of death, and compensation in case of disablement through wounds’⁶. The subsequent *War Pensions Act of 1914* was the first specific Australian legislation covering pensions. Its purpose was to provide monetary compensation for war-caused pain, discomfort, disfigurement, impaired physical or mental capacity, lower standard of health, loss or reduction of earning capacity and inability to participate in normal social activities.⁷

1.10 Since that time military compensation legislation has evolved with Australia’s involvement in various conflicts and peacemaking and peacekeeping operations.

5 *Committee Hansard*, 16 June 2003, p. 3 (Mr Bill Maxwell, Head, Compensation and Support Division, Department of Veterans’ Affairs)

6 Official history of Australia in the war 1914–1918, volume XI, p. 206.

7 Parliament of Australia, Debates, 1914, volume XXIV, p. 1896.

1.11 The Department of Veterans' Affairs in its submission to the Committee explained the compensation arrangements up to 7 December 1972:

... members were covered for compensation in respect of a given period of service under one of two compensation schemes established by the Commonwealth. In respect of deployments to conflicts, such as Korea or Vietnam, compensation coverage was provided under the Repatriation Act 1920 (the antecedent legislation to the VEA). In respect of other periods of service, compensation was provided under the *Commonwealth Employees' Compensation Act 1930* and later the *Compensation (Commonwealth Government Employees) Act 1971* (the antecedent legislation to the SRCA).

For service on and from 7 December 1972, members of the ADF became eligible to claim compensation under both Schemes in respect of peacetime service. This was introduced as part of measures to promote service in the ADF and retain existing members with their skills and knowledge during peacetime or peacekeeping service. For most members, dual eligibility ceased on 6 April 1994 after which a new military compensation scheme was introduced.⁸

1.12 From 21 June 1994 the offsetting provisions in respect of peacetime service that are in Division 4 of Part IV of the VE Act, were incorporated in Division 5A of Part II in respect of other service covered by the VE Act.

1.13 Dual eligibility still exists for certain members:

- those who enlisted prior to 22 May 1986 and who have served continuously,
- those who since 6 April 1994 have rendered operational, warlike, peacekeeping, hazardous or non-warlike service in respect of the periods of such service; and
- dependants of deceased ADF members who are similarly able to claim compensation subject to similar offsetting principles.⁹

8 *Submission 9*, pp. 2–3 (Department of Veterans' Affairs)

9 *Submission 9*, p. 3 (Department of Veterans' Affairs)

