

**SENATE FOREIGN AFFAIRS, DEFENCE AND TRADE
LEGISLATION COMMITTEE**

SUBMISSION

**Inquiry into aspects of the Veterans' Entitlement Act and
the Military Compensation Scheme (MCRS)**

Submission no	3
Organisation making submission	N/A
Postal address	146 Harpenden Street Huntingdale WA 6110
Location (if required)	
Contact person	Mr Alan Wheatley
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Number of pages (including cover)	19
Attachments	1-10

Submission by Alan Wheatley

Introduction

My name is Alan Wheatley, I live at 146 Harpenden St Huntingdale WA 6110, Phone 08 9398 5581 DVA Number WSM 7919 I am 48 years of age.

Body

I applied for a lump sum when medically discharged from the Defence Force, this was while MCRS was under Defence control. I was told that my DVA pension would be reduced until the lump sum was paid back, this seemed reasonable as it would only be for a short period of time then my pension would revert back to the full amount.

We moved from Tasmania to Perth WA, about 2 years ago I phoned DVA to find out how much longer I had to go to pay this lump sum back, I heard a chuckle on the line and was told that the reduction was for life, I couldn't believe this and asked to speak to someone else, this was confirmed so I wrote to Bruce Scott, then the Minister for Veteran Affairs, this was the start of many letters back and forth, including the present Minister Donna Vale, all this to no avail.

Speaking to other veterans and to DVA there are hundreds of veterans all around Australia in the same situation of being give the wrong information, all this at the time when you are depressed, some on medication that could affect a sensible decision, having a young family and being discharged and put on the scrap heap, no longer wanted by the Defence Force or anyone else, you are put on a pension and just become a statistic.

Then after years of being on a reduced pension we are told that our CPI increases are now to indexed, this means that the gap is now going to get bigger and bigger, each year we fall further and further behind, in the letter from Peter Hulsing 25 July 02 the reduction had gone from \$58.67 to then being \$64.31, since it's introduction, if this carries on, in 10 years time this could over four times that amount, then if the increases are linked to MATWE the gap will increase dramatically to a stage where my gap could increase by \$100 per fortnight, that is a lot for a pensioner to loose. At the present time I am paying about \$1,700 per year back, I only received \$25,702.64 as \$8,213.80 was recovered from previous pension payments.

I have recovered some letters from my file and they contradict them selves in different paragraphs, the letter dated 8 November 1995 paragraph 5, it says that "you have a choice either forego the lump sum or have it recovered in full from your Disability Pension" then it also says "this must be done over the full term of your Disability Pension", These letters were sent to me before I accepted the lump sum, when I was called to MCRS in Tasmania to sign for the lump sum I asked for clarification, I was told that my pension would be reduced until the lump sum was paid back then revert to the full pension,

then the letter dated 17 May 2001 from the Minister for Veterans' Affairs paragraph 2, it says "there is no attempt to recover the lump sum compensation".

I have files from other veterans telling the same story, these are from all over Australia, ex-defence members that I have never met or know personally, there seems to be a pattern here.

I have also been sent a letter from Ray Gross who at the moment is in no position to do his own submission and has given me permission to write on his behalf, as you will see from his letter most of his lump sum was taken away from him because of previous pension payments, he has now paid the equivalent to the lump sum back with his reduced pension, he is 51 years old and over the next 10 years would expect to pay at least another \$20,000 plus, if he lives beyond 80 this could amount to well over \$100,000

Conclusion

If they can't get the information right in the letters they send out or information given verbally what hope has the veteran got of making a decision that affects the rest of their lives, as mentioned previously one letter says they are recovering the lump sum and another says they are not.

I wish that I had been given the correct information that allowed me to make a good calculated decision as members have now, I understand they are allowed to seek professional advise, who in there right mind would accept \$25,702.64 knowing full well that they would have to pay that back 3 or 4 times over if not even more depending on their age when made TPI.

Knowing that I'm not the only one affected makes it even more ironic and disgusting.

Recommendations

1. All members that this affected, which seems to be up until MCRS was moved to DVA, have only to pay back the lump sum then revert back to full pension as informed.
2. The indexing of the CPI stops immediately and all past reduced increases be fully reinstated, e.g. my gap revert back to \$58.67 and all lost money paid back and no further increases on this \$58.67.

A. Wheatley

Attachments

1. Letter dated 19 October 1995, when I was sent this letter in 2003 it was the first I had seen this.
2. Letter dated 8 November 1995, this is the letter that contradicts it's self Paragraphs 5 & 6.
3. Letter dated 7 December 1995 telling me about the money that I would receive.
4. Letter dated 17 May 2001 from Paul Evans, paragraph 2 tells me "there is no attempt to recover the lump sum compensation"
5. Letter dated 11 July 2002 to Donna Vale.
6. Letter dated 25 July 2002 from Peter Hulsing.
7. Letter dated 12 August 2002 to Donna Vale.
8. Letter dated 25 September 2002 from Andrew Baillie telling me that any additional increase in my lump sum would be offset against my pension.
9. Letter dated 11 November 2002 from Peter Hulsing.
10. Letter dated 2 April 2003 to me from Ray Gross.

A. Whalley

A77 (1)



Commonwealth Department of
Veterans' Affairs

TASMANIAN BRANCH OFFICE

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Contact Murray Forbes Telephone (002) 21 6659
Reference SM915 / C12

21 Kirksway Place
Battery Point TAS 7004
Postal Address:
GPO Box 481E, Hobart TAS, 7001

Telephone: (002) 216 666
Facsimile: (002) 216 602

Mr Alan Wheatley
3 Melissa Street
Brighton TAS 7030

19 October 1995

Dear Mr. Wheatley,

This letter is to advise you that part of your Veterans' Affairs pension is to be recovered due to the payment to you of a lump sum by the Department of Defence on 23 November 1995.

The Veterans' Entitlements Act requires that, where a compensation payment is made by another authority for a disability for which the recipient is already receiving a pension from this Department, then the recipient is entitled to the larger of the two payments, but not to both payments.

The Department of Defence recently advised us that you are to receive a lump sum payment of \$33,916.44 on 23 November 1995, in respect of **sciatica in left leg as a result of disease of the lumbar 4/5 disc.**

Using tables compiled by the Office of the Commonwealth Actuary, this amount has been converted to its fortnightly equivalent in pension payable from 12 July 1990, the date that your Disability Pension was put into payment. This amount is \$58.67 per fortnight. Your Disability Pension has therefore been reduced by this amount for the full term of its payment to you.

The overpayment for the period 12 July 1990 to 22 November 1995 will be recovered on behalf of the Commonwealth from your lump sum and your pension will continue to be limited by \$58.67.

If you have any queries regarding this letter, I can be contacted on the above number.

Yours faithfully

Murray Forbes
Senior Claims Investigator

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ATT②



Commonwealth Department of
Veterans' Affairs

TASMANIAN BRANCH OFFICE

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②

Contact
Reference SM915 / C12

Telephone 002 216659

21 Kirksway Place
Battery Point TAS 7004
Postal Address:
GPO Box 481E, Hobart TAS, 7001

Mr Alan Wheatley
3 Melissa Street
Brighton TAS 7030

Telephone: (002) 216 666
Facsimile: (002) 216 602

8 November 1995

Dear Mr. Wheatley,

I am writing in response to your letter, received on 25 October, in which you ask for a review of the date of effect for the recovery of Disability Pension resulting from your receipt of a lump sum from the Department of Defence.

The Departmental Medical Officer has reviewed your case and has affirmed the Department's view that the lower back condition which occurred in 1990, and which was accepted by this Department, was the real cause of your discharge from the army and is the cause of your sciatica.

Your Disability Pension has been paid to you in respect of *Lumbo-sacral junction instability* since 12 July 1990. This means that you have been compensated for all of the effects upon you of this condition from this date.

The lump sum payment which you are to receive is for the same condition and in particular the effect of sciatica in the left leg.

Because you cannot be compensated twice for this, the Commonwealth must recover one of these payments. You have the choice either to forego the lump sum or to have it recovered in full from your Disability Pension.

The law prescribes that this must be done effectively over the full term of your Disability Pension. Hence there is an arrears component as well as an ongoing reduction in your pension.

Hypothetically speaking, if the arrears component could be reduced then the ongoing limitation would have to be increased in order to recover the full amount. However the law is quite specific in this regard and such an adjustment cannot be made.

The date of onset of further symptoms of your back condition such as the sciatica is not connected in any way with the manner in which the law requires that the lump sum be recovered from your pension.

I hope that this letter clarifies the situation for you.

Yours faithfully



John Sutherland
for Deputy Commissioner

DEPARTMENT OF DEFENCE
Military Compensation & Rehabilitation Section

Telephone: 002- 377156



Defence Centre Hobart
Anglesea Barracks
HOBART TAS 7000

Ref 94-WST-8

MCRS DEPT OF VET AFFAIRS
GPO Box F352
PERTH 6001
MARCIE SHALDELS
9366 8566

7 December 1995

Mr Alan Wheatley
3 Melissa St
Brighton 7030

Dear Mr Wheatley,

**MILITARY COMPENSATION SCHEME
SAFETY, REHABILITATION AND COMPENSATION ACT 1988**

I refer to your application for payment of a lump sum for permanent impairment in respect of sciatica, left leg as a result of your accepted compensation claim for disease of the L4/5 disc .

On the basis of the information available, I have determined that under Section 24 of the above Act, you suffer a permanent impairment as a result of your compensable condition and the degree of that whole person impairment is 20%.

The total amount of compensation has been assessed as \$33916-44. Department of Veteran's Affairs has requested an amount of \$8213-80 be withheld to avoid pension overpayment. Accordingly a cheque for \$25702-64 will issue as soon as possible.

The assessment is based on Mr Doigs report and after seeking further but necessary clarification through Service medical sources. The delay in resolving the issues causing this matter to become quite protracted is regretted and the concerns expressed in your letter received by this office on 17 November are noted. Please accept my apologies for the distress caused by the time taken to resolve this matter.

Please read the back of this letter as it explains your rights under the Act.

Should you have any enquiries on this matter please contact Mike Armitage on the above number.

Yours Sincerely

Christine Moore
Delegate of Comcare



OFFICE OF THE
MINISTER FOR VETERANS' AFFAIRS
MINISTER ASSISTING THE MINISTER FOR DEFENCE

Mr Alan Wheatley
146 Harpenden Street
HUNTINGDALE WA 6110

Dear Mr Wheatley

I refer to your letter of 12 April 2001 to the Minister for Veterans' Affairs, the Hon Bruce Scott MP, concerning the ongoing limitation of your disability pension. The Minister has asked me to respond on his behalf.

At the outset I must emphasise that the limitation placed on your disability pension is not designed to enable you to repay the lump sum you received under the *Safety, Rehabilitation and Compensation Act 1988* (SRCA). The Repatriation Commission has accepted liability for a disability in respect of which SRCA compensation has also been paid, but there is no attempt to recover the lump-sum compensation.

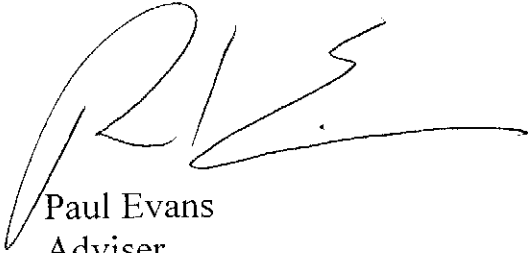
If a member of the Australian Defence Force is eligible for compensation under the SRC and for a disability pension under the *Veterans' Entitlements Act 1986* (VEA) for the same condition, the VEA provides that the person should not receive more compensation than would be available if he or she was eligible under one authority only. Therefore, compensation is payable by the means which is most financially beneficial to the person.

When a fortnightly payment or the fortnightly equivalent of a lump sum payment made under the SRCA exceeds the disability pension, the Department of Veterans' Affairs (DVA) is required by law to cancel the disability pension. Similarly, where the compensation payment is less than the disability pension payment, the DVA is required by law to reduce, having regard to the amount of the lump sum, the amount of disability pension payable. This is done by notionally converting the lump sum to a fortnightly equivalent amount for the person's life, in accordance with the instructions of the Commonwealth Actuary.

Turning to your concern that the limitation is applied for the remainder of your life, I should explain that, notionally, a lump sum payment of compensation is used up at a constant rate over the recipient's lifetime. Consequently, it will be affected by inflation and by interest earnings over that time. DVA has been advised that these factors have been incorporated by the Commonwealth Actuary in their tables to deduce a fortnightly value of the lump sum payment.

I trust that the information I have provided is of assistance.

Yours sincerely

A handwritten signature in black ink, appearing to be 'P. Evans', with a long horizontal flourish extending to the right.

Paul Evans
Adviser

17 MAY 2001

Alan Wheatley
146 Harpenden St
Huntingdale WA 6110
PH: (08) 9398 5581

Hon Danna Vale MP
Minister for Vet Affairs
Parliament House
CANBERRA ACT 2600

Dear Minister

I first wrote to your office a few years ago, before you became Minister for Vet Affairs and was unhappy with the response I received so I decided to write to you.

I am on a TPI pension and on a reduced rate because I accepted a lump sum compensation payout.

I was given wrong information by the compensation people and was told the reduced payments would only last until I paid back the lump sum, I found out later this was false and it lasts for life, I can live with that if I have to, that's not my biggest concern, What I have concerns about was that until a few years ago every CPI increase I received was the full amount, then the rules were changed and I lose part of the increases.

I don't have all the figures but over the last few years the gap has widened between the full TPI rate and what I get, this gap is going to get bigger and bigger, I feel as though I'm being persecuted, I accepted the lump sum on information given to me at that time and since then the rules have been changed, I have talked to Blue Ryan about this and he knew nothing about the changes.

With the submission of the TPI Association being considered I have concerns that if the proposed increases are accepted by the Government I will not receive the full increases and the gap widen yet again, if this gap keeps getting bigger in years to come I could find myself hundreds of dollars below the full rate.

I would appreciate it if you could look in to this for me and let me know the out come so then if necessary I can take this further with the Association and Blue Ryan.

Yours truly,

Alan Wheatley
WSM 7919
11 July 2002

cc Senator Mark Bishop



OFFICE OF THE
MINISTER FOR VETERANS' AFFAIRS
MINISTER ASSISTING THE MINISTER FOR DEFENCE

Mr Alan Wheatley
146 Harpenden Street
HUNTINGDALE WA 6100

Dear Mr Wheatley

I refer to your letter of 11 July 2002 to the Minister for Veterans' Affairs, the Hon Danna Vale MP, concerning compensation offsetting and the special (T&PI) rate of disability pension. The Minister has asked me to respond on her behalf.

I am advised that a member of the Department of Veterans' Affairs has already spoken with you on the content of your letter.

Since 3 October 1994, your disability pension has been assessed at the special rate. You also received a lump sum of compensation from the Military Compensation & Rehabilitation Service (MCRS). As you are deemed to be receiving the equivalent value of that lump sum in terms of an indexed fortnightly pension payable for life (currently \$64.31 per fortnight), the Department of Veterans' Affairs pays your current disability pension of \$666.39 per fortnight to make up the balance of your entitlement to the special rate.

Although the amount of the special rate pension, and the fortnightly equivalent of the lump sum payment, are determined independently of each other, both are indexed at the same time and by the same factor which in your case has had the effect of maintaining the same proportions. Had you been receiving a lower rate of disability pension and been increased to the special rate, the equivalent fortnightly value of the lump sum would have continued to be independently calculated and not increased proportionately.

I understand you are concerned about the effect on your pension limitation were there to be an across the board increase in the special rate of disability pension above the inflation rate that is being sought by some ex-service organisations including the Australian Federation of Totally and Permanently Incapacitated Ex-servicemen and Women. In these

circumstances any across the board increase would not alter the fortnightly equivalent of any lump sum payment which would continue to be independently calculated. In short you would receive the full amount of any such increase.

I trust that this information is of assistance.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Peter Hulsing', is written over a horizontal line. The signature is stylized and cursive.

Peter Hulsing
Adviser

25 JUL 2002

Alan Wheatley
146 Harpenden St
Huntingdale WA 6110
PH: (08) 9398 5581

Hon Danna Vale MP
Minister for Vet Affairs
Parliament House
CANBERRA ACT 2600

I would like to thank you for the letter from Peter Hulsing dated 25 Jul 02, I'm sorry that I've not replied before now but I was in hospital having my Gallbladder out.

As stated in the second paragraph of the letter a Mr Perry Phillips did ring from Vet Affairs, he advised me that because there was nothing in writing about my claim to being given the wrong advise there was nothing that could be done.

When asked about why the rules had changed and now my increases were indexed I was told that until the investigation of the Black Hawk disaster was done they didn't realize that they were doing things wrong, from then they indexed the increases, then to be told that I shouldn't worry because it's only a small amount anyway, would someone like to explain to me & my family that when on a pension a few dollars here or there shouldn't worry me, it may not worry someone that doesn't have to live on a pension but that was insulting.

That alone should prove that I accepted the lump sum on false information, there was no information given to me that the increases would be indexed because at that stage they weren't, if anything the indexation should not have been applied to anyone already on that scheme as none of these members would have been given the correct information.

Why wasn't any of this put in my letter, then again that would mean that I would have it writing just like the information I was given in the first place, it was verbal in the office of Military Compensation who you expect to be trustworthy and to give you the correct information, am I to assume in future I have to record all telephone & office conversations so that I can be sure that the things I get everything down that I may need, if this seems a bit dramatic just think about the way all this has impacted on my life which has all started from me finding out I was given wrong information which affected the rest of my life, how many more suckers are in the same boat.

I look forward to your response, which I hope will include the part about DVA doing the wrong thing.

Yours truly,

Alan Wheatley
12 August 2002

A77 (8)

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**COMMONWEALTH DEPARTMENT OF
VETERANS' AFFAIRS**

Telephone: (08) 9366 8567
Toll Free: 1300 550 461

File Reference: WHE0066-01

Military Compensation and
Rehabilitation Service
Dept of Veterans' Affairs
GPO Box F352
PERTH WA 6001

Wednesday, 25 September 2002

Alan Wheatley
146 Harpenden St
Huntingdale WA 6110

Dear Mr Wheatley

SAFETY, REHABILITATION & COMPENSATION ACT 1988 (SRCA)

I refer to your enquiry about further payments you may be entitled to under the SRCA. The payments referred to in the ministerial letter refer to:

The possibility of a top-up lump sum in respect of your back condition. The SRCA provides that where the original injury has worsened an appreciable amount since the original lump sum grant an additional sum may be payable depending on the assessed degree of deterioration. However the additional lump sum would be offset against your VEA compensation payments.

The possibility of ongoing incapacity payments under the SRCA for your back condition. The payments are taxable and offsettable against the VEA compensation payments and any Comsuper benefit paid to you. However, it may be worthwhile for you explore the possibility, as on balance you may be financially better off.

If there is anything you would like to discuss, please phone me on (08) 9366 8567.

Yours sincerely

Andrew Baillie
Delegate SRCA





OFFICE OF THE
MINISTER FOR VETERANS' AFFAIRS
MINISTER ASSISTING THE MINISTER FOR DEFENCE

Mr Alan Wheatley
146 Harpenden Street
HUNTINGDALE WA 6110

Dear Mr Wheatley

I refer to your letters of 23 September and 27 September 2002 concerning indexation of the amount of offset applied to disability pensions.

The legislation that requires compensation offsetting provides that the amount of the offset is to be determined in accordance with the instructions of the Commonwealth Actuary. From the inception, in 1972, of dual entitlement to claim compensation under the *Veterans' Entitlements Act 1986* (VEA) and the *Safety, Rehabilitation and Compensation Act 1988*, and until 1996, the Department of Veterans' Affairs had believed that once the amount of an offset had been calculated, that amount remained fixed.

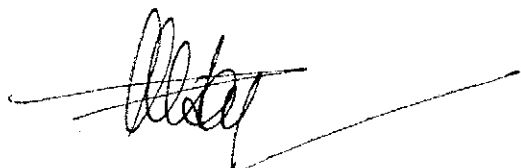
That understanding of the legislation and of the Actuary's instructions was the basis of advice given to all veterans who were entitled to claim compensation from other sources for disabilities that had been accepted under the VEA.

Following the review of compensation arrangements after the Black Hawk disaster in 1996 the Commonwealth Actuary notified the Department that it had not correctly applied tables used to determine a fortnightly equivalent of lump sum compensation. Consequently, those affected were being progressively paid compensation in excess of their correct entitlements. While the resulting overpayment to veterans in previous years was not recovered, the 1997 Budget included changes to correctly index compensation offsets. All veterans who were affected by the change, including yourself, were notified of the new arrangements in 1998.

Changes to the legislation and to the administration of legislation occur quite often. While you would have been advised to the best of the Department's understanding when you chose to accept your lump sum of compensation, that advice was current only at the time it was given. As explained above, changes to the administration of compensation offsetting were necessary to correctly reflect the true value of your lump sum. It is not reasonable to expect that the Commonwealth would knowingly continue to pay compensation at an incorrect rate.

Turning to my earlier advice that you may be eligible for benefits from the MCRS, the purpose was to alert you of the possibility that, in terms of the net income you receive, seeking additional benefits may place you in a better position than at present. I note that the MCRS in Perth has similarly advised you.

Yours sincerely

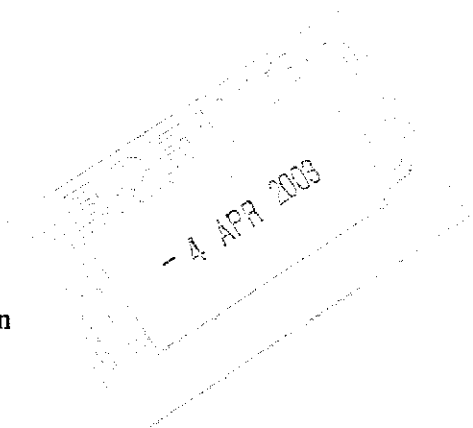
A handwritten signature in black ink, appearing to read 'Peter Hulsing', is written over a horizontal line. The signature is stylized and cursive.

Peter Hulsing
Adviser

11 NOV 2002

R.N. & H. Gross
77 Thorley Way
Lockridge 6054
Ph 92796865

Alan Wheatley
T.P.I. Association
Bullcreek W.A.



DVA File Ref No WSM 4705

Dear Alan

In regards to our telephone conversation on the 2nd April 2003, the following facts are as close as I can estimate without my paperwork.


1996-97 OFFERED AND PAID COMPENSATION OF \$ 41,000.
1996-97 PENSION REDUCED BY \$ 78.00 F/N BECAUSE OF PAYMENT
LUMP SUM OF \$27-28,000 RECOVERED BECAUSE OF PREVIOUS PENSION
PAYMENTS.
TOTAL REPAID TO DATE, \$ 13 - \$ 14,000 [approx].

I'm sorry I cannot be more accurate Alan, but you said you needed the info ASAP. I wouldn't be too far off the mark though because when I received the lump sum, I was getting about \$166.00 per F/N and the Pension then reduced to \$88.00 per F/N.

I hope this will help you and others in the "Cause".

If at anytime, I can assist you, the Association, or other members, please *don't* hesitate to call me on the above telephone number.

Kindest regards,


RAY GROSS

2nd Apr 03