

**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	14
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Attachments	Nil

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VIGILANT



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**ATTENTION :
SECRETARY SENATE FOREIGN AFFAIRS,
DEFENSE AND TRADE COMMITTEE.****SUITE S 1 .57
PARLIAMENT HOUSE CANBERRA
A.C.T. 2600****Dear Committee Members,****Further to the submission of Mr. John Gabriel of the
13/5/03. (acknowledged 16/5/03) I would like to enclose
additional evidence prepared by our Committee members
Mr. J. Gabriel and Mr. F. Meysa.****Yours sincerely,****Mrs. Kerry Glover
Secretary. M.A.C.V.**

61 9 443 7723

The aim of this submission is to illustrate the inequity and the detrimental effect s74 and 30D of the VEA is having on the veteran community.

Although the mentioned sections were in the VEA for some time, the implementation or application of the said sections appears to have come into force around 1992.

Dealing first with s74 of the VEA, we find this instrumentality enables the limitation of a pension by the Department of Veteran Affairs. (Predominantly T&PI). This limitation is to offset a compensation lump sum payment from another source or the payment of loss of income. To explain the procedure we use a veteran receiving a T&PI pension from Department of Veteran Affairs, as he legally has an entitlement of a dual eligibility he applies for a Dept. of Defense compensation payment for a disability. Under s74 he will suffer a limitation to the monetary value of his T&PI. That is to say, if the compensation lump sum payment were to be assessed at 20% he would have his T&PI payments limited by the value of 20% of the general rate of pension. Providing it was an accepted disability by Department of Veteran Affairs and the Dept. of Defense.

On the surface it appears an acceptable calculus. However the Department of Veteran Affairs in the implementation of s74 limiting pensions have in our opinion, not only introduced discrimination, but also has applied a horrific penalty to the veteran. I will endeavor to illustrate these effects individually.

Discrimination. The Department of Veteran Affairs varies the application of limitation dependent on the assessing officer, state in which the determination is made and the subject knowledge the officer has. It can be proved that some veterans have received a percentage limitation, an entire higher rate pension limitation and some have not received a limitation at all. This varying action of limitation is discriminatory to the veterans, as they will not compare limitation of their fellow veteran for fear of fingering their comrade; rather the veteran will suffer the indignity silently.

Horrific Financial Penalty, A veteran in receipt of a T&PI with the Department of Veteran Affairs with a s74 limitation at say 40% who is aged 45. Say his limitation was imposed for a lump sum payment of \$20,000. One could believe it equitable if that veteran's limitation were to remain in place until he had repaid the lump sum received. **Not So.** The fact is he must repay the limitation amount until his demise. A just and realistic scenario would be at age 58 or 13 yrs repayment of the compensation lump sum he would revert back to the full rate of T&PI pension, having repaid the amount he received in lump sum. Some veterans under this system will not only repay the lump sum value back once but twice, and in a few cases three times, dependent on age of the veteran." How can this be equitable and just?" When the veteran is financially penalised for exercising his legal rightful entitlement to both acts.

61 9 443 7723

The Department of Veteran Affairs is still not satisfied with this application by itself and it shows no mercy by going further. Should the veteran dare to exercise his legal right by applying for loss of income payments from the Dept. of Defense whilst in receipt of a T&PI from the Department of Veteran Affairs, he will then suffer a massive total reduction of pension payable at the T&PI rate. E.g., A veteran receiving a T&PI pension applies for and receives loss of income payments from the Dept. of Defense. He will have his T&PI rate limited back to the rate he received prior to the T&PI. That is, if the rate prior to grant of T&PI was 100% of the general rate (approx \$240 per ftm) and the rate of T&PI is (\$650 per ftm) the veteran will suffer a loss of (\$400 per ftm) and dependent on the application of s74, not until age 65 when loss of income payments with Dept. of Defense cease, but until death.

The veteran fails to comprehend how any government can legislate benefits to those who earned the right and have the entitlement, that should the veteran dare to access his entitlement he will invoke the unmerciful wrath of the Department of Veteran Affairs administrators, be having his pension reduced below the poverty line. Not only are they forced to suffer the humiliation of financial loss of unjust repayments but also it continues until death.

We respectfully suggest that when the legislation of s74 was enacted, it be designed to allow the lump sum received to be repaid. Once this had occurred the disability pension would be restored to its full value. Definitely not continue until death. This method forces the veteran to repay the lump sum back several times.

When assessing limitation of a lump sum compensation payment made to the wife of a veteran who is in receipt of a Service pension (S/P), the Department of Veteran Affairs first halves the lump sum amount. Half is deemed for loss of income and the remainder is shared for pain and suffering and disability severity. The half deemed loss of income is assessed for the purpose of limitation and the S/P is reduced accordingly, when the amount of lump sum has been repaid then the S/P is restored to its full value. "Why does the same not apply to the disability pension?"

A veteran eligible to receive a DFRDB pension, Service pension and the T&PI pension can receive the three pensions and only the service pension that is asset and income tested can be reduced.

A veteran receiving a Service pension and T&PI pension who receives a superannuation or a share dividend payment will only have his Service pension reduced.

However.

A veteran who has the entitlement to receive a lump sum compensation or loss of income payments from the Dept. of Defense and a T&PI pension from the Department of Veteran Affairs will have his T&PI rate reduced not until lump sum repayment but until death.

Under the VEA the only pension that is income and assets tested is the S/P. neither the T&PI is non-taxable nor can it be used as income other than for child maintenance purposes. Yet s74 allows the T&PI not only to be limited by a percentage but also to be totally obliterated because the veteran has a legal dual eligibility under the VEA.

61 9 443 7723

We believe veterans can accept a limitation for the purpose of repayment of a compensation lump sum payment, on the proviso that when lump sum amount has been repaid limitation ceases and the veterans pension is restored to its full value. In the case of dual payments, a limitation is imposed utilising the percent of the general rate of pension. This would eliminate the dual payment logic and on repayment or cessation of Department of Defense payments the Department of Veteran Affairs pension limitation cease and pension resume at full value.

S 30D.

Basically this provision of the VEA empowers a self-enacting mechanism to legalise and lock in s74 without the right of appeal. Consultant lawyers are horrified that in a democratic country, those who fought for its freedom are denied the right of appeal.

S30D provides for a self-enacting limitation of disability pension, thus no determination or assessment is required to be made by a Department of Veteran Affairs officer. A veteran has the right to appeal a decision or assessment made by an officer of the Department of Veteran Affairs. S 30D allows for a limitation because a self enacting mechanism that is automatic and does not require an officer to determine or assess, hence no right of appeal. Legal opinion indicates that no right of appeal against a perceived injustice is draconian, oppressive and unsound in law. The veteran believes it oppressive, intimidating and totally demoralizing.

Summary.

S74 and s30D today effect over 1,000 veterans in Australia. As illustrated this is discriminatory and financially devastating to those veterans. MAC V respectfully requests you heed the plea of the Australian veterans as their imposed penalty remains under current legislation. The obvious swell of dissatisfaction among effected veterans is such that, should their plea for justice go unanswered then consideration of alternative action will occur.

We do not ask for a repeal of the legislation, rather an amendment to the existing legislation. A more equitable and just application of the VEA to those who have the eligibility, entitlement and the legal right to apply for disability with more than one Government Department is what we seek.

Amendments to VEA Requested By MAC V.

1. s74. A veteran, having a dual eligibility with the Department of Defense and the Department of Veteran Affairs whom receives a lump sum payment from one and a pension from the other. Has his pension restored to its full value once the amount of hump sum has been received via limitation of his pension.

61 9 443 7723

2. s74. A veteran receiving Department of Defense loss of income payments and a Department of Veterans Affairs T&PI payments, has his T&PI payments limited by the percentage disability under GARP 5. This will eliminate dual payments and at age 65, when Department of Defense loss if payments cease, the veterans T&PI be restored to its full value.

3. s30D. This provision is amended to allow a veteran to appeal an injustice he may feel has been imposed on him through discriminatory or financial application.

We the members of MACV hope that this inquiry committee may see the injustice that we believe is being administered by the Department of Veteran Affairs. Those veterans, whom have the entitlement and are eligible under the Act, receive the allocated benefit for their disabilities without a financial penalty being applied.