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Bills Digest  
No. 134 2003–04

## Veterans' Entitlements (Clarke Review) Bill 2004

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INFORMATION AND RESEARCH SERVICES

Bills Digest  
No. 134 2003–04

Veterans' Entitlements (Clarke Review) Bill 2004

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Social Policy Section  
28 May 2004

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# Veterans' Entitlements (Clarke Review) Bill 2004

**Date Introduced:** 1 April 2004

**House:** House of Representatives

**Portfolio:** Veterans' Affairs

**Commencement:** While the formal provisions commence on the date the Bill receives Royal Assent, there is a variety of commencement dates for different parts of this Bill, as set out in the Table in **Clause 2** of the Bill.

## Purpose

The Bill provides for amendments to the *Veterans' Entitlements Act 1986* (VEA) to give effect to those recommendations in the Clarke Review of Veterans' Entitlements, which the government agrees with and proposes to implement.

The proposals presented in this Bill are:

- a one-off \$25,000 compensation payment for North Korean internment
- the indexation of the 'above general rate' of disability pensions (i.e. special rate, Extreme Disablement Adjustment rate and also the intermediate rate) to average weekly earnings rates (see comments about **Schedule 1** of this Bill in this digest for an explanation of the current veterans' disability pension payment rates)
- the removal of the disability pension as income for other income support payments provided under the *Social Security Act 1991* (SSA), by way of the proposed Defence Force Income Support Allowance (DFISA)
- the payment of rent assistance to war widows' pension (WWP) recipients also receiving income support supplement (ISS)
- an increase in the amount of funeral benefit payment to \$1,000, and
- the recognition of minesweeping and bomb/mine clearance service after World War 2 (WWII) as 'operational service'.

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## **Background**

Background to the Clarke Review and the government's response

### **Review of veterans' entitlements announced in lead up to the November 2001 election**

In the lead up to the November 2001 federal election, the Prime Minister, the Hon John Howard, MP announced that if re-elected the government would initiate a review of veterans' entitlements anomalies.<sup>1</sup>

### **Clarke Review announced**

On 8 February 2002, the Minister for Veterans' Affairs, the Hon Danna Vale, MP announced the establishment of an independent committee to examine veterans' entitlements.<sup>2</sup> The Committee became known as the Clarke Review after the Committee's Chair, the Hon John Clarke, QC. The terms of reference for the Committee were quite broad including:

Recommend possible changes to address any anomalies and to facilitate the equitable and efficient administration of the VEA.<sup>3</sup>

The terms of reference also specifically referred to some current and topical concerns of veterans, being perceived anomalies with eligibility for access to VEA benefits and qualifying service that might be raised by:

- some WWII veterans,
- veterans of the British Commonwealth Occupation Forces in Japan,
- Australian participants in British Atomic testing in Australia, and
- Australian service personnel engaged in counter terrorist and special recovery training and other interested parties.

The full terms of reference are available in the Clarke Review report.<sup>4</sup>

### **Clarke Review report released**

The Clarke Review report was released on 13 February 2003 and is available on-line at the Committee's internet site.<sup>5</sup> The Clarke Review report made some 109 recommendations in three volumes, making up a total of some 917 pages.

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## **Government announces its response to the Clarke Review report**

On 2 March 2004, the government announced its response to the recommendations about veterans' entitlements presented in the Clarke Review report.<sup>6</sup> A more detailed response to the report was provided by the Minister for Veterans' Affairs, the Hon Danna Vale, MP on 2 March 2004.<sup>7</sup>

In the Minister's media release of 2 March 2004, the government explained some why it did not agree with some of the major recommendations in the Clarke Report.<sup>8</sup> This digest is largely concerned with the recommendations the government has decided to implement.

The government claimed in its response to the Clarke Review that the recommendations it had agreed to would cost an estimated additional \$267 million over five years.<sup>9</sup>

## **Appropriate provision for veterans and ex-service personnel**

### **World War I (WWI) - need for war pension and war compensation**

On 8 August 1914, Major-General W. T. Bridges, who had been given the task of raising 20,000 volunteers, advised the Government that:

‘pensions’ should be guaranteed to enlisted men, and to their dependants in case of death, and ‘compensation’ in case of disablement through wounds.

A proposal for a war caused injury and loss scheme received Cabinet approval and was made public in September 1914 and subsequently the *War Pensions Act 1914* (WPA) was introduced to the Parliament on 5 September 1914. The WPA was the first piece of repatriation legislation in Australia. There being no Australian precedent repatriation legislation or scheme, the WPA largely mirrored the pre-existing UK legislation, which had previously covered Australians serving as members of Imperial Forces overseas. The then Minister for Defence Senator G. F. Pearce, in his second reading speech in the Senate on 17 December 1914 said:

One of the saddest spectacles of the past has been to see men who have been willing to risk their lives in the defence of the country left destitute and the dependents of men who have laid down their lives for their country having to live on charity.<sup>10</sup>

Prior to the WPA, compensation for the small contingents sent by Colonial Governments overseas, such as the Sudan, the Boxer Rebellion, the Boer War, were provided for by the British Government.

In debating the WPA, the then leader of the Opposition in the Senate, Senator E. D. Millen said:

I need only remind Senators of our experience in connection with the South African War. We all know how we cheered our troops on their way to the front, and that,

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when they came back, one of the most pitiful sights that could confront anyone was the spectacle of a number of our returned soldiers absolutely driven to beg for a living.<sup>11</sup>

So concern and debate in the community and in the parliament about appropriate assistance for veterans and ex-service personnel is not new.

### **Clarke Review of veterans' entitlements anomalies – latest in a long history of similar reviews**

At pages 223 to 227 of the Clarke Review report is a list of previous reviews conducted into veterans' issues since 1970.<sup>12</sup> It lists 12 reviews, which highlights how many times veterans' issues have been examined, wholly or partially over the past 34 years. Not all of the reviews have had as broad a terms of reference as the Clarke Review, with some examining only specific areas of service. For example, The Mohr Report of 2000 was commissioned to only examine service entitlement anomalies in respect of South-East Asian Service 1953-1975.<sup>13</sup> The Mohr Report contrasts with the Toose Report of June 1975 which extended to 762 pages, being, like the Clarke Review, was commissioned to make a comprehensive review of the Australian Repatriation System.<sup>14</sup>

### **Why have there been so many veterans' entitlement reviews?**

Concerns about appropriate assistance for veterans and/or ex-service personnel have been in existence in Australia since at least the beginning of the WWI. As stated in the Clarke Review report:

The veteran community is a special group with special circumstances. Veterans and their dependants want their needs to be addressed holistically, so that the delivery of assistance is effective and consistent.<sup>15</sup>

The most important words in this statement are 'effective' and 'consistent'.

#### **Entitlements need to be 'consistent'**

Where one group of veterans or ex-service men or women see that a group is gaining access to assistance or entitlement, and they think they are just as worthy a group and/or their service circumstances is similar, they therefore think they deserve to have the same assistance. This situation then this raises concerns about perceived or real 'entitlement anomalies'.

The history of repatriation assistance in this country is littered with 'catch-up' claims by one group of veterans or ex-service personnel, claiming assistance similar to the assistance available to another group. A current example of this is Australian ex-service personnel of WWII, who do not have qualifying war service (having not served in a theatre of war), seeking access to the veterans' Gold Card. At present the Gold Card is only issued to

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Australian ex-service personnel of WWII aged 70 or more who are considered as 'veterans' under the VEA, as they have qualifying war service.

Entitlements need to be 'effective'

It is not just 'catch-up' claims that drive veterans' entitlement issues. As said above, the Toose Report of 1975<sup>16</sup> conducted a very comprehensive review of the Australian repatriation system. It examined all service issues up to the early 1970s, but views and understanding of these issues will change over time. For example, the medical profession and the veteran community today has a better understanding of post traumatic stress disorder, than existed after WWI and WWII. Over time the understanding of various service and the views as to appropriate assistance and compensation develops and changes.

For so long as there are Australian armed service personnel engaged in duty that places them at risk, like peacekeeping duties or warlike operations, the future will be one of on-going debate about appropriate assistance and compensation for those adversely affected.

### **Expectations from any veterans' entitlement review**

Each time a review is convened it is usually with a different team of experts and/or eminent person/s and with different terms of reference. With each review, there is an expectation that some concessions will be made or assistance expanded to some group, otherwise the review is seen to be parsimonious, unsympathetic or too harsh. However, whenever assistance or access is recommended to be expanded, there is the risk that it will be contrary to the recommendations of previous reviews.

### **Ad-hoc reviews – are they the best way to conduct the repatriation assistance and entitlement debate?**

It is arguable that the convening of ad-hoc reviews into veterans' entitlements is an unsatisfactory way of examining veterans' policy and considering access to veterans' assistance. A patchwork quilt approach to veterans' policy can result and this need not be the way veterans' assistance is considered. The tenets and principles of access to veterans' assistance are not difficult; and it might be far better to have some form of on-going consideration of veterans' assistance, using a form that is established and agreed. This would encourage greater consistency, using a methodology and policy principles that are set out, explained, publicised, understood and agreed.

### **Repatriation aims and principles**

The Clarke Review discussed repatriation principles in Chapter 4.<sup>17</sup> It considered the repatriation principles of the Toose Report<sup>18</sup> and also the Baume Report<sup>19</sup> and generally

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accepted the principles espoused in those two reports. The Clarke Review also provides its own view of the aim of repatriation assistance:

The Government, in expression of the nation's debt of gratitude, shall provide a beneficial level of compensation and support to veterans and their dependants for incapacity or death resulting from service in the armed forces during times of war or of conflict or in warlike and non-warlike operations.<sup>20</sup>

### **Government's reaffirmation of veterans' entitlement principles**

In its response to the Clarke Review recommendations, the government affirmed that there would be no change in some of the basic principles currently and historically underlying access to veterans' entitlements. The government response stated:

The government will continue to provide special recognition and comprehensive assistance to those who have served Australia in times of war, at personal risk of injury or death from an armed enemy.

In keeping with this approach, we have accepted the Clarke Report's recommendation that there be no change in the incurred danger test for Qualifying Service. However, we reject the view this test has been interpreted too narrowly.<sup>21</sup>

In short, this means there is to be no change in the requirement that an ex-service person must have qualifying war service to access the assistance that is targeted at this group, mainly the service pension and the Gold Card. This is why WWII ex-service personnel who may have seen service in Australia only, and therefore do not have the requisite war service, cannot access the service pension or the Gold Card provided to WWII veterans with qualifying war service. This was confirmed in the media release by the Minister for Veterans' Affairs, the Hon. Danna Vale, MP of 2 March 2004.<sup>22</sup>

The Clarke Review examined claims for some peacetime service to be recognised as warlike service. A long-standing issue in this context is the British Commonwealth Occupational Forces (BCOF) in Japan post WWII.<sup>23</sup> It has been a long-standing claim of the former BCOF service personnel that BCOF service was just as hazardous as other WWII warlike service and should be recognised in the VEA as such. Currently, the service is recognised as peacekeeping type service, so BCOF service has access to the disability pension for BCOF caused injuries/illnesses and their widow/er has access to the WWP for BCOF caused/related death. However, BCOF service, not being recognised as qualifying war service, means it does not entitle access to the service pension or the Gold Card provided to other WWII veterans with qualifying war service. The Clarke Review did recommend that some early BCOF service be recognised as warlike service,<sup>24</sup> but it appears the government has not agreed to this.

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## Part 2 – Compensation payments for North Korean internment

**Part 2** of the Bill proposes to provide for a one-off ex-gratia payment of \$25,000 to all surviving prisoners of war (POW) of the Korean War and their surviving widows/ers. Recommendation No. 50 of the Clarke Review suggested that such a payment should be provided.<sup>25</sup>

This proposed payment follows on from the one-off ex-gratia payment provided to POW of the Japanese in WWII, their widows and widowers. The *Compensation (Japanese Internment) Act 2001* was the legislation that provided for that one-off payment.<sup>26</sup>

The main controversy with this proposal is that it is not proposed to provide those POW interned in Europe in WWII with a like payment. The Clarke Review did not recommend POW of Europe of WWII should get a payment, referring to the rationale for the one-off payment to the POW of the Japanese, that was set out by the then Minister for Veterans' Affairs, the Hon. Bruce Scott in the second reading speech to the *Compensation (Japanese Internment) Act 2001*:

By war's end, more than 8,000 Australian POWs—36 per cent of those taken prisoner by the Japanese—had died. For up to three and a half years, Australian service personnel and civilians suffered in the most horrific conditions imaginable. They endured starvation and brutal treatment at the hands of their captors. They were forced into slave labour on projects like the Burma-Thailand railway. They were sent on forced marches, such as the notorious death march from Sandakan to Ranau, during which more than 2,000 Australian and Allied prisoners of war died. In recognition of their unique ordeal, the government will make a one-off cash payment of \$25,000 to all living Australian prisoners of war and civilian detainees and internees who were held by Japan during World War II.<sup>27</sup>

The Clarke Review considered that the treatment of POW of the Korean War was like that for the POW of Japan and therefore recommended a like payment should be made.

### Estimated cost

The estimated cost of proposed payment is \$0.5 million in 2003-04. As at 28 June 2003, there were 15 Korean War POW in Australia.<sup>28</sup> So a rough calculation using these figures means there is approximately 5 Korean War POW widows/widowers.

## Schedule 1 – Indexation of the above general rate of disability pensions

### Introduction

At present all disability pension rates are indexed twice a year (March and September) to the consumer price index (CPI).

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The Clarke Review recommended that the rate of disability pension paid for non-economic loss compensation (that is, general rate disability pension) should be indexed to the CPI. This is currently the case. The Clarke Review recommended that those disability pension rates paid with some component of income support paid for economic loss (that is, the special rate, the intermediate rate and the Extreme Disablement Adjustment) should be indexed to earnings rates.<sup>29</sup> The proposed amendments presented in **Schedule 1** of the Bill accord with this recommendation.

See below for an explanation of the current different rates of veterans' disability pension.

### **Estimated cost**

The proposed indexation of the disability pension rates, paid above the general rate, is estimated to cost \$2.0 million in 2003-04, \$9.9 million in 2004-05, \$19.1 million in 2005-06, \$24.6 million in 2006-07 and \$31.6 million in 2007-08.

### **Proposed indexation of disability pension**

The proposal is to index the disability pension rates that are paid above the general rate to both the CPI and to Male Total Average Weekly Earnings (MTAWE). This is the same indexation regime that has applied to the age pension and the veterans' service pension since 1997.<sup>30</sup>

### **Background – current veterans' disability pension payment rates**

There are three separate veterans' disability pension payments, paid above the general rate. Each is not payable concurrently and each has different payment rates. The payments are:

- Special rate (T&PI, blinded or T&TI)                      \$771.00 per fortnight (pf)
- Intermediate rate    \$532.20 pf
- Extreme Disablement Adjustment                              \$438.45 pf

Notes:

- The rates quoted are effective March to September 2004.
- T&PI - refers to Totally and Permanently Incapacitated.
- T&TI refers to Totally and Temporarily Incapacitated.

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### General rate disability pension

Separate to these special disability pension rates, the general rate disability pension is payable from 10 per cent (\$29.23 pf) up to a 100 per cent disability rate (\$292.30 pf) – see table below. The general rate is linked to the individual's level of assessed of disability. The general rate disability pension is not income or asset tested.

### ***General rate disability pension payment rates – March to September 2004***

*(per fortnight)*

100%	\$292.30
95%	\$277.69
90%	\$263.07
85%	\$248.46
80%	\$233.84
75%	\$219.23
70%	\$204.61
65%	\$190.00
60%	\$175.38
55%	\$160.77

50%	\$146.15
45%	\$131.54
40%	\$116.92
35%	\$102.31
30%	\$87.69
25%	\$73.08
20%	\$58.46
15%	\$43.85
10%	\$29.23

**Schedule 1** of the Bill does not propose to index the general rate disability pension to MTAWE, so it will continue to be indexed twice a year to the CPI.

### Intermediate rate

The intermediate rate is potentially payable where the veteran is assessed as having a 70 per cent or more disability (using the assessment for the general rate) and it also assessed that the veteran is unable to work for at least 20 hours a week. In this case, the \$532.20 pf intermediate rate is paid instead of general rate disability pension of 70 per cent or more (that is, \$204.60 pf to \$292.30 pf).

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The intermediate rate is not always payable where the disability assessment is 70 per cent or more. For example, a veteran may be assessed as having an 80 per cent disability but may also be able to work for more than 20 hours a week. In this case the intermediate rate is not payable, only the 80 per cent general rate, that is \$233.84 pf.

The intermediate rate, paying a higher rate than the 100 per cent general rate recognises the resultant work inability of the veteran arising from their war caused/related illness/injury, so has a component for income support. Separate to the 20 hours a week test; there are a few other situations where the intermediate rate can be paid, for example suffering from pulmonary tuberculosis.

The intermediate rate disability pension is not income or asset tested.

Intermediate rate is one of the disability pension payment rates that **Schedule 1** would to index to MTAW.

### Special rate

The special rate disability pension is commonly referred to as the Totally and Permanently Incapacitated (T&PI) disability pension. The special rate works very much like the intermediate rate, but the incapacity for work test is tougher. The special rate is potentially payable where the veteran is assessed as having a 70 per cent or more disability (using the assessment for the general rate). Where the 70 per cent or more is attained, and it also assessed that the veteran is unable to work for at least 8 hours a week, then the special rate of \$771.00 pf is payable. The \$771.00 pf is then the only amount paid and is not paid in addition to any general rate pension.

Separate to the 8 hours a week test; there are a few other situations where the special rate can be paid, for example where the veteran has pulmonary tuberculosis (TB). Where the veteran has TB, it is assumed disability and inability to work requirements are met and the special rate is paid.

The special rate, paying a higher rate than the 100 per cent general rate recognises the resultant work inability of the veteran arising from their war caused/related illness/injury, so has a component for income support. The special rate disability pension is not income or asset tested.

The special rate disability pension is not income or asset tested.

Special rate is one of the disability pension payment rates that **Schedule 1** would index to MTAW.

For special rate, where a veteran has reached 65 years of age, additional criteria apply. The last paid work, which is precluded by the incapacity, must have commenced prior to 65 and the veteran must have been employed in it for at least 10 years. Retired veterans,

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aged 65 or more, with very severe disabilities, might be entitled to an Extreme Disablement Adjustment rate – see below.

#### Extreme Disablement Adjustment

The Extreme Disablement Adjustment rate disability pension can only be considered for veterans who have reached 65 years of age and who are entitled to a disability pension at 100 per cent general rate but are also not eligible to receive a special rate or intermediate rate pension. As the veteran is aged 65 or more, the inability to work tests for either 20 hours a week (i.e. that used for intermediate rate) or 8 hours a week (i.e. that used for special rate) are not applied. Instead a test requiring 70 medical points or more and at least 6 out of 7 lifestyle points is applied to qualify for Extreme Disablement Adjustment.

Extreme Disablement Adjustment is not income or asset tested.

Extreme Disablement Adjustment is one of the disability pension payment rates that **Schedule 1** would index to MTAWA.

#### **Indexation to the CPI or MTAWA – which is best can depend on timing**

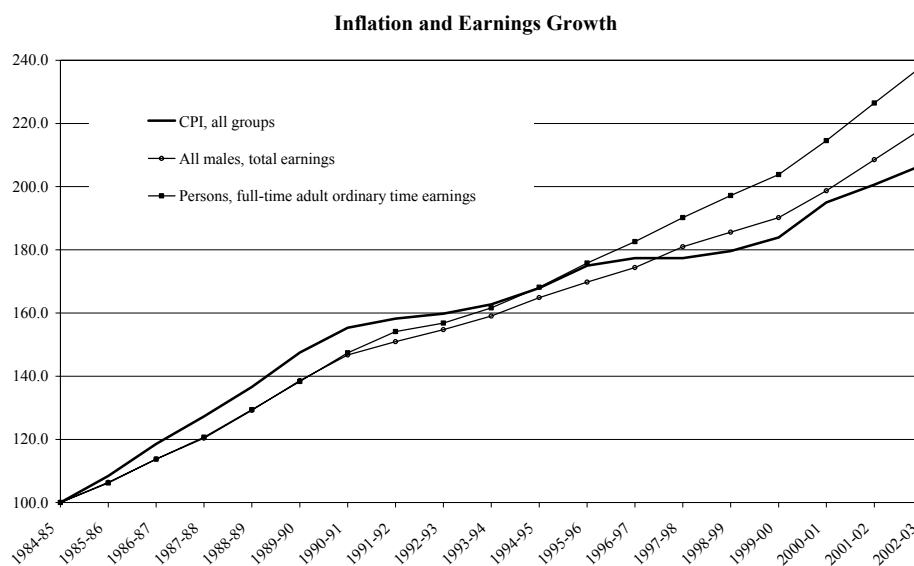
The clamour for the veterans' disability pensions to be indexed to earnings rates has especially increased since the indexation of the age and service other pension rates to both the CPI and to 25 per cent of MTAWA since September 1997. In the current climate of increases in wage levels being larger than increases in the CPI, it is the indexation of the age and service pension to 25 per cent of MTAWA that has driven the recent increases to the age and service pension payment rates. In the period from December 1995 to December 2003, the CPI increased by 20.5 per cent, whereas the AWE (full-time adult) increased by 42 per cent.<sup>31</sup>

While it is true at the moment that AWE are increasing at a higher rate than CPI, the table below demonstrates that there have been times in the past when the CPI has grown at a greater rate than the other two AWE indexes. In particular, between the 1985-86 and 1989-90 years, the CPI was increasing at a greater rate than earnings rates, mainly due to increasing interest rates and the then Wages Accords. Also, in the 2000-01 year, due to a spike in the CPI induced by the introduction of the Goods and Services Tax (GST).

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We did not see veterans clamouring for indexation against AWE in the mid-1980s, when the CPI rate increases exceeded AWE rate increases. So the urgings at the moment for the indexation of the special rate to wage earnings rates is being driven by concerns that the rate is being left behind comparatively.

### Comment

For those disability pension rates that are paid above the general rate (i.e. the special rate, Extreme Disablement Adjustment and the intermediate rate), there are elements in the payment rates that are for income support/lost earning capacity. This contrasts with the general rate (from 10 per cent to 100 per cent), which is solely tied to assessed level of disability. In terms of the elements paid for income support, the payment rates being only indexed to the CPI, have certainly fallen behind compared to increases in earnings rates.

Currently, income support pension rates paid under the SSA and the VEA are maintained at both the CPI and 25 per cent of MTAW. <sup>32</sup> However, allowance income support payments provided under the SSA are only maintained with the CPI. <sup>33</sup> Whether government should maintain income support payments in line with earnings rates increases or just to CPI rate increases is a matter of debate. Arguably, maintenance against the CPI ensures payment rates are not eroded against the cost of living increases. Maintenance against earnings rates increases is aimed at ensuring that increased earnings rates being enjoyed by those in labour force are also being enjoyed by those not in the labour force.

Veterans' groups have been asking for the indexation of the special rate to AWE for some time and have supported this proposal. <sup>34</sup>

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## Schedule 2 – Part 1 - Defence Force Income Support Allowance (DFISA)

The Clarke Report examined the issue of the differential treatment of all the different disability pension rates as income for income support payments provided under the SSA and not as income for income support payments provided under the VEA.<sup>35</sup> The Clarke Review recommended that the various different disability pension rates be no longer regarded as income for income support payments provided under the SSA.<sup>36</sup>

### **Government proposal**

In response to this Clarke Review recommendation, the government proposes to introduce the new DFISA, to be paid to eligible veterans receiving a disability pension under the VEA and also receiving an income support payment under the SSA. The DFISA will eliminate the difference between a veteran's SSA income support payment, which is currently reduced as their disability pension is regarded as income, and the amount they would receive if their disability pension was not assessed as income.

The new DFISA will make up for the loss of the rate of income support payment paid under the SSA. The income support payment is reduced as the disability pension paid under the VEA is regarded as income under the income test.

The features of the proposed new DFISA are:

- it will be payable under the VEA
- it will be payable to person who receives a disability pension paid under Parts II and IV of the VEA<sup>37</sup> and who also receives an income support payment under the SSA,<sup>38</sup> and
- the amount of DFISA paid will be the amount of the reduction in the primary SSA income support payment, as a result of the disability pension being treated as income.

### **Estimated cost**

The proposed DFISA is estimated to cost \$6.6 million in 2003-04, \$24.3 million in 2004-05, \$23.0 million in 2005-06, \$23.1 million in 2006-07 and \$22.9 million in 2007-08.

### **Residual issues and comment**

The main complaint about the current arrangements centres on the disability pension and its treatment as income for the age pension (and other social security income support payments). It has often been argued that disability and the WWP, being compensation, should be disregarded as income under the income test.

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The issue of how to treat veterans' compensation payment against income support payments provided under either the VEA or the SSA has been the matter of debate since 1917, and the rules have varied over time.

For those disability pension rates that are paid above the general rate (that is, the special rate, Extreme Disablement Adjustment and intermediate rate), there are elements of the rates that are for compensation and also for income support/lost earning capacity (see comments about the disability rates in Schedule 1 comments above). Whether the elements in the rates paid for income support should be exempted from the income test for other income support payments paid under the SSA is arguable. This contrasts with the general rate, which is paid as compensation for assessed level of disability.

### Dual entitlements to payments – to regard, or not regard, as income?

In the context of there always having been a pension means test, the issue of the appropriate treatment of the war disability pension against other income support payments like the service pension and the age pension, has been ongoing and continuously contentious.

It has often been argued that veterans' disability pension, being largely compensation, should be disregarded as income under the income test. The counter arguments to disregarding compensation payments as income is that some individuals with dual entitlements can be significantly financially advantaged compared to those with a single entitlement. Also, the extra cost to government outlays in ignoring compensation payments as income could be significant.

### Current interactions between the service pension, age pension, disability pension and WWP

PAYMENT	Service pension	Age pension	Disability pension	War widows/ers pension
Service pension	<b>X</b>	Cannot be paid concurrently – can only be paid one OR the other	Can be paid at the same time – the war disability pension is not income for service pension	Can be paid additional to service pension. Service pension is paid in the form of Income Support Supplement at a reduced rate
Age pension	Cannot be paid concurrently – can only be paid one OR the other	<b>X</b>	Disability pension can be paid in addition to the age pension but is treated as income under the income test	Can be paid additional to age pension. Age pension is paid in the form of Income Support Supplement at a reduced rate
Disability pension	Can be paid at the same time – the war disability pension is not income for service pension	Disability pension can be paid in addition to the age pension but is treated as income under the income test	<b>X</b>	Can be paid at the same time with no impact on either payment
War widows/ers pension	Can be paid additional to service pension. Service pension is paid in the form of Income Support Supplement at a reduced rate	Can be paid additional to age pension. Age pension is paid in the form of Income Support Supplement at a reduced rate	Can be paid at the same time with no impact on either payment	<b>X</b>

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### **The *Invalid and Old Age Pensions Act 1908* and the WPA - history of legislative interaction**

By the time the WPA was introduced, the civilian age and invalid pensions had been in place for four years.<sup>39</sup> Under the *Invalid and Old Age Pensions Act 1908*, income included all monies or valuable consideration, earned derived or received. This was catch-all income definition, with only specific exclusions listed in Section 4 not counted as income.

Upon the introduction of the WPA, the *Invalid and Old Age Pensions Act 1908* was not amended to exclude the new war disability pension or the WWP, resulting in these pensions being counted as income for the civilian pensions. The probable reason for this was that there was probably very few people entitled to both payments at that time, that is a male aged 65 or more (female aged 60 or more), who also had qualifying WW1 service and had a war caused illness/injury, or was a war widow.

#### *Amendments to the Invalid and Old Age Pensions Act 1908 – 1917*

The first specific legislative interaction between the war disability pension with the civilian pension payments occurred in 1917. The *Invalid and Old Age Pensions Act 1908* was amended to exclude as income any additional amounts of war disability pension, paid in respect of child dependents of deceased or incapacitated soldiers, for example, attendant allowance. However, the principal war pension payments paid to the veteran continued to be caught and defined as income for the civilian pension income test.

#### *Amendments to the Invalid and Old Age Pensions Act 1908 – 1928*

Amendments were passed by the Parliament in 1928 to exempt as income any war disability pension for the civilian age pension. Up until this change, these payments were regarded as income under the income test. An examination of Hansard reveals the amendments had bipartisan support.<sup>40</sup> This decision was reversed in 1931 with the onset of the Depression – see below.

#### *Financial Emergency Act 1931*

In 1931 the war disability pension was removed as being exempt as income for the age and invalid pension. This was part of the austerity measures for the Depression under the *Financial Emergency Act 1931*.

### **Introduction of the Service Pension in 1 January 1936 - *Australian Soldiers' Repatriation Act 1935***

The service pension was introduced in 1936 as the broad equivalent of the civilian age pension and primarily for those with 'theatre of war' service. Currently, there is virtually no difference between the veteran service pension and the civilian age pension in terms of rate and means testing. The service pension is payable 5 years earlier than the age pension,

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recognising the extra stresses and strains of war service. The main difference in the means testing is the current exemption of disability pension as income under the service pension income test.

From the outset, there were legislative exclusions to preclude the simultaneous payment of the service pension and the civilian age pension. Also, from introduction, the service pension was subject to a means test and the veterans' disability pension was regarded as income. Over time, the amount regarded as income was reduced to the benefit of veterans. In 1973, 75 per cent of the disability pension was regarded for the income test for service pensions. This was changed in 1975 to 50 per cent and this was progressively decreased to 40 per cent from January 1982. Eventually none was regarded as income from November 1982.

### **DFISA paid under the VEA – is this a simple solution?**

The SSA does not carry specific sections stating that war disability pensions paid under the VEA is 'income' for income support payments paid under the SSA. Rather, the SSA has a general all encompassing definition of 'income' then lists specific exemptions.<sup>41</sup> Subsection 8(1) of the SSA basically says everything is 'income', unless it is listed as an exemption in subsections (4), (5) or (8) of section 8 of the SSA.

If the aim of the proposal is no longer to regard disability pension paid under the VEA as income for SSA income support payments, it would seem a far simpler legislative solution simply to have war disability pension paid under the VEA removed as income for SSA purposes. It could be simply added as one of listed exclusions in sub-sections (4), (5) or (8) of section 8 in the SSA.

The proposal to create this new and extra payment (that is DFISA), creates far more complexity and cost, especially in administrative costs, now and in the future. If disability pension were simply exempted in the SSA, then only two calculations need to be made at claim or review: one calculation of the disability pension rate under the VEA and a second for the income support payment under the SSA, the second simply ignoring any disability pension received (as is done now for the service pension paid under the VEA which ignores any disability pension paid).

With the proposed DFISA, three calculations will be required: one for the disability pension and a second for the SSA payment including the disability pension as income. The third calculation required that will be the SSA payment rate, if the disability pension were ignored as income, so the rate of DFISA rate can then be determined. This would not be required if disability pension was simply exempted as income under the SSA.

### **Schedule 3 – Rent assistance for war widows and war widowers**

The Clarke Review examined the level of payments available to war widows/ers and recommended rent assistance (RA) be provided to war widows/ers receiving a WWP and

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also receiving ISS.<sup>42</sup> **Schedule 3** of the Bill ensures that any RA that is paid can be in addition to the ISS rate.

Basically, the justification for the Clarke Report recommending that RA be provided to war widows/ers was:

war widows/ers renting in the private market are among the most needy in the Australian community and regards this situation as inequitable. The Committee recommends the rent assistance in its present form be provided in addition to the existing war widow's pension and ISS.<sup>43</sup>

A description of ISS is set out below. So those WWP recipients who are also receiving ISS are by definition low-income earners, as they otherwise qualify for an income support payment under their income and/or asset tests.

### **What is ISS?**

ISS refers to the income tested income support supplement paid to some recipients of disability pension or WWP. Neither the disability pension or the WWP is means tested (income or assets), being largely paid as compensation for war related illness/injury or death. Some recipients of WWP may also qualify for another income tested income support payment provided under either the SSA or the VEA, for example age pension, wife pension or service pension. If they are entitled to an income support payment under the SSA or VEA, ISS paid by the Department of Veterans' Affairs under the VEA, in lieu of the income support payment. Any ISS paid in addition to the WWP is at a reduced rate (see below), recognising they are also receiving a means test free veterans' war compensation payment.

Some disability pension or WWP recipients do not qualify for ISS as their income and/or assets preclude payment of age pension, or service pension or wife pension under the means tests. It is not proposed to provide RA to this group of WWP recipients.

### **Current WWP payment rates**

The fortnightly rates of WWP and ISS for the period March to September 2004 are set out below.

#### **WWP**

War widow's/widower's pension — indexed component	\$464.20 pf
War widow's/widower's pension — non-indexed component	\$ 25.00 pf
Total	\$489.20 pf

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## ISS

The ISS ceiling rate is \$137.90 pf. Note the ISS ceiling rate is adjusted twice yearly, in March and September, in line with movements in the CPI and/or average wages.

### **Estimated cost and numbers affected**

The proposal to pay RA to war widows/ers is estimated to cost \$11.5 million in 2004-05, \$21.4 million in 2005-06, \$22.3 million in 2006-07 and \$23.1 million in 2007-08 and \$23.8 million in 2008-09. It is estimated some 11,000 WWP recipients will receive an increase in their ISS as a result of the proposal to pay RA in addition to ISS. This will mean up to an additional \$94.40 a fortnight for eligible WWP recipients.<sup>44</sup>

### **Comment**

This proposal will, for the first time, pay RA to a group whose primary source of income is a non-means tested war compensation payment, that is WWP. The Clarke Report, in recommending this proposal, also examined submissions for an increase in the rate of the WWP but did not find that warranted.<sup>45</sup> However, the Clarke Report did recommend that RA be paid to WWP recipients receiving ISS. The basis for this conclusion, that war widows/ers renting in the private market are among the most needy in the Australian community, is not supported by any investigation or evidence in the Clarke Report.

If the current maximum rate of WWP is \$495.00 pf (includes \$5.80 pf pharmaceutical allowance), is added to the maximum rate of ISS \$137.90 pf, plus the maximum rate of RA \$95.40 pf (single person, no children), then the total potential payment would be \$728.30 pf. How does this compare to a like age, disability support or widow B pensioner? The current maximum rate of pension is \$470.00 pf (includes \$5.80 pf pharmaceutical allowance), plus the maximum rate of RA (\$95.40 pf – single person, no children), resulting in a total payment of \$565.40 pf.

## Schedule 4 – Funeral benefits

The proposal is to have a one-off increase in the rate of funeral benefit (FB) from the current \$572 to \$1,000. This accords with the recommendation in the Clarke Review.<sup>46</sup>

### **Estimated cost**

The proposed one-off increase in the rate of FB is estimated to cost \$5.6 million in 2004-05, \$5.6 million in 2005-06, \$5.6 million in 2006-07 and \$5.6 million in 2007-08.

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## Schedule 5 – Minesweeping and bomb/mine clearance service

This proposal is to extend the definition of 'operational service' to prescribed mine sweeping and bomb/mine clearance service post WWII up to in some cases the mid 1950s. This accords with a recommendation in the Clarke Review report.<sup>47</sup>

### Estimated cost

The proposed extension of 'operational' service to designated minesweeping bomb/mine clearance service after WWII is estimated to cost \$0.1 million in 2004-05, \$0.1 million in 2005-06, \$0.1 million in 2006-07 and \$0.1 million in 2007-08.

### Comment

It has been a long-standing complaint of ex-service personnel that their minesweeping and bomb/mine disposal work, especially post WWII, has not been given the proper recognition it deserves. It has always been recognised as being very dangerous work and this is evidenced by the service having recognition as 'qualifying service', which is unique as there is virtually no other service outside designated qualifying war service, that gets this recognition. Interestingly, the Clarke Review commented that this accreditation of minesweeping/bomb/mine clearing service as 'qualifying service' might not have been an appropriate decision.<sup>48</sup>

However, to gain access to the service pension, as well as having 'qualifying service, the minesweeping/bomb/mine clearing service personnel also had to be classified as a 'veteran'. To be eligible for service pension, the person needs to be a 'veteran' and have 'qualifying service'. Section 36 of the VEA refers.<sup>49</sup> Section 7A of the VEA, which defines 'qualifying service', essentially refers to service involving a period of hostilities in a war or at least armed conflict.

For many of the minesweeping/bomb/mine clearing service personnel this was not a problem, having also served in a theatre of war zone during WWII, they met the 'veteran' requirement. However, the minesweeping/bomb/mine clearing activities extended for many years after 1945 and a small number of personnel became involved after the end of WWII hostilities and therefore did not have the 'war service' to be classified as a 'veteran'. They had the 'qualifying service' of minesweeping but not the 'war service' to be classified as a 'veteran', as required by section 36 of the VEA.

It is this small group that **Schedule 5** proposes to accredit with 'operational service' and therefore classify them as a 'veteran', thereby gaining access to the service pension, the Gold Card and disability pension and treatment.

The group is small signified by the low estimated cost outlays of \$0.1m a year.

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## Main Provisions

### Part 2 – compensation payments for North Korean internment

**Clause 5** sets out who is to be qualified for the one-off compensation payment.

**Clause 6** sets out the amount of the payment at \$25,000.

**Clause 13** ensures the compensation payment is disregarded for the VEA and SSA assets tests. However, there being no exemption for the income test proposed in this Bill, where monies are placed into a bank account etc, any income generated would be income under the VEA and SSA income tests.

### Schedule 1 – Indexation of the above general rate of disability pensions

**Item 5** identifies which of the different disability pension rates are to be subject to this proposed new indexation arrangements, being special rate, Extreme Disablement Adjustment and intermediate rate.

**Item 9** sets out the new proposed indexation methodology. This is identical to the sections already in the VEA for the indexation of the service pension and the pension payments in the SSA.<sup>50</sup>

### Schedule 2 – Part 1 - Defence Force Income Support Allowance (DFISA)

**Item 3** sets out the DFISA definitions, qualification requirements, when DFISA is to be paid and the amount of DFISA.

### Schedule 3 – Rent assistance for war widows and war widowers

**Schedule 3** proposes to amend Schedule 6 of the VEA. Schedule 6 of the VEA is the part that sets out the calculation of the rate of service pension and ISS. By inserting these proposed sections to calculate a rate of RA in Schedule 6 of the VEA, the amendments will tag RA payment to ISS recipients. RA is only to be paid to WWP recipients also receiving ISS. **Item 3** and **Item 7** set out the formula for the calculation of the rate of RA.

### Schedule 4 – Funeral benefits

**Items 1 to 3** proposes to alter the provisions in the VEA to change the rate of funeral benefit payment from \$572 to \$1,000. **Item 4** prescribes that the new rate applies to deaths only after the commencements date being 1 July 2004.

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## Schedule 5 – Minesweeping and bomb/mine clearance service

**Item 1** proposes to alter section 6 of the VEA to include minesweeping/bomb/mine clearing service as 'operational service'. **Item 2** defines what period of minesweeping/bomb/mine clearing service is referred to by tagging it to receipt of certain prescribed service awards (clasps). These clasps confirm service in the prescribed areas.

## Concluding Comments

This Bill represents the government's response to the recommendations in the Clarke Review report into veterans' entitlements. Not all of the Clarke Review recommendations have been included in this Bill and therefore have not been agreed to by the government at this stage.<sup>51</sup> Some of the proposed amendments to the VEA do set a precedent, for example providing RA to WWP recipients. Some amendments are beneficial but could still be a matter of contention given that they could be accused of being too beneficial. For example, exempting disability pension payments paid at above the general rate, with their components of income support, as income for other income support payments provided under the SSA.

All of the Schedules proposed in the Bill propose amendments to the VEA that are beneficial, in terms of providing greater levels of assistance. This is evidenced by the total estimated extra cost of \$267m over five years.<sup>52</sup> The Clarke Review, at three volumes and 917 pages, is a very comprehensive examination of veterans' entitlements but history suggests that many of the issues that the government has not agreed to this time, will be the subject of future requests for examination and assistance by future governments.

## Endnotes

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- 2 The Hon. Danna Vale, MP, (Minister for Veterans' Affairs), *Independent committee to review veterans' entitlements*, media release, 8 February 2002, [http://minister.dva.gov.au/media\\_releases/2002/feb/va005.htm](http://minister.dva.gov.au/media_releases/2002/feb/va005.htm)
- 3 Internet site for the Clarke Review of veterans' entitlements anomalies, <http://www.veteransreview.gov.au/index.htm>
- 4 Clarke Review report. op. cit., pp. 167-169, <http://www.veteransreview.gov.au/report/index.htm>

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- 5 The Hon. J. C. Clarke QC, 'Review of Veterans' Entitlements', Commonwealth of Australia, Canberra, 2003, <http://www.veteransreview.gov.au/report/index.htm>
- 6 The Hon. John Howard, MP, (Prime Minister), *Additional benefits for veterans, government response to the Clarke Report*, media release, 2 March 2004, [http://www.pm.gov.au/news/media\\_releases/media\\_Release724.html](http://www.pm.gov.au/news/media_releases/media_Release724.html)
- 7 The Hon. Danna Vale, (Minister for Veterans' Affairs), *Response to the Clarke Committee Report on Veterans' Entitlements*, media release, 2 March 2004, [http://minister.dva.gov.au/speeches/2004/March/ministerial\\_statement\\_040302.htm](http://minister.dva.gov.au/speeches/2004/March/ministerial_statement_040302.htm)
- 8 *ibid.*
- 9 The Hon. John Howard, MP, (Prime Minister), *Additional benefits for veterans, government response to the Clarke Report*, *op. cit.*, [http://www.pm.gov.au/news/media\\_releases/media\\_Release724.html](http://www.pm.gov.au/news/media_releases/media_Release724.html)
- 10 Senator G. F. Pearce, Minister for Defence, 'Second reading speech: War Pensions Bill 1914', *Senate Debates*, 17 December 1914, p. 2,098.
- 11 Senator E. D. Millen, Leader of the Opposition in the Senate, 'Second reading speech: War Pensions Bill 1914', *Senate Debates*, 17 December 1914, p. 2,100.
- 12 Clarke Review report. *op. cit.*, pp. 223–227, <http://www.veteransreview.gov.au/report/index.htm>
- 13 R. F. Mohr, *Review of Service Entitlement Anomalies in Respect of South-East Asian Service 1953-1975*, Australian Government Publishing Service, Canberra, 2000.
- 14 P. B. Toose, *Independent Enquiry into the Repatriation System*, Australian Government Publishing Service, Canberra, 1975.
- 15 Review report. *op. cit.*, p. 70, <http://www.veteransreview.gov.au/report/index.htm>
- 16 P. B. Toose, *op. cit.*
- 17 Clarke Review report. *op. cit.*, pp. 93–101, <http://www.veteransreview.gov.au/report/index.htm>
- 18 P. B. Toose, *op. cit.*
- 19 P. Baume, *A Fair Go: report on compensation for veterans and war widows*, March 1994.
- 20 Clarke Review report. *op. cit.*, p. 101, <http://www.veteransreview.gov.au/report/index.htm>
- 21 The Hon. John Howard, MP, (Prime Minister), *Additional benefits for veterans, government response to the Clarke Report*, *op. cit.*, [http://www.pm.gov.au/news/media\\_releases/media\\_Release724.html](http://www.pm.gov.au/news/media_releases/media_Release724.html)
- 22 The Hon. Danna Vale, (Minister for Veterans' Affairs), *Response to the Clarke Committee Report on Veterans' Entitlements*, *op. cit.*, [http://minister.dva.gov.au/speeches/2004/March/ministerial\\_statement\\_040302.htm](http://minister.dva.gov.au/speeches/2004/March/ministerial_statement_040302.htm)
- 23 Clarke Review report. *op. cit.*, Chapter 15, pp. 361–370, <http://www.veteransreview.gov.au/report/index.htm>

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- 24 Clarke Review report. op. cit., Chapter 15, p. 368,  
<http://www.veteransreview.gov.au/report/index.htm>
- 25 Clarke Review report. op. cit., Chapter 18, pp. 415–425,  
<http://www.veteransreview.gov.au/report/index.htm>
- 26 Peter Yeend, 'Compensation (Japanese Internment) Act 2001', *Bills Digest*, no. 6 2001-02, Parliamentary Library, Canberra, 2001, <http://www.aph.gov.au/library/pubs/bd/2001-02/02bd006.htm>
- 27 The Hon. Bruce Scott, MP, Minister for Veterans' Affairs, Second Reading Speech: Compensation (Japanese Internment) Act 2001, House of Representatives *Hansard*, 22 May 2001, pp. 26,720–26,721.
- 28 Source: Department of Veterans' Affairs statistical unit.
- 29 Clarke Review report. op. cit., Chapter 30, p. 624,  
<http://www.veteransreview.gov.au/report/index.htm>
- 30 *Social Security and Veterans Affairs Legislation Amendment (Male Total Average Weekly Earnings Benchmark) Act 1997*.
- 31 CPI – ABS catalogue No. 6401.0., AWE – ABS catalogue No. 6302.0.
- 32 Pension rate income support payments provided under the SSA and the VEA indexed to the CPI and 25% of MTAWE include age pension, wife pension, disability support pension, carer payment, parenting payment – sole parent, widow B pension, service pension, invalidity service pension, wife service pension.
- 33 Allowance income support payments provided under the SSA indexed only to the CPI include newstart allowance, sickness allowance, youth allowance, Austudy payment, parenting payment – partnered, partner allowance, special benefit, mature age allowance, widow allowance.
- 34 'RSL Welcomes Government Response to the Report of the Review of Veterans' Entitlements – The Clarke Review', *Media Release*, Returned Servicemen's League of Australia, 2 March 2004, <http://www.rsl.org.au/press/2Mar04.htm>
- 35 Clarke Review report. op. cit., Chapter 26, pp. 563–564,  
<http://www.veteransreview.gov.au/report/index.htm>
- 36 Clarke Review report. op. cit., Chapter 30, pp. 625 and 639,  
<http://www.veteransreview.gov.au/report/index.htm>
- 37 Disability pension paid under Parts II and IV of the VEA includes general rate disability pension, special rate pension, Extreme Disablement Adjustment and Intermediate Rate pension.
- 38 Income support payments provided under the SSA include age pension, wife pension, disability support pension, carer payment, newstart allowance, youth allowance, Austudy payment, parenting payment – partnered, parenting payment – sole parent, partner allowance, sickness allowance, widow B pension, special benefit, mature age allowance, widow allowance.

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- 39 The first payments under the *Invalid and Old-age Pensions Act 1908* did not commence to be made until 1910.
- 40 Second reading speech: Invalid and Old Age Pension Act 1928, House of Representatives *Hansard*, 5 September 1928, pp. 6,392–6,400.
- 41 8.(1) In this Act, unless the contrary intention appears:
- "income", in relation to a person, means:
- (a) an income amount earned, derived or received by the person for the person's own use or benefit; or
- (b) a periodical payment by way of gift or allowance; or
- (c) a periodical benefit by way of gift or allowance;
- but does not include an amount that is excluded under subsection (4), (5) or (8).
- 42 Clarke Review report. op. cit., Chapter 30, pp. 634–635,  
<http://www.veteransreview.gov.au/report/index.htm>
- 43 *ibid.*
- 44 The Hon. Danna Vale, (Minister for Veterans' Affairs), *Response to the Clarke Committee Report on Veterans' Entitlements*, op. cit.,  
[http://minister.dva.gov.au/speeches/2004/March/ministerial\\_statement\\_040302.htm](http://minister.dva.gov.au/speeches/2004/March/ministerial_statement_040302.htm)
- 45 Clarke Review report. op. cit., Chapter 30, pp. 634–635,  
<http://www.veteransreview.gov.au/report/index.htm>.
- 46 Clarke Review report. op. cit., Chapter 30, pp. 636–637,  
<http://www.veteransreview.gov.au/report/index.htm>.
- 47 Clarke Review report. op. cit., Chapter 30, pp. 271, 346–347,  
<http://www.veteransreview.gov.au/report/index.htm>.
- 48 *ibid.*
- 49 Sect 36 of the VEA - age service pension
- (1) Subject to subsection (4), a person is eligible for an age service pension if the person:
- (a) is a veteran; and
- (b) has rendered qualifying service; and
- (c) has reached pension age.
- Note 1A: For *veteran* see [subsection 5C\(1\)](#). Note 1: for *qualifying service* see [section 7A](#).  
Note 2: For *pension age* see [section 5QA](#).

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- 50 Pension rate income support payments provided under the SSA and the VEA indexed to the CPI and 25% of MTAWWE include age pension, wife pension, disability support pension, carer payment, parenting payment – sole parent, widow B pension, service pension, invalidity service pension, wife service pension.
- 51 The Hon. Danna Vale, (Minister for Veterans' Affairs), *Response to the Clarke Committee Report on Veterans' Entitlements*, op. cit.,  
[http://minister.dva.gov.au/speeches/2004/March/ministerial\\_statement\\_040302.htm](http://minister.dva.gov.au/speeches/2004/March/ministerial_statement_040302.htm)
- 52 *ibid.*

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