

POSTSCRIPT TO
LEGISLATION REFORM SUBMISSION
[2023 40]

SUBMISSION FROM
TPI VETERAN LIVING OUTSIDE AUSTRALIA
IN AUSTRALIAN SOCIAL SECURITY
INTERNATIONAL RECIPROCAL COUNTRY

My submission [2023 40], sent to DVA Legislation Reform, was compiled in February 2023 and in effect was the substance of a Claim for Defective Administration - CDDA raised previously in 2020.

I now, in March 2024, provide the following extract from the findings of that CDDA claim. (Note this was received in July 2023 some thirty two months after the claim was submitted.)

52. Finally, I note your comments that a TPI veteran and partner living in an 'International Social Security Agreement' country should be permitted to lodge claims for DVA's Service Pension and PSP from ██████████, as if living in Australia. While I sympathise and understand that you view the situation as unfair, these concerns were addressed in DVA's letter to you dated ██████████ 2020 and that response remains unchanged.

53. To the extent you may be raising issues that there are special circumstances relating to your situation, for example that Australian Government legislation or policy has had an unintended, anomalous, inequitable or otherwise unacceptable impact on you, unfortunately it is not open to me to consider these issues under the CDDA Scheme.

While it may not be open to the author of those remarks to consider these issues under the CDDA Scheme, I believe that the issues remain a core fundamental matter in how we provide transparent legislation, particularly for veterans living outside Australia. In my particular case and claim this provided a direct insight to the trials and tribulations of multiple legislations:

1. The VEA 1986 (Core principles of veteran, partner and family welfare)
2. SCRA/DRCA (Self executing legislation)
3. Provisions for Offsetting Entitlements. The offsetting of entitlements existed and was applied between VEA and SCRA, however things became very muddled when considering any offsetting of VEA/SCRA compensation and Social Security Disability Support Pensions DSP and Carer Payments.
4. Department of Social Security DSS (*International Social Security Agreement*)

Critical Comment

There is direct reference at VEA 38H Subsection 2 living outside Australia addressing Social Security pensions (Age Pension, Disability Support Pensions Carer Payment) entitlements but there is no corresponding inclusion of VEA entitlements of Service Pension and Partner Service Pension in the *International Social Security Agreement*.

I have been told by both DVA and the government of [REDACTED] that there is no intention at this time to include the Service Pension and Partner Service Pension in the *International Social Security Agreement*.

Conclusion

In Australia the partner (without any age qualification) immediately and automatically receives the VEA Partner Service Pension because the veteran is a TPI veteran.

Living overseas the TPI veteran is expected to prove his level of disability to Australia Department of Social Security DSS standards in order to qualify for a Disability Support Pension. This is a mandatory requirement (VEA 38H Subsection 2) prior to the partner being eligible to apply for a Carer Payment. The Carer Payment is the only entitlement available to the partner.

Once both veteran and partner qualify for the DSS entitlements then and only then can they apply to transfer to the DVA Service Pension and Partner Service Pension. If they don't qualify then the only entitlement for the Partner is based upon residency in Australia (VEA 38H Subsection 1)

If the veteran, who is already categorized a TPI cannot meet that level of disability then the veteran has to wait until age retirement age to apply of the Australian Age Pension in accordance with *International Social Security Agreement*. Meanwhile the partner is immediately disqualified from receiving any entitlement. There is something morally wrong and repugnant to me as a veteran and importantly grossly unfair to my wife.

In 2003 I was assessed as VEA Total and Permanently Incapacitated TPI veteran. My wife at that time was 44. In 2018 I received the Service Pension; my wife was 59.

I plead with the Prime Minister as well as the Minister for Veterans' Affairs and the Legislation Improvement Team please seriously look at this Social Security/Veteran Welfare issue.

Finally, a case for assessment is now with the Commonwealth Ombudsman.

I remain sitting here and continue to hear somebody saying "The law's an ass."

End of Submission

1 March 2024