COMMONWEALTH OF AUSTRALIA

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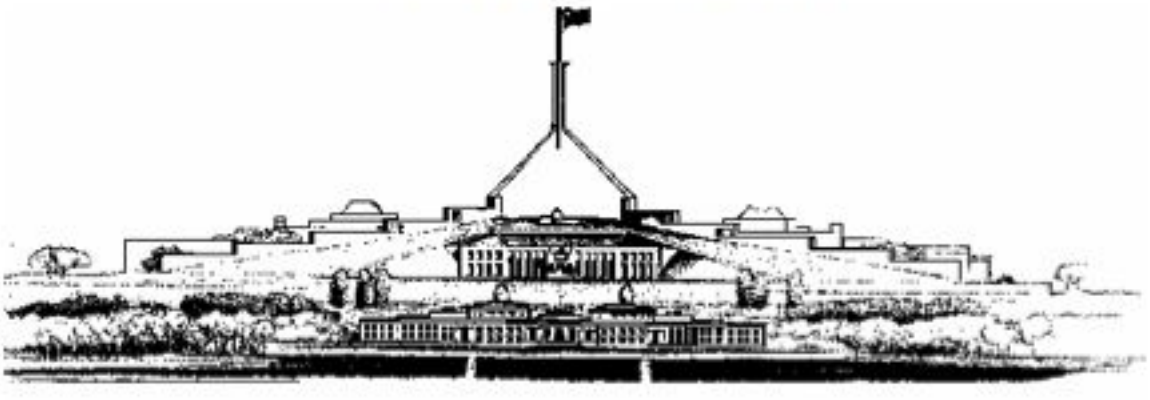

THE SENATE

BILLS

Veterans' Entitlements Amendment Bill 2011

Second Reading

SPEECH

Monday, 12 September 2011

BY AUTHORITY OF THE SENATE

SPEECH

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Speaker	Senator FAWCETT	**Question No.**	

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Senator FAWCETT (South Australia) (10:37): I rise to speak on the Veterans' Entitlements Amendment Bill 2011 and note the contribution of Senator Ronaldson and our opposition to schedule 2. The bill gives effect to the following budget measures: a prisoner of war recognition supplement, some proposed compensation offsetting changes, and rationalisation of the temporary incapacity allowance and loss of earnings allowance.

I will touch briefly on schedules 1 and 3 and then come back to schedule 2. On schedule 2, I have a number of issues with both process and principle that I would like to address. With regard to schedule 1, since 2001 lump sum payments of $25,000 have been made to former prisoners of war, particularly prisoners of the Japanese during World War II. That was a well-justified initiative of the Howard government to recognise the conditions and privations that were put upon these people who served their country. In 2003, these were extended to former POWs of the North Koreans during the Korean War and were extended again in 2007 to former POWs interned in Europe during World War II.

The supplement is a $500 per fortnight payment, which I welcome on behalf of the veterans who have been prisoners of war and note that it is tax free and not offset. I believe that is the kind of precedent that we should be setting for all of our support for veterans, whereby we recognise the fact that they have provided a unique service to this country and therefore we should be prepared to provide unique support back to them, even if it is different to the way some other community payments are treated.

Schedule 3 of the bill is a rationalisation of the temporary incapacity allowance and loss of earnings allowance. I notice there will be some veterans who are affected by the wind back of TIA, but all of the veterans organisations that we consulted supported that rationalisation as providing better clarity around those provisions.

I wish to discuss schedule 2 in a little more detail. I particularly wish to thank members of the RSL who came to the inquiry of the Senate Foreign Affairs, Defence and Trade Legislation Committee, as well as Legacy and VVF, who provided submissions to help the committee looking at this provision understand how these proposed amendments could affect veterans and their concerns about them. One of the concerns that we raised in particular was about process. The Minister for Veterans Affairs made statements about the extensive consultation that had preceded these amendments and yet in our discussions, particularly with the RSL, it became abundantly clear that the consultation process in fact was not particularly broad. When it was boiled down, the specific consultation process with peak bodies such as the Returned and Services League consisted of a budget-eve briefing.

The common definition of consultation, as I understand it and as I think a reasonable person in the community would understand it, is a process whereby you engage with concerned parties, put forward a case, seek their feedback and, as appropriate, amend your position based on their feedback. To have a one-way flow of information on the eve of an announcement such that people have no chance, no opportunity, to influence or put forward their case or identify where the amendments may affect them and call it consultation is a real stretch. I believe that in light of the proposed amendments that the Australian Greens are talking about, where the government is promising to consult with the veterans community, we need to look at what it has done preceding this amendment bill and make sure that it is held to account to have meaningful consultation, which means consultation well ahead of the tabling of any changes that gives a real opportunity for people to consider the amendments and to make appropriate and studied responses to the amendments.

I move to the issue of principle. The RSL raised the point that it is very happy with the way the current offsetting provisions work. It accepts the need for offsetting but it also maintains essentially that if it is not broken then don't try to fix it. DVA promises that these amendments will make no change and will have no impact on veterans, which raises the question—particularly given that the Federal Court indicated that the Smith case was unique and DVA is not able to identify anyone else who falls within the same category—as to why the changes are needed. The RSL in particular highlighted that it believes that the *Guide to the Assessment of Rates of Veterans' Pensions*, fifth edition, the GARP V, is adequate and addresses the situations where there needs to be some offsetting or

pro rata allocation for a combination of injuries that have led to an incapacity.

Coming to the principle of offsetting: as I said, none of the veterans organisations disputed the need for offsetting. If you go back to 1973, when the principle first started to appear in legislation, there was an overlap between the Repatriation Act, the predecessor to VEA, and the Commonwealth Compensation Act 1971, which gave rise to a situation where some people had dual eligibility. It was very clear that there were two Commonwealth schemes under which people could possibly have a dual eligibility. So the concept was that nobody should be compensated twice by the Commonwealth for an injury that was received during their service. I do not think anyone has concerns with that. What has changed, though, is that the understanding that the offsetting should be between two Commonwealth sources of compensation has been extended so that any source of compensation is included We see this in both the explanatory memorandum and the DVA submission. In fact, DVA highlighted that some 20 per cent of the offsetting cases they are dealing with are not from Commonwealth sources but from sources such as civil claims and other sources of compensation. There is a flawed principle in the application of this amendment and the way the department has administered offsetting since it was introduced in 1973. If the principle was to make sure that the Commonwealth was not liable twice for one injury, that would be fine. But when you extend that to other sources of income then you start abrogating the duty of care that the Commonwealth has to people who have served this nation. It is important to remember that loyalty flows two ways.

If we expect people to enlist in the armed forces and to be prepared to put their lives, their welfare and their health on the line in the interests of this nation then we should be prepared to return that loyalty to them when they return. If they have been injured, including in the course of their duties during non-war related activities, we have an obligation to care for them. The fact that they may have another injury which was caused during a civilian accident and which happens to affect the same incapacity does not remove the obligation of the Commonwealth to care for those people who have rendered that service to their nation.

This concept of the duty of care is longstanding. Going back to the 1500s, Elizabeth I instructed parishes in England that they needed to care for returned servicemen. During the Napoleonic wars the British government came up with the concept of the 'deserving poor', recognising that people who returned and who were incapacitated as a result of their service to their country deserved the care of the people of that country. In contemporary Britain—and I use the example of Britain because of the links to the Westminster system—as recently as the last decade there has been the concept of a covenant between the British people, their government and the military.

This covenant has two facets. One is that if the government is going to deploy service men and women then they have a duty to make sure that those men and women are adequately equipped, trained and supported in the theatre of war. Likewise, there is that obligation post service to provide adequate care. I do not believe that the Australian public expects or would support the principle that the Commonwealth should be able to shift that duty of care to a third party just because a veteran has had civilian compensation payable for an injury. If a veteran has signed up to the service and the service has promised to provide for them then that obligation continues. If the veteran has a civilian injury, that is a separate issue. Speaking to people in the service and even to people working within the Repatriation Commission, I have noted their surprise in hearing that offsetting would be allowed for things other than dual Commonwealth entitlement. I believe that is something we need to address as a parliament.

The second facet of this covenant relates to the costs that are considered as part of the offsetting arrangement. Currently if somebody seeks compensation because of an injury then not only does the government take into account the civilian costs—and I dispute that principle—but it does it in a way that I believe is quite unfair. Whilst DVA recognises the party-to-party costs it does not recognise or discount the solicitor-client costs. That means that if a veteran receives, for example, $30,000 but $10,000 of that is taken up with costs to their solicitor then, rather than recognising that they received only $20,000, DVA treats the whole $30,000 as being compensation received by the veteran and offset appropriately or accordingly. Again, I do not believe a reasonable member of the public would expect that our government should be short changing veterans who had to incur that cost in order to win that compensation in the first place.

To my mind, the government is not only going against the principle of two-way loyalty—of having a duty of care to veterans—by including that civil payment. It is doing it in a manner that is unjustifiable. When questioned on this during the inquiry, DVA's position was that the offsetting or discounting of the solicitor-client costs was in line with community norms. Again, I come back to the principle that we are expecting people who sign up to serve in the Australian Defence Force to do things that are not expected of the broader community. If we expect that loyalty from them, we should show that loyalty back to them. We should show them that when things like this come up we are

prepared to deviate from the community or civilian norm so that we do not disadvantage the veterans in our community.

The RSL also expressed during this inquiry its concern about the long-term changes of the offsetting provisions. The military, in a very welcome move, has increased the amount of rehabilitation available to servicemen. Rather than discharging them on a medical basis, there is an increased focus on rehabilitation. The question was raised—and was not particularly satisfactorily answered by the department—as to the long-term consequences of the costs of rehabilitation and how they may be offset in future years. I note particularly that the concept of offsetting between Commonwealth funds has now crept, without any legislative guidance, to include any source of compensation. The RSL raised the concern that, over time, the way people apply legislation can change and will often change to the detriment of the veteran.

So a number of new factors are starting to come into this whole space, where we see an increase in money spent by the Commonwealth on rehabilitation—and very appropriately. The question remained open, at the end of the inquiry, as to whether there was any guarantee that there would not be a detriment in years to come to veterans who had received payment from the Commonwealth for rehabilitation services to enable them to continue their service. So, all in all, we have an amendment here that the department itself says will have no effect. It cannot identify other people who fall into the case of Mr Smith, whose court case led to this amendment. It is proposing to spend some $2.7 million implementing an amendment it has said will have no practical effect. The ex-service community oppose the amendment and I believe there is no cause for us to support this amendment.

Whilst I commend Senator Wright for her active role and for engaging with the government, it seems to be indicative of the coalition that has now been formed between the government and the Greens in that they were fully informed about the changes to the explanatory memorandum and yet it was only delivered to the opposition shadow spokesperson for this important portfolio when he was 10 minutes into his second reading debate speech. I believe it is a particularly poor effort on behalf of the government to treat their coalition partner differently to the way they would treat the opposition in this important area. It is not the first time they have worked together and, like Senator Ronaldson, I note and want to record my deep disappointment that the Greens, the ALP and Senator Xenophon joined together to defeat the bill that would have addressed the indexation of the DFRDB.

I also note, again coming back to the lack of consultation, that this government has, without consultation, reduced funding for things like veteran advocacy funding, an important part that enables volunteers within our service organisations to work with people who need advocates. The funding provides them with the training and support that enables them to do an important role. If there is one thing I have seen from my involvement in public life it is that government policy is one thing, but it is the people on the ground, those who have the relationships and the connections to encourage and walk with people through the process to connect them to the benefits that are available from policy, who actually make a difference. Policy by itself does very little. No matter how dedicated public servants in the departments are, they do not have the relationships with people in the community. So it is often these voluntary roles that are really the effective connecting and coordinating bodies, and to cut their funding arbitrarily and without consultation is, I believe, a particularly poor step on the part of this government. It shows a great disrespect for our veterans community and the work they do.

We will not be supporting schedule 2 of this amendment.