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	**1**
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Number of pages (including cover)	18
Attachments	Annexures A to E

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RDFWA

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Mr P Barsdell
Secretary
Senate Foreign Affairs, Defence and Trade Legislation Committee
Parliament House
CANBERRA ACT 2600

Dear Mr Barsdell,

SUBMISSION TO SENATE FOREIGN AFFAIRS, DEFENCE AND TRADE LEGISLATION COMMITTEE

I refer to the notice that the Senate Foreign Affairs, Defence and Trade Legislation Committee is conducting an inquiry into aspects of the Veterans' Entitlements Act 1986 and the Military Compensation Scheme, focusing on the offsetting calculations applied to veterans and ex-service personnel who opt to receive a pension in lieu of a previously paid lump sum.

A submission to the inquiry by this Association is attached.

Would you please advise if and when you will be placing our submission on the Internet or, alternatively, when it can be released to third parties.

Yours sincerely,

H.J.P. Adams

H J P Adams
National President

THE SENATE FOREIGN AFFAIRS, DEFENCE AND TRADE LEGISLATION COMMITTEE
INQUIRY INTO ASPECTS OF THE VETERANS' ENTITLEMENTS ACT 1996 AND THE MILITARY COMPENSATION SCHEME

SUBMISSION BY

THE REGULAR DEFENCE FORCE WELFARE ASSOCIATION INC ON

OFFSETTING CALCULATIONS

Background

1 The Regular Defence Force Welfare Association (RDFWA) was formed in 1959 to promote and protect the interests of serving and former members of the Regular Defence Force, their spouses, dependants, widows and widowers. The Association provides advice and advocacy services to serving and retired regulars, and their families, who may have a claim under military compensation, veterans' entitlements, or superannuation legislation or regulations. Our organisation is federally based with branches throughout Australia. We have over 6000 members but our constituency is of the order of 300,000. The RDFWA is not a union and is staffed by volunteers except for a paid, part-time, national secretary. The Association does not become involved in the general defence debate, limiting our activities to welfare matters.

2. Our attention has been drawn to the way in which a Department of Veterans' Affairs (DVA) pension is *offset* against a lump sum compensation payment. This *offset* has the effect of the Department recovering far more than the lump sum paid to the recipient.

Double Dipping and Offsetting

3. It is possible for a person who suffers an injury, disability or death as a result of service in the Australian Defence Force (ADF), or their widow(er) in the case of death, to be paid both a compensation lump sum and a pension for that same occurrence. When such an instance occurs, the pension is reduced to *offset* the compensation payment. Persons who have been paid both a compensation lump sum and a pension for the same condition have their pension reduced, on an actuarial basis, to such a degree that, over time, the amount recovered by this process has been, or will be, far in excess of the compensation payment.

4. Correspondence between this Association and DVA has enabled us to understand the way in which *offsetting* is applied under current legislation. The purpose of this submission is to argue the case for a change to the Veterans' Entitlements Act so that *offsetting*, in any particular case, ceases when the amount of compensation, plus an element of interest, has been recovered.

5. The RDFWA in not arguing against recovering a compensation payment if a pension has also been awarded for the same injury, disability or death as we agree that 'double dipping' should not occur. Our argument relates to the way in which the pension is reduced and for the reduction continuing for the life of the pension recipient regardless of the amount 'recovered' by the *offsetting* process. We also question why the amount of reduced pension, or *offset*, increases from time to time after advice to the recipient that the, then, calculated reduction will apply over his/her lifetime.

6. As background to our argument, it is important to understand how the 'double payment' situation occurs. A lump sum compensation payment by the Department of Defence and a DVA pension for the same occurrence are assessed and awarded separately. That is, each one, in its own right, is meant to compensate for the injury, disability or death. However, if both are granted, and because the awarding authority separately takes them to be total compensation for the same condition, then some form of reconciling this 'double payment' needs to occur. The way this is done by the *offsetting* arrangements currently in place is the core of our argument.

7. A logical question to ask is why people claim both a compensation payment and also a DVA pension for the same condition. Some years ago this was common and, in some cases, the claimant was encouraged to claim from both avenues of payment. In one case study we have available a claim was made for compensation and in correspondence back and forth with the claimant he was advised that 'it would be necessary for you to test your entitlement' 'for repatriation benefits and 'exhaust all avenues of appeal'. In this correspondence there was no mention of *offsetting*. After a DVA disability pension had been awarded in this case the compensation claim was then processed and a lump sum awarded. Then, a letter from DVA stated that the compensation 'is recoverable from the total Repatriation Disability Pension payable'. Thus, the regime of many years ago was confusing. In later years claimants could or might have been advised that a compensation lump sum was 'recoverable' from a pension if one was granted, but there has been no impediment to claiming both and at the time of the claims the claimant, in many cases, had no knowledge of having to 'repay' more than the lump sum received.

Terminology

8. The RDFWA has correspondence spanning many years about this matter and copies of specific cases relating to *offsetting* a pension against a compensation lump sum payment. Sprinkled throughout the correspondence are terms that have changed over the years as different government officers take up the correspondence with this Association or pension recipients. Therefore it is necessary to address terminology at the outset to preclude our argument being set aside as not addressing the real issue. The current term used by DVA officers is *offsetting*. However, over the years the terms 'recovering', 'paying back', 'repaying', etc, have been used but they all relate to the same process. It is important to note that we are only referring to the process by which a DVA pension is permanently reduced to take account of a lump-sum payment. Because *offsetting* is the current DVA term, that word will be used to describe the process throughout this submission.

Definitions

9. In this submission, the following words have the meanings shown:

Offsetting means the reduction of a DVA pension being paid to a person who has received a lump sum compensation for the same condition for which both a pension and compensation have been claimed and subsequently accepted by a Government department.

Pension means any pension paid by the Department of Veterans' Affairs (DVA) which is subject to *offsetting* arrangements.

Use of *Offsetting* in Another Context

10. The term *offset* has been used by the Federal Government in another context. The Report by the Senate Standing Committee on Legal and Constitutional Affairs titled *Debt Recovery Under the Social Security Act and the Veterans' Entitlements Act* dated June 1990 used this terminology. This report states, at paragraph 2.3:

> "People paid under the SS Act and the VE Act at times receive money to which they are not legally entitled and thereby become indebted to the Commonwealth. Sub-section 246(1) of the SS Act provides that overpayments which arise in consequence of a false statement or representation or a failure or omission to comply with any provision of the Act are 'debt(s) due to the Commonwealth'. Section 205 of the VE Act refers to 'recoverable amount(s)'. According to figures provided to the Committee by DSS, as at 30 June 1989 in excess of $214 million was outstanding as a result of overpayments. DVA said that its outstanding overpayments amounted to approximately $7.7 million."

Thus, the Senate Standing Committee report of June 1990 dealt with overpayments which then became a debt(s) due to the Commonwealth.

11. Having dealt with debt(s) due to the Commonwealth, that Senate Report then went on to indicate how each of the two departments recovered the overpayments. In the case of DSS this included withholding a percentage of the client's continuing payment or, if there was no continuing payment and the former client was not voluntarily reducing the debt, then DSS had the power to garnishee any money due to the client from a third party. In the case of DVA, the alternatives offered to clients who could not repay an overpayment with a lump sum included withholding from pensions or benefits payable by the Commonwealth and garnishee proceedings.

12. Under the side heading **'Offsets'**, that Senate Report, at paragraph 5.31, states:

> 'The question of 'offsets' arises when a client is paid a particular type of pension or benefit to which he or she is not entitled but was entitled to receive a different pension or benefit for the same period."

13. The use of the term *offset* in the Senate Standing Committee on Legal and Constitutional Affairs report of June 1990 dealing with debt recovery resulting from overpayments is, in our view, in a different context to that which is used by DVA to *offset* a pension for the actuarial value of a lump sum compensation payment. Both the pension and the lump sum compensation were legal entitlements of the recipient paid by two different Government Departments for the same injury, disability or death and are not in the same category of recoverable debt addressed in the report of the Senate Standing Committee on Legal and Constitutional Affairs.

Current Arrangements

14. DVA has advised this Association formally that the requirement to *offset* compensation against pension payments is contained in Division 4 of Part IV (sections 74 to 79) and Division 5A of Part H (sections 30A to 3OP) of the VEA. These sections of the Act do not use the term *offsetting*. Instead, these sections state that if a person has received a lump sum payment in respect of the incapacity of a veteran from injury or disease or death and is subsequently granted a pension, then that person is taken to have been receiving a fortnightly rate determined by the

Commonwealth Actuary. A copy of section 30C(I) of the VEA is at Annex A to illustrate this philosophy.

15. In practice, a calculation is made to equate the compensation lump sum to a fortnightly pension and the 'current' pension payable reduced by this amount for the life of the recipient. In a letter dated 5 June 2000 DVA has explained the methodology in the following way:

> 'This is a complex subject but in essence the task is to translate a lump sum payment into a fortnightly pension which can then be offset against a disability pension payable under the Veterans' Entitlements Act for the same incapacity. You have asked me for details of the mechanisms involved. From my Department's viewpoint, the Australian Government Actuary has provided a set of tables that, for a veteran of a given age and gender, yield a rate per $10,000 which is the start-point of an equivalent indexed pension payable for life. This is then adjusted for the actual lump sum payment and directly compared with a disability pension, which is also an indexed pension payable for life.
>
> 'The Actuary's tables include the assumption that in the long term the true earning rate of funds, were they invested to support such an indexed pension, is 3%. That is, the interest rate prevailing from time to time consists of 3% true return and the balance is merely maintaining the principal against inflation. Put another way, the concept is that over the course of a lifetime, a pension payable under such arrangements would return, in indexed installments to maintain real values, the whole of the lump sum plus the true earnings of 3% per annum on that lump sum. **For those who have life expectancies of 20 to 40 years this approach means that the sum of the indexed installments will be far greater than the original principal or lump sum. Applying this concept to veterans affected by compensation offsetting, the sum of indexed fortnightly limitation amounts will eventually total more than the original lump sum.**' (Emphasis added.)
>
> [A copy of the tables and accompanying instructions, based at present on the Australian Life Tables 1995-97, were enclosed in the DVA letter to this Association.]

16. The Committee's attention is drawn to the two sentences in bold print in paragraph 15 above. This Association has difficulty in accepting that the Parliament of the day intended to recover **far more than the lump sum** and that is the crux of this submission. We have no argument against the recipient of a lump sum being deemed to have been in receipt of a pension. However, we believe that *offsetting* arrangements should acknowledge that at some time in the future the 'books have been balanced' and that there should be a mechanism to restore the pension to its original value when the commitment to 'repay' the compensation, and an element of interest, has been met.

17. Official correspondence refers to an actuarial calculation which determines the value of the *offset* in any particular case and this calculation is done at the point in time at which the pension was granted. Although one could be expected to believe that the calculation would be a once-off calculation to *offset* the lump sum over the expected life of the recipient, that is not the case. In practice, as the pension being received by the recipient increases (for whatever reason), so also does the *offset* amount even though the lump sum earlier received has not altered. This means that the amount of pension reduction which is supposedly calculated to *offset* a fixed lump sum is increased as the pension increases over time and begs the question of why this occurs.

Case Studies

18. In support of our argument for a change to the current *offsetting* arrangements, we provide three case studies of how the process operates in practice. They are real cases for which RDFWA holds copies of the official correspondence relating to each one. All three persons who are the subject of these case studies have given their permission for us to use the material pertaining to their specific case. There are, of course, many more recipients of DVA pensions who are affected by the current offsetting arrangements. The figures in the three case studies are calculated to earlier dates over the last two years. However, because the pension increases by small increments each year by CPI indexing, the three case studies presented will by now be in greater detriment than when the calculations were done.

19. **Case Study 1 - War Widow's Pension.** Attached at Annex B is the case study of a widow whose late husband died in a military accident in 1978 when she was 41 years old. She was paid a compensation lump sum of $22,000 plus $1,000 for each of her three children and a war widow's pension of $106.40 per fortnight. The pension was reduced by the *offsetting* calculations to $46.75 per fortnight. This case study shows that the pension of the widow in question has been *offset* to such a level that she has already 'paid back' more than the original lump sum compensation. Since this widow has a life expectancy of another 20 years **her pension will be *offset* by an amount of $61,828 to 'recover' a lump sum of $25,000.**

20. **Case Study 2 - Disability Pension.** Attached at Annex C is the case study of a (then) serving member of the ADF who was awarded a pension for a minor disability that was accepted as being caused by military service. The disability pension amounted to (initially) $7.69 per fortnight that was reduced by (initially) $2.45 to *offset* a lump sum of $1,277.50 that was paid as compensation for the same disability. The *offset* to January 2002 amounts to $1,650. Since this pensioner has a life expectancy of another 23 years **the total *offset* from his disability pension is expected to be $2,758 whereas the lump sum was only $1,277.50**.

21. **Case Study 3 - War Widow's Pension.** Attached at Annex D is the case study of another lady receiving a War Widows pension. This widow was awarded a lump sum compensation payment of $148,934 and two years later was awarded a War Widows Pension. In advising the award of a War Widows Pension she was advised that it would be 'reduced' by $345.05 per fortnight for the remainder of her lifetime. Despite this advice the reduction in her pension, or *offset* has increased to $351.96. This widow has a life expectancy of another 21 years according to the current life tables and if she lives that long **her widow's pension will have been *offset* by $274,528 to recover a lump-sum payment of $148,934**.

Reasons for Change

22. There is no doubt that government officials can and will argue against what they will call the 'perception' that the recipient of a DVA pension which is subject to the current *offsetting* arrangements is in some way 'paying back' the lump sum paid in compensation for the same injury, disease or death. This has been the theme of official responses we have received in the past but we have never received an explanation as to why a pension should continue to be *offset* for the life of the recipient once the lump sum has been recovered. An explanation which included, for example, that we do not understand actuarial principles would not suffice and would not satisfy recipients who, in their view, 'pay back' more than the lump sum received.

23. In reality, compensation paid as a lump sum is probably never invested for the life of the recipient, but this is the basis of current *offsetting* arrangements. If this were the case, then the

recipient would not be able to enjoy the financial respite afforded by the lump sum. In many cases, particularly those widowed in the prime of their lives, the lump sum is used for a deposit on a house, to pay off the car or other loans, or clear debts, or for some other financial payment which will enable the recipient to 'get their head above water' and lessen their future financial burden. In this way, the lump sum could be considered as a loan, which has to be repaid by the pension recipient just like a commercial loan. There is no doubt in the minds of people who receive both a pension and a lump sum for the same injury, disease or death that their pension is *offset* in order to 'recover' the lump sum. They do not object to 'repayment' of the lump sum. They do, however, feel cheated when the Government awards them both a pension and a lump sum for the same injury, disease or death and then reduces the pension by such an amount that **far more than the original lump sum is 'recovered' by the *offsetting* arrangements currently in use**.

24. Official responses in the past have indicated (as an example see para 8 of Annex C) that the amount a pension is reduced (or *offset*) equates to the amount of interest the recipient could receive in his/her lifetime if the lump sum were to be invested upon receipt. If the lump sum is not spent but merely invested, as the *offsetting* philosophy infers, then the recipient would receive only the limited amount of fortnightly taxable interest and the lump sum eventually pass to the recipient's estate. This flies in the face of the reasons a person affected by these circumstances claims for a lump sum compensation payment. Thus, there needs to be a change in the way that *offsetting* is applied to bring an element of fairness and logic to the process.

Proposed Change

25. This submission argues, and provides factual examples, that current *offsetting* arrangements can return to the Government more than the lump sum payments which the *offset* is meant to recover. Therefore we believe there is a need to amend existing legislation to ensure that money recovered through *offsetting* arrangements is limited to the lump sum payment being recovered, plus an element of interest.

26. There will be a counter argument to this proposal based on the fact that some people die before their actuarial age. If this occurs then the Government will not have 'recovered' the lump sum compensation payment and the counter argument to our proposal will put forward the concept that there are winners and losers in the current arrangements and therefore the current arrangements should not be changed. We counter that argument by the simple philosophy that one widow or pensioner should not be expected to pay the 'debt' of another widow or pensioner just because the latter has passed away and the Government should be compensated for its 'loss' occasioned by the untimely demise.

Recommendations

27. This Association recommends that:

a. the *Veterans' Entitlements Act* be amended so that any DVA pension which is subject to *offsetting* arrangements be restored to its original value once the lump sum and interest has been recovered as a normal commercial loan; and

b. existing recipients of both a lump sum and a DVA pension for the same occurrence who have been subject to current *offsetting* arrangements and whose lump sum and interest has already been recovered have their pension restored to its original value.

28. If current *offsetting* arrangements are not amended then we request an explanation be provided, able to be understood by elderly recipients of DVA pensions, as to why the Government expects to 'recover' more than the original lump sum (plus interest) and why the reduction in pension increases from time to time after advice to the recipient that a given reduction will apply over his/her lifetime.

Annexes:

A. Copy of Section 30(1) of the Veterans' Entitlements Act
B. Case Study 1 - War Widows Pension
C. Case Study 2 - Disability Pension
D. Case Study 3 - War Widows Pension

(iii) a committee, or subcommittee of a committee, of an organisation described in paragraph (a), or of such an organ, council or body.

Lump sum compensation payment

30C. (1) If:

(a) a lump sum payment of compensation is made to a person who is a veteran or a dependant of the veteran; and

(b) the compensation payment is paid in respect of the incapacity of the veteran from injury or disease or the death of the veteran; and

(c) the person is receiving, or is subsequently granted, a pension under this Part in respect of the incapacity from that injury or disease or the death;

the following provisions have effect:

(d) the person is taken to have been, or to be, receiving payments of compensation at a rate per fortnight determined by, or under the instructions of, the Commonwealth Actuary;

(e) the person is taken to have been, or to be, receiving those payments for the period of the person's life determined by, or under the instructions of, the Commonwealth Actuary;

(f) the period referred to in paragraph (e) begins:

(i) on the day that lump sum payment is made to the person; or

(ii) on the day the pension becomes payable to the person;

whichever is the earlier day.

Note 1: Pensions under this Part are payable in respect of the incapacity of a veteran from a war-caused injury or disease or in respect of the death of the veteran (see section 13).

Note 2: A payment of arrears of periodic compensation is not a lump sum compensation payment (see subsection 30B (2)).

Lump sum payment—Safety, Rehabilitation and Compensation Act (section 137)

(2) If:

(a) a lump sum payment is made under section 137 of the *Safety, Rehabilitation and Compensation Act 1988* to a person who is a veteran or a dependant of the veteran; and

(b) the payment is made in respect of the incapacity of the veteran from injury or disease or the death of the veteran; and

(c) the person is receiving, or is subsequently granted, a pension under this Part in respect of the incapacity from that injury or disease or the death;

Case Study 1 - War Widow's Pension

1. This widow's late husband died in an ADF accident in November 1978, leaving his widow and three school-aged children.

2. In December 1978 compensation was awarded as follows:

$22,000 lump sum to the widow
$1,000 for each of the three children, to be invested by government authorities
An additional $10 per week for each child until a date determined by the Commission for Employees' Compensation (or his delegate)

3. In February 1979 DVA awarded the following pension payments:

$106.40 per fortnight widow's pension
$24.00 per fortnight domestic allowance
$20.90 per fortnight for each of 2 children until aged 16

amounting to $172.20 per fortnight total pension.

4. The letter from DVA which advised of the pension payment also advised that 'the legislation under which these pensions are payable also requires me (ie DVA) to take into account any compensation which may have been awarded for your husband's death. The fortnightly value of compensation awarded to you and your children is $124.45 and your total pension payments will be limited by that amount'. The result was that the widow was then paid a reduced pension of $46.75 per fortnight.

[Note: Although the DVA letter advising this pension reduction stated that $124.45 per fortnight was the equivalent of the lump sum, from then on DVA used $125.45 as the amount of suspended pension. However, it is not the intention of this submission to argue about the $1.00 differential as we do not know which figure is correct.]

5. Each time DVA widows' pensions have been adjusted upwards by indexation, this widow's pension has been subjected to the above-calculated reduction.

6. At the time of her husband's death in 1978 this widow was aged 40. Her figures show that the original total compensation of $25,000 was 'recovered' by 1997.

7. In mid 2001 the widow was 64 years old. The minimum reduction in her widow's pension since her husband's death has been $58.43, which was the reduction figure since all her children finished their education. That means that for the 21 years to 2001 (when these calculations were made) she has had her pension reduced by at least $58 per fortnight. The amount 'recovered' from her pension to 2001 has therefore been at least $58 by 23 years by 26 fortnights, or at least $34,684 for an outlay of an original $25,000. These figures are conservative, as the reduction in pension in earlier years was higher than $58 per fortnight.

8. This widow has a life expectancy of another 20 years by which time, by the same type of calculation, another $30,160 will have been 'recovered' by DVA. This means that if this widow lives to her life expectancy, the Government will have *offset* her widow's pension by $64,844 to 'recover' a lump sum of $25,000.

Case Study 2 - Disability Pension

1. This (then) member of the ADF was awarded a disability pension commencing on 29 June 1977 for a minor disability that was accepted as caused by military service. The Disability Pension amounted to $7.44 per fortnight for the then member and $1.37 per fortnight for his wife.

2. On 22 January 1979 a compensation lump sum of $1,277.50 was awarded for the same disability.

3. In January 1979, the Department of Veterans' Affairs advised that:

> 'Compensation expressed as a fortnightly amount based on actuarial tables, is recoverable from the total Repatriation Disability Pension which is payable to you and your family. This adjustment will be applied from January 1977 which was the date from which your pensions were granted.
>
> 'The fortnightly equivalent of compensation is $3.82 and in accordance with legislative directions, the amount of pension payable to your children and your wife will be recovered from your pension. When your children cease to qualify for a pension, the amount to be deducted from your pension will increase.
>
> 'I will write to you again with the date from which the recovery will reduce your pension payments The amount recoverable from 29 June 1977 to the date of reduced pension payment will be deducted from your lump sum payment of compensation.'

4. On 29 June 1977 the pension payment was made up as follows:

Disability pension at 10% rate	$7.69
Less suspended pension	2.45
Net fortnightly rate	$5.24

5. On 8 March 1979 the pension payment was made up as follows:

Disability pension at 10% rate	$7.69
Decoration allowance	2.00
Gross fortnightly rate	9.69
Less suspended pension	2.73
Net fortnightly rate	$6.96

6. In September 1980 this pensioner was advised in writing that 'The $3.82 being recovered will continue for your lifetime. When (the youngest child) ceases full-time education, your pension will be reduced a further 28 cents per fortnight.'

7. The disability pension being paid to this (now) ex-ADF member was increased on discharge because other minor disabilities were accepted as being caused by military service and the pension was aggregated to the 30% rate. On 13 November 1988 the pension was made up as follows:

Disability pension at 30% rate	$58.68
Decoration allowance	2.00
Gross fortnightly rate	60.68
Less suspended pension	2.73
Net fortnightly rate	$57.95

8. In response to a query by the pensioner regarding the suspended pension, DVA explained in writing that the deduction 'basically, is the amount of interest you could hope to receive each fortnight in your lifetime (DVA's underlining) if you were to invest the $1,277.50 upon its receipt'. Thus, **this is an official admission that the way *offsetting* is applied presumes that the lump sum is not expected to be spent by a compensation recipient but invested for the remainder of his/her life and the lump sum then becoming part of his/her estate**.

9. On 3 January 2002, verbal advice to the pensioner was that the pension is currently made up as follows:

Disability pension at 30% rate	$82.14
Decoration allowance	2.10
Pharmaceutical allowance	5.80
Gross fortnightly rate	90.04
Less compensation offset	3.28
Net fortnightly rate	$86.76

10. From June 1977 to March 1979 the suspended pension rate was $2.45 per fortnight which equates to a sum of $105. From March 1979 to January 2002 the suspended pension was at a rate of at least $2.73 per fortnight which equates to at least $1,545 with total *offset* to January 2002 being at least $1,650. This pensioner has a life expectancy of another 13 years which at the current rate of suspended pension of $3.28 per fortnight is expected to yield a further $1,109 bringing the total expected suspended pension to $2,758 in order to *offset* a compensation lump sum of $1,277.50.

Case Study 3 - War Widows Pension

1. This widow's husband died in February 1992 from a disease which was, at some time later, accepted as being caused by his military service. The widow is in receipt of a War Widows Pension, which is *offset* because of a lump sum payment in compensation for her late husband's death.

2. In September 1993 the Department of Defence awarded a lump sum compensation payment of $148,934.

3. On 3 August 1995 the Department of Veterans' Affairs (DVA) awarded a War Widows pension. The initial advice from DVA referring to the grant of the War Widows pension used the term 'limitation' in reducing the fortnightly payment. The DVA letter included the following information:

> 'The limitation was calculated by converting your compensation lump sum into a fortnightly equivalent, by the use of actuarial tables. Using this method it was calculated that your lump sum would equate to a regular fortnightly payment of $345.05. We will therefore deduct this from your pension payments in order to prevent dual payments from being made.'

The effect of this advice was that the War Widows pension would be reduced (or *offset*) by $345.05 per fortnight for the remainder of her lifetime.

4. Advice from DVA dated 20 September 2001 advises the following breakdown of this widow's pension with effect from 18 September 2001:

Widow's pension and domestic allowance	$427.00
Income Support Supplement	387.00
Pharmaceutical allowance	5.80
	$819.80
Less compensation	351.96
Total fortnightly payment	$467.84

5. This widow's pension has now been *offset* for eight years to September 2001 at a rate of at least $345.05 per fortnight. This equates to 'recovery' of $71,770 of the original lump sum of $148,994.

6. The current 'recovery' rate is $351.96 per fortnight and, at that rate, it will take another eight and a half years to 'recover' the balance of $77,224. Thus, this widow's lump sum compensation will have been 'recovered' / 'repaid' / 'paid back' (or whatever term is used) by March 2010.

7. This widow is now 63 years old and, according to the current Life Tables, has a life expectancy of another 21 years, or until the year 2022 by which time her pension will still be *offset* because of current arrangements. If the reduction of her War Widows pension remains constant then the Government will have 'recovered' $274,528 for a lump sum outlay of $148,934.

REGULAR DEFENCE FORCE WELFARE ASSOCIATION INC
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Annex E

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Patron: His Excellency the Right Reverend Dr Peter Hollingworth AO OBE
Governor-General of the Commonwealth of Australia

RDFWA

RECEIVED
Senate Foreign Affairs, Defence and Trade Committee

Ref: 60.05
May 2003

Mr B Holmes
Secretary
Senate Foreign Affairs, Defence and Trade Legislation Committee
Suite S1.57
Parliament House
CANBERRA ACT 2600

Dear Mr Holmes,

The attached paper is forwarded to you for the information of the members of the Senate Foreign Affairs, Defence and Trade Legislation Committee. The RDFWA's charter includes, inter alia, promoting the interests and welfare of serving and retired members of the ADF across the range of remuneration, compensation and superannuation as well as conditions of service.

The principal concerns which our Association has identified as needing correction have been identified in the attached paper. They have all been represented to the Government at different times.

With the abolition of the Defence Force Advocate (which is contrary to Liberal Party policy as expressed in the 1996 LP manifesto) it is our view that the need for organisations such as the RDFWA to promote and safeguard the interests of serving personnel has never been more important.

Yours sincerely,

Peter Adams

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National President

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RDFWA

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PURPOSE AND POLICY PAPER

Abridged Version

Background

The Regular Defence force Welfare Association (RDFWA) was formed in 1959 as a direct response to the parlous situation then existing in the superannuation provisions pertaining to serving and former members of the regular services. It has since become a nationwide organisation concerned with the welfare and conditions of service affecting retired and serving members of the Regular Defence Force.

The Association has branches throughout the Commonwealth, their principal role being the provision of advocacy services to serving and retired personnel who may have a claim on government under various Commonwealth legislation covering superannuation, compensation and veterans' entitlements. These branches also administer widows' support groups where these have been established at State or Territory level.

The Association does not become involved in the Defence policy debate, except where it may affect the well being of serving personnel.

The Association works closely with other ex-service organisations. It is a contributing member of the Australian Council of Public Sector Retiree Organisations, and the Australian Veterans' and Defence Services Council (AVADSC).

Major Policies

The RDFWA has developed a number of major policy areas which affect serving and retired members of the Australian Defence Force and their dependants and seeks to have the various anomalies corrected through revised legislation or by administrative fiat. In pursuing these matters with Government we point out to all political parties that military service is unique in that we are dealing with people who volunteer to stand in harm's way for the defence of the nation. Furthermore, this group of people is industrially unprotected and is totally dependent on the Government of the day to ensure that levels of remuneration and conditions of service are appropriate for the profession of arms.

Because of this and their generally shorter careers it is important to realise that, in the field of superannuation, compensation and remuneration, Australia's servicemen and women must be regarded as special and not necessarily subject to public sector or community norm. The Government must be seen as an informed and concerned employer.

Military Superannuation Schemes

Indexation. The Association is currently pressing for a change in the indexation arrangements applicable to DFRDB pensions and MSBS preserved benefits. The Association is seeking to have these benefits indexed to the CPI or Male Total Average Weekly Earnings (MTAWE), whichever is the higher. In 1997 the Government legislated for Social Security and Veterans' Affairs service pensions to be indexed to the more generous CPI/MTAWE formula. The Federal parliamentarian's superannuation scheme is linked to wages. Since 1997 the Wages Index has provided benefits 12% higher than the CPI. Over 60,000 Defence Force retirees are affected.

Benefits After Age 65. Under existing DFRDB legislation a partner is entitled to a widow's benefit after three years cohabitation. If the DFRDB pensioner is over 60 years of age his partner is not entitled to a widow's benefit until five years of cohabitation. We seek to have this discrimination corrected.

Life Expectancy Tables. The existing DFRDB Scheme uses 1960-62 life expectancy factors in the formula determining the DFRDB benefit on separation. If current life tables are used the benefit is significantly increased. In the case of a brigadier retiring now he will be short-changed to the tune of $100,000 over his lifetime. For a warrant officer the figure about is $60,000. The Association has represented to Government that updated life tables are legislated for.

Superannuation Industry Standards (SIS) Legislation. The current MSBS Scheme is compliant with the existing SIS Act in that benefits are not accessible until preservation age. This means that when personnel separate from the forces after, say, 20-25 years service, they cannot access superannuation to assist in their transition to civilian employment. The Association considers that it is timely to have an independent review of military superannuation so that existing and future schemes are made more compatible with a military career.

Superannuation surcharge. Under the rules determining whether a serving member is required to pay the superannuation surcharge, one of the determinants which relates to a serving member's income is the *Notional Surcharge Contribution Factor*. Under existing regulations DFRDB and MSBS contributors find that their notional surcharge contribution factor, because of the high-risk nature of military service, is significantly higher than the equivalent Public Service schemes. Serving members have no option but to contribute to the military schemes and should not be discriminated against. The RDFWA seeks to have this gross anomaly removed. Furthermore, we believe that serving personnel should be exempted from the superannuation surcharge because of its impact on experienced and highly trained personnel whose retention in the services is so important to developing professional standards.

Income Splitting

Through ACPSRO, representations have been made to enable recipients of Commonwealth-funded superannuation schemes to split their income stream with their spouse/partner. This will enable the combined household to pay no more income tax than other retiree couples on similar combined income.

Compensation

In recent years the RDFWA has made major submissions to Government reviews on military compensation and has pressed the Government to move on the establishment of a comprehensive stand-alone military compensation and rehabilitation scheme for all members of the Australian Armed Services. It is our intention to ensure that the proposed new legislation is beneficial, fair and transparent. Importantly we believe that the term 'veteran' should not disappear from Australia's military lexicon.

Insurance. The RDFWA has for many years recommended the introduction of an ADF life insurance scheme funded by serving members of the Australian Defence Force together with a Commonwealth co-payment. The scheme would cover loss of a military life in any circumstance. The aim is to have a bereaved family presented with a lump sum within eight days of death in order to pay off family debts and tide the family over until they receive entitled benefits from the government's military compensation schemes – DVA, SRCA (MCRS) or the new MCRS.

Offsetting. A particular concern of the RDFWA has been the inequitable situation whereby a recipient of both a lump sum and an income stream as compensation for the same disability receives a reduction in his income stream to offset the lump sum which may have been payable under a different Government scheme. Under existing arrangements this reduction in income stream continues throughout the life of the recipient and is never reduced, even when the lump sum has been paid back in full. The RDFWA seeks to have existing legislation changed to remove this inequity.

Defence Force Home Loan Schemes

Because of the disparity in the amount of money available under the Defence Service Home Loan Scheme (now closed) and the Defence Home Owners Scheme ($25,000 compared to $80,000), the Association considers this to be grossly unfair and has sought to have the disparity removed. The Association also believes that the amount of money available under both schemes should be reviewed regularly so as to maintain their value. The Association considers that an urgent review of both schemes is now required.

ADF Remuneration

It is the view of the RDFWA that neither the Pratt Review nor the Nunn Review has done anything to improve the pay-fixing arrangements for serving members of the ADF. Because members of the ADF are industrially unprotected our principal concern has been the removal of the Defence Force Advocate from pay-fixing arrangements (which is contrary to 1996 Liberal Party policy) and the lack of transparency in the existing system. Furthermore, we believe it is wrong in the context of pay fixing for the CDF to be the representative of ADF members as well as the employer. The existing system can only lead to dissatisfaction in the long term.

The RDFWA is an *intervener* at the DFRT and attends DFRT hearings.

Veterans' Gold Card

The RDFWA believes that widows of veterans who are not classified as War Widows should be in receipt of a Veterans' Affairs Gold Card in situations where their former husbands saw operational service as specified in the VEA.

Conclusion

The policies described in this summary establish the direction for RDFWA activities in support of its constituency. However, pursuit of policy objectives comprises only one element of the Association's activities. Most important is the continuing requirement to assist members and others in the service and ex-service community who have bureaucratic or personal difficulties arising from their service and it is in this activity that the real purpose of the Association can be found.