

**SENATE FOREIGN AFFAIRS, DEFENCE AND TRADE  
LEGISLATION COMMITTEE**

**SUBMISSION**

**Inquiry into aspects of the Veterans' Entitlement Act and  
the Military Compensation Scheme (MCRS)**

<b>Submission no</b>	<b>12</b>
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# AUSTRALIAN PEACEKEEPERS & PEACEMAKERS ASSOCIATION

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*The Australian Veteran & Defence*  
*Service Council (AVADSC)*  
*The National Younger Veteran*  
*Consultative Forum*

*Listed Ex-Service Organisation with the Department of Veterans' Affairs ESO Directory*

Tuesday, 10 June 2003

**Ms Pamela Corrigan,**  
Research Officer,  
Foreign Affairs, Defence & Trade,  
Legislation Committee,  
Parliament House,  
CANBERRA, ACT, 2600

RE: Inquiry into aspects of the Veterans' Entitlement Act 1986 and the Military  
Compensation Scheme (MCRS).

**Subject: Australian Peacekeepers and Peacemakers Association Submission**

Dear Pamela:

Please find attached the Australian Peacekeepers & Peacemakers Association (APPA) Submission to the Foreign Affairs, Defence and Trade Senate Committee in regard to the Inquiry into aspects of the Veterans' Entitlement Act 1986 and the Military Compensation and Rehabilitation Scheme Offsetting Provisions.

This Association is delighted to be invited to make a submission to the Senate Hearing and envisage that our points are valid with the Senate, with a prospect of Legislation amendment toward the Veterans' Entitlement Act 1986.

We look forward to contributing to the Hearing and trust this Submission is suitable to the Senate Committee.

Respectfully,

**P.A. Copeland,**  
CBUS (USQ), Adv Dip Comms Mgt, Dip Proj Mgt (UNE), Dip FM (I), Cert Radio Freq Mgt, AHRI  
**National President**

**The Australian Peacekeepers & Peacemakers Association**

**Submission for the Senate Estimates Committee Hearing**

**For an Inquiry into aspects of the *Veterans' Entitlement Act 1986* and the *Military Compensation & Rehabilitation Scheme (MCRS)*.**

**Introduction.**

1. The Australian Peacekeepers & Peacemakers Association (APPA), have been invited by the Foreign Affairs, Defence and Trade (FADT), Legislation Committee, to provide a submission into the Offset arrangements, focussing on the offsetting calculation applied to veterans and ex-service personnel who opt to receive a pension in lieu of a previously paid lump sum.

**Background.**

2. The APPA is an arms and services focussed association with 500 members Australia wide, with a potential constituency of 65,000 Regular, Part-Time Australian Defence Force personnel (ADF) and Police Force veterans, who have served on Peacekeeping; Peacemaking; Humanitarian and Operational Service since 1947. The APPA does not include the veterans of the British Commonwealth Occupation Force (BCOF) – Japan; The Korea War; Malayan Emergency; the Borneo Confrontation; nor the South Vietnam conflicts. Those operations are well and truly served by their respective associations.

3. The APPA was established in Brisbane on United Nations Day 26<sup>th</sup> of October 1997, and has been in operation for over five years. It is a fledgling association, which is gaining growth and recognition from various Ex-Service Organisations and from the Department of Veterans' Affairs.

4. The APPA has Training Information Program (TIP) qualified Advocates, Pension and Welfare Advocates and also specialises in the Military Compensation Rehabilitation Scheme (MCRS). Our main focus is to assist veterans, with regards to providing a welfare network and a focal point of contact for serving and ex-serving ADF and AFP personnel, Peacekeepers, Peacemakers, Gulf War, Afghanistan and Iraq War veterans.

**Aim.**

5. The aim of this submission is to convince the Senate Foreign Affairs, Defence and Trade Legislation Committee (FADT Committee), to have the Veterans' Entitlement Act 1986 amended, in order to provide a fair, just and equitable compensation offsetting provision to all veterans.

**Compensation Offsetting ("*Double Dipping*") – MCRS Incapacity Payments.**

6. The experience of our VEA and MCRS Case Officers has been to say the least very confusing, when trying to advise a young veteran of the offsetting procedures and calculations. Currently a veteran under our clientele is only receiving the Special Rate (Totally & Permanently Incapacitated – normally \$752 p. f.), of only \$38.00 per week, as he

is in receipt of MCRS Incapacity Payments (IP) (\$628 before Tax p. f.), and Defence Force Retirement & Death Benefit Fund Class B pension of approximately \$1,008 before tax p. f. The total income is \$1,674 per fortnight. Some may say this is a really good outcome. However what has occurred is that the veteran has now been pushed into a higher tax bracket by accepting MCRS IP, along with VEA TPI. The veteran was medically discharged from the Royal Australian Navy (RAN) in 1997 and subsequently qualified for the DFRDB Class B pension (30-60% of disability under the DFRDB Act). The MCRS IP and DFRDB Class B pensions are both counted as taxable incomes and the veteran is placed into the income tax stream of \$42,536, with a tax-free benefit of \$986 from his reduced TPI pension. The veteran is then liable for the 30% Income Tax Bracket.

7. After discussions with the staff of the Incapacity Section of MCRS in Melbourne, it was soon discovered that there is an apparent flow-on from Superannuation to MCRS then lastly onto VEA Pension. The information provided by the Incapacity Section was that the DFRDB is deducted as income for MCRS purposes; in order to satisfy the maximum limit of income a veteran may receive for MCRS IP purposes. When calculating the MCRS IP portion a further 5% (Military Superannuation Benefit Scheme (MSBS)), or 5.5% for DFRDB pension recipients, in order to offset the MCRS IP, as though the veteran was continuing to contribute to either schemes. Then lastly, the VEA Pension, no matter the status (TPI, EDA, TTI, Intermediate or General Rates), receives only the minimal payment to cover the total package so that he or she does not exceed the income limits for MCRS purposes.

8. The relevance of this case highlights the following areas:

- a. The veteran is not aware of this provision, before he or she is committed to MCRS IP, although they are given the MCRS IP total, they are not given the full break-down of the calculations made, to make an educated decision.
- b. The veteran should not be made to offset 5% (MSBS), or 5.5% DFRDB, as though they are continuing the contribution toward their superannuation, as they had done so whilst serving and because of their incapacity are in receipt of the Invalidity pension that they previously paid for.
- c. The “Flow-on” effect that was described in paragraph 7 should be reversed. Therefore the full benefit of the veterans’ Tax-Free TPI Pension is made payable, along with DFRDB, then the MCRS IP being the last added payment covering the difference, instead of the VEA Pension. It is obvious that the Government Actuarial Department has placed this system, in order to obtain some return in the form of taxation from the veteran, leaving the veteran disadvantaged from the full benefit of the Special, Intermediate or General Rates of VEA Tax-free pension.

### **Compensation Offsetting – MCRS Lump Sum Payments with VEA Pension.**

9. Most claims handled by the APPA that have MCRS Lump Sum (aka Permanent Impairment) payments, have seen the veteran firstly lose up to \$1,600 from the Lump Sum **and** have their VEA Pension Reduced. In all cases, the veteran is not made fully aware of the circumstances of the offset offer made to them. To highlight this point, most loaning institutions in Australia are required to show the intended Loan recipient a schedule of costs and payment rates – particularly when taking out a home loan. The schedule of costs displays to the recipient the approximate amount of the repayment value over a number of years. In many cases the Loan recipient is able to pay the Principle loan amount without penalty. They also have an educated offer made to them, showing the amount that they will need to payback in principle and interest.

10. Whilst not trying to provide the FADT Committee with a lesson in Housing loans, we emphasise that our Younger Veterans do not receive a detailed schedule of costs, along with CPI increases and how much they are required to pay-back the Lump Sum Compensation payment made toward them.

11. One case story is of a 25 year-old veteran who was severely injured in a Motor Vehicle Accident, whilst participating on Exercise Kangaroo 1989 (K89). As a result of the injuries he received in total approximately \$60,000 for various injuries, along with a VEA Pension at the General Rate in 1994, at the age of 25. He also served on Operational Service in Cambodia and later in his life was diagnosed with Post Traumatic Stress Disorder (1999), which severely incapacitated him. The veteran is now in receipt of the TPI pension, but at a reduced rate. Not only did he lose approximately \$4,500 from his MCRS PI value, he is now required to pay \$87.00 per fortnight (after the latest CPI increase), out of his TPI pension to cover the PI that was made in 1994. In total the subject veteran will pay back to the Commonwealth \$127,452 for a \$60,000 Compensation Lump Payment – given that he lives until 82 years of age.

12. Another case story is of a 33 year-old ADF soldier, who suffered Bilateral Instability of the Knees & Depressive Disorder, including (later) Skeletal Back Strain as a result of military parachuting. The ex-soldier was Medically Discharged in 1996. He was overpaid the amount of approximately \$11, 000, an error made by MCRS, in which the then Director of Military Compensation & Rehabilitation (Department of Defence), refused to a non-repayment waiver to the soldier, in which he was forced to repay the \$11,000 amount. He subsequently was awarded in total \$56,101.48, (repaying \$68,000), under Section 24 of *the SRCA* and \$21,187.64, under section 27 of the *SRCA* for Non-Economic Loss (NEL). It has been confirmed by MCRS that the ex-soldier is not in receipt of MCRS IP; however he is in receipt of the DFRDB Class A pension (approx \$1,000 p. f.), and has a Compensation Limitation under Division 4, of Part IV of the *VEA 1986*, of over **\$650 p. f.** from his TPI pension, therefore leaving him with only approximately \$94.00 of his TPI Special Rate pension.

13. The ex-soldier was aged 28 years of age at the time of the determinations (1997). Therefore if his life expectancy is to be around say, 82 years old, he will effectively return his debt to the Commonwealth a massive total of **\$912,600**. One would suggest that this is far in excess of his Lump Sum repayment or Compensation Limitation.

14. The veterans' cases in paragraphs 11 and 12, is typical of many Younger Veterans who believe that taking the Lump Sum will be better than not at all. The average housing Principle does not rise with CPI, and is certainly easily paid off at the price that it was borrowed. This is contrast to Commonwealth Compensation as not only is the veteran paying in excess of that amount back, with a reduced pension amount in the first place, but the veteran is also paying as the CPI rises.

### **Department of Finance.**

15. Upon investigation for the actuarial documentation and calculations made to arrive at the compensation of PI payments and VEA Pensions, it appears that not many departments within the DVA – MCRS or VEA are very familiar with the calculations. It has been suggested that the Department of Finance would be able to provide answers to these questions. However, upon investigation with the Department of Finance as to which department calculates and arrives at the figures offered to veterans, they say it is a responsibility of DVA. Therefore, causing a great deal of confusion as to whom, where and how the calculations for offsetting are made.

### **Legislation/Acts (Superannuation versus Compensation).**

16. Notwithstanding the above in paragraph 13, the *Veterans' Entitlement Act 1986*, attempts to describe how the calculations are made within *Part IIIC – Compensation Recovery*. The interpretation of the calculations within *Part IIIC* are not easily understood and requires Government Actuary to calculate the Ordinary Income Free Area (OIFA), Maximum Basic Rate (MBR), rate of Pharmaceutical Allowance (RPA). Having read through *Part IIIC*, it would be easy to ask how the calculations are arrived for discounting 5% - 5.5% to be inclusive of Comsuper contributions, the discounted PI Payment and the amount of compensable pension that is subtracted from the veterans' VEA Pension.

17. Due to the provisions of Division 4 of Part IV of the *VEA 1986*, (*pension and other compensation*), "it is no possible to receive benefits from two (2) Departments or compensating bodies for the one condition". Looking at the *Safety Rehabilitation and Compensation Act (SRCA 1988)*, and the *Military Compensation and Rehabilitation Scheme Act (MCRS 1992)* – enacted in 1994, refers to "*The Principal Act*" (*VEA 1986*), in particular *Division 5A (VEA 1986)– Effect of certain compensation payments on rates of pension*, also produces a complex description, however is explained in calculations terms under *Section 30C (10) (VEA 1986) Lump sum compensation payment*, where the calculation offered is Pension to be reduced over Total Pensions Payable times by the Total Compensation payable. Where does Comsuper come into these calculations with regard to compensation?

18. Throughout the MCRS Act, the reference to the "*Principle Act*" (*VEA 1986*) is largely referred to discuss pension offsetting. In this case it appears that the *VEA 1986*, may not be cognisant of the changes in Military Compensation from its operation on 7 April 1994. *The Principle Act* describes compensation paid when a veteran receives a pension in respect of incapacity from war-caused injury or war-caused disease or both, is to have these payments taken into account in assessing the rate of pension offered. This is highlighted in *Part II Pension other than Service Pensions for veterans and their dependants, Rates of pensions payable to dependant of a deceased veteran (s) 26 (VEA 1986), Reduction in rate of pension in certain cases*.

### **Summary.**

19. This paper has highlighted a system of compensation that is very disadvantageous to the veterans of the Australian Defence Force. In particular is the reduction value in MCRS Lump Sum payments and the recovery of Lump Sum payment through the VEA pensions. It is very evident that the veteran is virtually paying for his or her Lump Sum Compensation, with CPI and interest – to the point where they are paying double the amount received. It is also evident that an accurate breakdown of offsetting is not disclosed to the veteran concerned – therefore the veterans in many cases are potentially making decisions, without adequate information provided to them by DVA or MCRS.

20. The *VEA 1986* requires amendment to accommodate the MCRS, with regard to recovery and reduced pensions, (Compensation Limitation), to make the MCRS and VEA compensation systems equitable and fair to those who selflessly served Australia

**Recommendations.**

21. The following recommendations are made:

- a. That the practice of offsetting 5%-5.5% for potential Comsuper contributions ceases.
- b. That the Government provide the intended recipient of an MCRS Lump Sum and VEA pension, with a complete cost schedule, including the rate of payback, along with the potential CPI increases.
- c. That the Government amend *the VEA 1986*, to make the act fair and equitable, with adequate compensation, without penalty to be afforded to Australia's veterans.
- d. That the calculations made for veterans in receipt of IP, VEA Pensions and COMSUPER Pensions are given the opportunity for the full value of the VEA Pension – therefore tax-free income, in replacement of the MCRS IP, effectively providing the veteran with a higher tax-free income, with a lower taxable income.