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The National Younger Veteran Consultative Forum
The New Military Compensation ESO Working Group

Saturday, 17th March 2007

Subject: Special Rate Disability Pension Offsetting against COMSUPER Pensions.

The Special Rate Disability Pension (SRDP) will be offset 60 cents to each dollar of received COMSUPER Pension (either Invalidity or Retirement), under the Military Rehabilitation & Compensation Act 2004 (*MRCA), s204(5) &(6).*

Having studied the COMSUPER Home pages (www.comsuper.gov.au) and gleaning information in support of the Australian Peacekeeper & Peacemaker Veterans' Association (APPVA) contention, that the SRDP, or "Safety Net", under the MRCA is unfair and reduces the prospective veterans' income for life.

To support the above comment, I offer you the following for rationale:

1. **DFRDB.** The scheme ceased to new ADF members in 1991. The provisions of the Scheme are complex, however some principle provisions are:

   a. Contributions by members are at 5.5% of salary.

   b. Invalidity benefits.

   c. Redundancy or Retrenchment benefits.

   d. Death Benefits.

   e. Commutation of Lump Sum.

   f. Pensions paid for life.

2. **MSBS.** The MSBS scheme is compulsory for all members of the ADF since 1991. A copy of the MSBS Investment Performance is attached to this paper.

a. Member Contributions are at 5%, with increase available as an option to members at 1% increments, to a maximum of 10% of salary. The Member Component of the MSBS Structure is Member Contributions plus accumulated earnings on the contributions.

b. Employer Contributions consists of a defined benefit equal to Total Accrued Multiple X Final Average Salary over a period of three (3) years (FAS 3).

c. 3% Benefit is Employer contribution of 3% of salary less 15% employer contribution tax together with accumulated earnings. The 3% forms part of the employer component.

The member contributions from DFRDB are deposited into the Commonwealth Consolidated Revenue Fund (CRF), and is paid after the member retires after 20 years service (15 years if enlisted at 40 years of age), upon invalidity or to the family of the member on death. The CRF is not a wealth created or invested fund and it is used by the Commonwealth as necessary by the Department of Finance. The DFRDB is more or less a deal that was made with the ADF that service and contributions and retirement will provide generous benefits to those members of the DFRDB, who would be enticed to stay in the ADF for 20 years. One would say an excellent personnel retainer, given today's competitive job market and falling ADF member retention.

The member contributions of MSBS however, are placed into a very different situation that those in DFRDB. The MSBS member contributions are governed by a Trust Deed and rules set out the full membership, contributions and benefits of the *MSBS Act 1991*. Therefore, in contrast to DFRDB, which is Legislation, the MSBS Trust is able to change Rules and conditions, as has been witnessed in the past. The Member Contributions of MSBS are invested by the Trust into Global Share markets and other investment strategies, similar to investment strategies for other Superannuation and Investment entities in Australia.

If a loss is recorded for MSBS, then the Member's fund will suffer that loss. For example from FY 01/02, the MSBS Fund earned -8.7%, in FY 02/03, the MSBS Fund earned -2.0%, as a result of market pressures. In contrast to DFRDB, the Fund did not lose its base, as it is CPI indexed, whereas the MSBS fund is not CPI. Another consideration to note is that the Public Sector Superannuation Scheme (PSS) is legislated to not provide losses for its contributing members in accordance in with the legislation. So, when MSBS members lost -8.7% in FY 01/02, PSS remained on 0% earnings, as the loss below 0% is legislated to be provided by the Government. Hence, the Government does not provide this safety measure to the MSBS Fund, which any loss is borne by the Contributing members and the superannuants of the Scheme.

The relevance of the above comparisons of schemes is deemed necessary to understand how the member's contributions are not counted by the Government in the case of Offsetting IAW *s204 (5) & (6) of the MRCA 2004*. The Government has stated in its reasons behind this Offsetting Provision, is that the COMSUPER Pensions are solely provided by the Government, and therefore constitutes ***"Double Dipping"*** of entitlements to entitled members. This is because the Government provides a Non-Economic Loss payment/pension of the SRDP, and believes the veteran in receipt of COMSUPER is taking double payment.

MSBS members who elect to take the Safety Net of the *MRCA, Chapter 4 Part 6,* will be fundamentally disadvantaged, as the Government has stated that they also fund the Superannuation. This is not exactly correct, as the Member Contributions are invested by the MSBS Board, is market reactive and market dependant. The Government Contributions

(Employer Contributions) are as a result of Superannuation Guarantee Legislation, in which they are obliged to contribute to its employee's superannuation, as much as the employee him/herself.

The SRDP is to be calculated using the current Totally & Permanently Incapacitated (TPI) Special Rate (SR) of pension under the *Veterans' Entitlement Act 1986 (VEA)*. Within the *VEA*, it does not appear to breakdown SR from 100% of General Rate up to the Special Rate as an earnings loss. In Clarke, SR was described as Non-Economic Loss (NEL) for loss of function, Lifestyle effects, pain and suffering.

Economic Loss (EL) is deemed to be income lost, due to the inability to work – therefore veterans with Qualifying Service (QS) are entitled to War Service Pension (WSP), which is Income Support Supplement (ISS) to assist veterans to achieve a quality of life. Those veterans without QS do not have ISS; however the Government has initiated the Defence Force Income Support Allowance (DFISA), in order to provide a form of ISS to veterans under Schedule 3 (Non-warlike or Peacetime service) of the VEA. DFISA is provided after application by the veteran to Centrelink for the Disability Support Pension (DSP), which reimburses the amount of SRDP loss when the DSP is means and assets tested.

Regardless, the EL or Superannuation is Income and Assets tested, in which the ISS is reduced according to Assets and Income that the veteran holds.

Therefore, the veteran will be hit twice with offsetting in the form of *s204 (6) (Offsets)*, which will be the reduction of the SR value by 60 cents in the dollar **and** having their COMSUPER reduced in the means and assets testing of WSP, or Disability Support Pension (DSP)/.DFISA.

SR under the VEA is not reduced because of income received from COMSUPER.

Therefore, in consideration of the above, a veteran who is Severely Incapacitated as a result of their service on or after 1 July 2004, who elect the Safety Net Provisions under the *MRCA Chapter 4 Part 6*, will be significantly disadvantaged, in comparison to a TPI veteran under the VEA.

The offsetting provisions of MRCA under the election to choose the option of the SRDP *(Chapter 4 Part 6*), with severe penalty for receiving either or both a pension or lump sum under a Commonwealth Superannuation (COMSUPER) scheme as a result of the retirement under *s204 (Offsets) (5) & (6)* is considered unfair and harsh. It is also noted that further reduction may be inflicted if the person has retired voluntarily, or has been compulsorily retired, from his or her work, under *s204 (5) (a)* of the MRCA. This is seen as a brutal reduction to a given veteran under the MRCA. Under the VEA and/or SRCA (if the member has dual eligibility or not), the Special Rate of pension and/or Lump sum Permanent Impairment (PI) is **not offset** as for *s204 of MRCA.*

This is an anomaly that requires rectification to make the SRDP a viable option for those who are in receipt of COMSUPER pensions or lump sums and wish to make the election toward an attractive option within the MRCA, and provide a reasonable quality of life for a veteran.

(Signed)

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