



COMMONWEALTH OF AUSTRALIA

Official Committee Hansard

SENATE

STANDING COMMITTEE ON FINANCE AND PUBLIC
ADMINISTRATION

Reference: Superannuation Legislation Amendment Bill 2007

THURSDAY, 5 JULY 2007

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**SENATE STANDING COMMITTEE ON
FINANCE AND PUBLIC ADMINISTRATION**

Thursday, 5 July 2007

Members: Senator Fifield (*Chair*), Senator Forshaw (*Deputy Chair*), Senators Carol Brown, Cormann, Fierravanti-Wells, Moore, Murray and Watson

Participating members: Senators Barnett, Bartlett, Bernardi, Birmingham, Boswell, Boyce, Bob Brown, Carr, Chapman, Conroy, Crossin, Eggleston, Chris Evans, Faulkner, Ferguson, Fielding, Fisher, Heffernan, Hogg, Joyce, Kemp, Ludwig, Lundy, Marshall, Sandy Macdonald, McGauran, McLucas, Milne, Nettle, O'Brien, Parry, Payne, Robert Ray, Ronaldson, Sherry, Siewert, Stephens, Trood, Webber and Wong

Senators in attendance: Senators Cormann, Fierravanti-Wells, Fifield, Forshaw and Sherry

Terms of reference for the inquiry:

To inquire into and report on: Superannuation Legislation Amendment Bill 2007

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Committee met at 11.59 am

CHAIR (Senator Fifield)—I declare open this meeting of the Senate Finance and Public Administration's Standing Committee. This hearing is for the committee's inquiry into the provisions of the Superannuation Legislation Amendment Bill 2007, which the Senate referred to the committee on 21 June 2007 for report by 27 July 2007. The bill seeks to amend the law relating to civilian and military superannuation schemes and in particular align certain superannuation entitlements for Commonwealth employees with those of the broader community. The committee has received six submissions for this inquiry. All submissions have been authorised for publication and will be available on the committee's website.

These are public proceedings although the committee may agree to a request to have evidence heard in camera or may determine that certain evidence should be heard in camera. I remind all witnesses that in giving evidence to the committee they are protected by parliamentary privilege. It is unlawful for anyone to threaten or disadvantage a witness on account of evidence given to a committee, and such action may be treated by the Senate as a contempt. It is also a contempt to give false or misleading evidence to a committee. If a witness objects to answering a question, the witness should state the ground upon which the objection is taken and the committee will determine whether it will insist on an answer, having regard to the ground which is claimed. If the committee determines to insist on an answer, a witness may request that the answer be given in camera. Such a request may of course also be made at any other time. The Senate has resolved that an officer of a department of the Commonwealth or of a state shall not be asked to give opinions on matters of policy and shall be given reasonable opportunity to refer questions asked of the officer to superior officers or to a minister. This resolution prohibits only questions asking for opinions on matters of policy and does not preclude questions asking for explanations of policies or factual questions about when and how policies were adopted. Before I welcome our witnesses, I would first like to welcome Senator Cormann to his first hearing of this committee. Also, Senator Fierravanti-Wells wishes to make a statement in relation to an interest.

Senator FIERRAVANTI-WELLS—Thank you, Chair. For the record I would like to state that prior to becoming a senator I was employed with the Australian Government Solicitor and I retain a benefit in the Commonwealth Superannuation Scheme. In addition, my husband, a former serving naval officer, contributed to the DFRDB scheme. He currently receives a pension under that scheme.

[12.02 pm]

GARRAWAY, Mr Lance Matthews, President, Superannuated Commonwealth Officers Association

HAZELL, Mr Ewan Edwin, Federal President, Superannuated Commonwealth Officers Association

CHAIR—I welcome officers from the Superannuated Commonwealth Officers Association. Before I call on you to make an opening statement is there anything you would like to add or correct in your written submission?

Mr Hazell—No, Chair.

CHAIR—Do you wish to make an opening statement?

Mr Hazell—Yes, thank you, Chair. The Superannuated Commonwealth Officers Association, SCOA, is a federal organisation with branches in all of the states. The only place we do not have a branch is in the Northern Territory. On behalf of SCOA I thank the committee for affording us the opportunity to make a submission and to be witnesses at this hearing.

The first issue I would like to speak to is salary sacrificing. Salary sacrificing for us is an omission in this legislation. There was a good opportunity here to afford Commonwealth public servants the opportunity to salary sacrifice their contributions into both the CSS and the PSS. Regrettably, this was not done. This would have brought us into line under simplifying superannuation provisions where we would have been salary sacrificing and paying at 15 per cent taxation rates. As it stands, without this opportunity the contributions will be taxed at the marginal rate. We believe this to be somewhat discriminatory in terms of taxation.

Opting out of contributing to the PSS and the CSS is in line with changes in superannuation to allow further choice. We have no difficulty with that and support the legislation in this regard. However, there are slings and arrows associated with this. Opting out of the PSS and CSS carries some penalty and potential losses. These need to be made clear to anybody at the time making a decision. If that is not made perfectly clear, then the person who has opted out may come back in years to come and sue ComSuper. There have been examples of this sort of thing, of people saying that they were not provided with sufficient information—sometimes successfully.

I would like to cite an article that probably illustrates best one of the penalties of opting out of the CSS. On Tuesday this week Daryl Dixon, a respected financial adviser in Canberra, had an article in the *Canberra Times* in which he estimated the reduction in the pre age-55 retirement pension of a person aged 45 at present—so with 10 years to run—who is earning currently \$50,000 a year. The loss was estimated to be in the order of \$800 for every year that no contribution was made to the CSS. So in 10 years you could accumulate—in reverse, if you like to think of it that way—an \$8,000 reduction in your pension that you would otherwise have had at age 55. That is a very substantial drop in pension for quite a modest income earned of \$50,000. So I draw that to the committee's attention, stressing again the need for good information.

I refer now to the restoration of the reversionary pensions to widows, and I move into an anecdote for a moment. About 35 years ago a colleague of mine died. The poor man was only 24 years of age and he left behind the widow and two small children. Several years down the track she remarried and lost her New South Wales superannuation pension. Those were the rules in those days. Some years later—five or six—she received advice from the department of the New South Wales superannuation fund that her pension was being restored. Indeed it was, and it came at a very crucial time in her life. The second marriage had failed, so she had her pension back; and that made a big difference to the lady's life.

Regrettably, at the same time the Commonwealth government did not choose for its funds to go down the same path. Here we are 25, 26, 27, 28 years later at last making the decision to restore pensions to widows who have remarried and who had lost their pensions in the past. It is very late, so late in fact that it is going to be very difficult to find these people. However, I think it is incumbent upon the government and the superannuation funds to make a supreme effort and to be seen to make the effort in this case. Otherwise it will be seen for nothing more than an illusion. I cannot stress strongly enough that this needs to be done.

One of the things that we did not mention in our submission was the possibility of using an approach to advertise this that was rather successful, where superannuation funds combined and put on the net listings of all those people who had a financial interest in a superannuation fund who somehow or other had got lost to them. It could be something like: 'do you have' or 'is this your name' 'or 'is this your money' in a particular fund and 'here is your opportunity to follow it up'. I believe we need to do this. The elderly widows who are in nursing homes now—and there will be some of them—may have friends or children who can say, 'Mum, that's your name. You're on the list. We will sort out your pension.' It could make a very big difference to their lifestyle in their declining years.

The age range of the people concerned would be somewhere in the early 50s. I cited a case of a very young widow. There were more elderly widows than that and there may be some who are centenarians. The New South Wales branch of SCOA has identified 10 of their members who are centenarians, for example. So the age range is still quite diverse. The total numbers could be in thousands, but not very many thousands. With the chair's indulgence I would like to ask Lance Garraway to speak to the value of independent advice and full disclosure.

Mr Garraway—I would like to speak to the importance of independent financial advice in a situation such as this. If we look back to the early nineties when the movement across, or the opportunity to select the PSS as against the CSS, was afforded to our members, that was an internal movement. Nevertheless, at that time, apart from ComSuper advice, no external advice was provided.

I left the Public Service through redundancy in 1993 and went off to nine years in financial planning. I participated rather heavily when the Kennett government changed the revised scheme and offered the opportunity of the new scheme. It was critical at the time, because the new scheme was a lump-sum based scheme and there were aspects of what we are doing now of people taking the opportunity, if they wished, to move to a lump-sum based situation. At that time the Kennett government provided and paid for quite a reasonable round of external financial advice. There were families involved in this. In most cases there were generally two

partners involved and often it is a matter of the splicing in of the benefit of a lump sum versus a pension and the nuances associated with that. I would ask the committee to consider the value of this independent financial advice in promoting this situation because I can see that in many cases it would be of great value.

CHAIR—Mr Hazell, in terms of going back in history to the rationale for cancelling pensions due to remarriage—and I realise this probably relates more to the domain of the department—was it your understanding that the rationale was that a woman who remarried had somebody providing for her and therefore she no longer had the need for the pension? Is that what the rationale was?

Mr Hazell—There would seem to have been a more quixotic world in the past where there was more chivalry, as it were, where the so-called fairer sex at the time were supposed to be dependent. It is a better world these days. In those days the entreaty upon a daughter was to marry well. Unfortunately for widows, they had to marry often as well. In this case it was thought that the woman was now dependent upon a man, so he could support her. In my opinion that was the view.

CHAIR—In the case you cited before, which I think you said was a New South Wales example, that woman subsequently remarried. She regained her pension when her second husband died?

Mr Hazell—No. The second marriage failed but she had regained her pension a little bit before that, and that gave her the necessary strength of purpose, character and security to make the right kind of decision that would protect her and her children.

CHAIR—In what year did that happen?

Mr Hazell—It was probably in the early eighties—I am fishing for a year in my mind, but it is about 20 to 25 years ago.

CHAIR—How long has the association been pushing for this change?

Mr Hazell—The history of us pushing for this change, I am afraid, eludes me. It is not something that we have been pushing for recently. It got lost in the annals of time, to our shame, as we changed leaders over the years and changed people. I would say that we probably pushed for it well into the eighties and maybe the early nineties, but other issues overran it by then. It was probably a lost cause. It revitalised itself when the government put it on the table, as far as I am concerned—I would have to ask my old colleagues for assistance.

CHAIR—I was just looking to ascribe a victory to your association for justice and equality—

Mr Hazell—I like to be frank and fearless, Chair.

Senator SHERRY—I was not aware of your background in planning, Mr Garraway. Why would an individual opt out of a defined benefit fund when an opt-out is to their disadvantage?

Mr Garraway—I can refer perhaps to the Victorian government experience. I saw about 300 people in the Victorian public sector—

Senator SHERRY—Before you go on, do you know what the average notional contribution was in the Victorian defined benefits versus the Commonwealth defined benefits that we are dealing with here?

Mr Garraway—I cannot answer that accurately—

Senator SHERRY—It is a similar circumstance.

Mr Garraway—It was fairly similar. You could line the two schemes together, as much as you can, looking at individual benefits, and there was a similarity in the schemes. It would be very hard to say that one was better than the other, because you are looking at years of service and quite a number of things that are very hard to align. I draw an example to that. I was able to say to my clients up-front, because greedy financial advisers always like a lump sum, of course—

Senator SHERRY—Yes, I had noted that. The commissioner goes along with it usually.

Mr Garraway—Yes. I was always able to put myself in a position to say, ‘I took a pension,’ and that does not mean that I stayed honest from that point, but I did. We had ACTU accreditation in the company I worked for. I use the example of teachers. A lot of teachers marry teachers, and you could then have a situation where both stayed in the revised scheme, so you would have a very large pension and also a very small lump sum. So in retirement there is a value for an ongoing pension which, coming out of both schemes, is assured and an excellent backstop, whereas in retirement you also need some flexible moneys obviously via the lump sum. That was an example at the time. Later on—if I may refer to this—the Kennett government also looked at cashing out their schemes and gave people the opportunity to cash their benefits into lump-sum super, or a portion of that, like a half-benefit. With that, you could also bring to people’s minds the value of the lump sum versus the pension. I think that can be done dispassionately to point out the strengths and weaknesses of both sides.

Senator SHERRY—If you were giving dispassionate, reasonable and, I think, fair and balanced advice, wouldn’t it be true that, in giving a person advice to opt out of a defined benefit, which is a very serious issue, you would have to at least point to the notional value at, say, age 60 or 65, when they can retire, of the value of that defined benefit converted into a lump sum?

Mr Garraway—Yes—and the frailty of investment opportunities. In good years they are very good and in bad years they are certainly not good. Of course, you do not have to go through the vagaries of that with a defined benefit pension. So, yes, it was more or less pointing to the pros and cons of both sides. The first redundancy program in the Commonwealth was here in Victoria, at the Williamstown naval dockyard and at a government aircraft factory. You were looking at a lot of very senior people having the opportunity to move—engineers and naval architects. I drew the short straw and got the opportunity of managing that first redundancy exercise. People were absolutely mesmerised by the lump sums. In those days, for the very senior technical people, they were \$400,000 and \$500,000. If we are talking 86—

Senator SHERRY—Sure, but isn’t it true that the pot of gold at the end of a rainbow, if I can use that expression, in real money terms can be actually less than the value of the defined benefit?

Mr Garraway—Yes, but within a family's requirements in retirement it is often very valuable; while a pension is very good for day-to-day living, you also need the opportunity to access some cash moneys. Often that is—

Senator SHERRY—Do you? We do not advance the age pension as a cash lump sum. There is an age pension of \$13,700 a year, approximately. We do not offer optional cash-out of the age pension as a lump sum for people who you could argue are in more pressing circumstances and may need a lump sum. Why wouldn't we do that, if that is the theory?

Mr Hazell—Could I suggest that, if that were available, there would be a whole tribe of people lining up for it—

Senator SHERRY—I am sure there would be, yes.

Mr Hazell—on the basis of their health. If you have had equivocal medical advice in the last few years and you struggle through to retirement and the opportunity for a lump sum is there and you are single—you no longer have a spouse or what have you; you are gay; you have a flock of nieces and nephews you would like to provide for—the lump sum becomes extremely attractive. It does not matter that there is an overall financial loss. You may not be there to experience it. I think there are a host of personal and individual reasons that can drive a person towards a lump sum; sometimes not being of sound mind might be one of them.

Senator SHERRY—So if a person were diagnosed as being terminally ill, for example, it would seem to me in that circumstance that it would be financially logical and to their advantage to switch out of a DB into a DC situation. There is just one other issue. You referred to the Kennett opt-out, if you like. Financial advice was offered. Was the government paying for that as free advice?

Mr Garraway—Yes—\$250.

Senator SHERRY—There were presumably planning companies or planners contracted to provide that advice so that there was a quality control to make sure—bulk purchase and quality control?

Mr Garraway—Absolutely.

Senator FORSHAW—I just wanted to pick up on the issue that is not covered in the bill and that you have suggested should be—salary sacrifice. I appreciate that we are dealing with the legislation as it is. Can you expand a bit on what has been happening there? I take it that you have been campaigning for this to be available for some time. What is the argument or the rationale put to you that it is not being agreed to?

Mr Hazell—It is available for the PSSAP—that is my understanding—because that is an accumulation fund. It is available only if you choose to salary sacrifice into some other fund out there—not CSS, not PSS. Why shouldn't it be available for the PSS and CSS? After all, the funds that you are putting into the CSS—that is an accumulation fund. The fact that there is this whole rack of defined benefits out here provided by the employer generally is not related to the CSS accumulation fund, being a hybrid scheme. The only bridge between the two is the 54-11 concept where, should you be made redundant by your employer at any age, or if you happen to get to nearly 55 and you have been in the Public Service for 35 years and decide it is time to go then you can take early retirement and you have your pension

calculated in a different manner, depending upon the amount of money you have accumulated in the CSS accumulation fund. It is not called that, but I am making it perfectly clear that that is really what it is. That is the only bridge between the defined benefit components over here and the accumulation component of the CSS.

So, if the CSS is an accumulation fund, why shouldn't it be treated in the same way as any other accumulation fund in the country under simplifying superannuation? That is one of our arguments. How long have we been on this? I guess it has not been very long. It is one of those things that we raised as an addendum to our submission to the Treasury on simplifying superannuation, when it was a proposal—that was on 9 August last year. We raised it again in our prebudget submission at the end of last year as a component of that. So it is in both of those. We have been conscious of it for a while because of the existence of the PSSAP, which is relatively young.

Senator FORSHAW—Have you had a response to indicate that it is being favourably considered or that it is being rejected? The fact that it is not in this legislation does not necessarily tell me the attitude of the government to what you are putting.

Mr Hazell—The major thing for us is that, when we put forward a submission such as the one we put forward to Treasury on simplifying superannuation, we were thanked for our submission. Similarly, we were thanked for our prebudget submission. That is the end of the matter. You know you have had a hit if it gets into legislation somewhere or other. At this stage it is still out there in the ether, and we will raise it again in our next prebudget submission.

Senator FORSHAW—Thank you.

Senator FIERRAVANTI-WELLS—In your submission you talk about information and informing members, particularly in recommendation 2 and 3, about the proposed amendments. Could I take you back, with your corporate history, to the 1990s when there was the change from CSS to PSS. I was in the Public Service at that time. One thing that I remember was the rather lack of information at the time. If you have some experience about what happened in the early nineties, how would you see that sort of information flowing today?

Mr Hazell—My recollection of the early nineties was that a sporting offer was made, as it were, by the superannuation fund, but we were advised of what it would mean in lump sum dollars. You could see the dearth between the two.

Senator FIERRAVANTI-WELLS—Some of us saw the dearth between the two.

Mr Hazell—That is right. But some of us leapt on the bandwagon, went forward and said, 'I'll join the PSS because my wife has just got a good inheritance. She's got the capital moneys and I need to maximise my pension.' The fact that the PSS had an indexed component that you could buy yourself was attractive to a lot of people, but you had to know that it was costing you something, and you could see the difference in the total cost between the two. That information was provided. To me it was all perfectly clear, but regarding my discipline many years ago, I was a tired old maths teacher, so I could see where numbers were leading me. I think the information was clear but it did not seem to be independent—it was provided by the superannuation funds. I think that being seen to be independent is important.

Senator FIERRAVANTI-WELLS—In terms of the spouse pension reinstatement, do you have a feel for the number of widows that we are talking about?

Mr Hazell—There are only—in rough figures—about 8,000 1922 scheme people left on this planet and being paid pensions. I can only relate to that how many people have dropped off along the way. Their ages are quite attenuated—from about 50 through to over 100 perhaps. I cannot imagine there being any more than 8,000. It would be probably fewer than that.

Senator FIERRAVANTI-WELLS—Given that a lot of them have not interacted with the Commonwealth for so many years, do you have suggestions as to how you would see that interaction occurring?

Mr Hazell—I can only personalise it in terms of the Superannuated Commonwealth Officers Association. In our newsletters we are going to ask all of our members: ‘Do you have an aunt, a mother or what have you who falls into this category? Can you apprise her of the situation and make sure that she at least knows that she has this option?’ Some may choose to not go down that path. I will be pressing upon the government to charge ComSuper with the responsibility of making sure that the same sort of message, couched in the way the government would like to see it, goes out in their newsletters. These days they are called the ARIA board newsletters, but they used to be ComSuper’s. I am sure they are prepared by ComSuper, but they go out under the ARIA board’s banner. Every superannuant and everybody in a preserved situation gets one of those. Contributors to the fund get different information, but they get a newsletter. We can ask the people who ComSuper is in contact with to do exactly the same thing: ‘Could you tap somebody who falls into this category on the shoulder—an aunt, a mother, a friend or what have you?’ We can do that form of advertising and it could be quite sharply pointed. That would probably lead to some success, but I also suggest using the internet and doing much the same as the superannuation funds have done to find people who have dropped off their radar. That is the best I can do at the moment. I have had only a few days to think about this, but I am sure that there will be advisers in the department of finance, particularly in the communications area, who can come up with some brilliant ideas.

CHAIR—As there are no further questions, thank you very much. We very much appreciate your joining us here today. The secretary will have some information for you in relation to a matter that you raised before the meeting. Thank you very much indeed.

Mr Hazell—Thank you. It is much appreciated.

[12.32 pm]

FELTHAM, Mr Peter, Project Officer, Community and Public Sector Union

GILLESPIE, Ms Margaret, Assistant National Secretary, Community and Public Sector Union

Evidence was taken via teleconference—

CHAIR—Thank you very much for joining us. At the outset, would you like to make any corrections to your written submission?

Ms Gillespie—No, thank you.

CHAIR—Would you like to make an opening statement?

Ms Gillespie—Yes, if you do not mind. Given that we are on the phone, which makes things a tad difficult, I will start and then Peter will talk to some matters, if that is all right with the committee. We will then take questions as usual, if that is fine with you.

CHAIR—That is fine.

Ms Gillespie—Regarding superannuation generally, the committee may be interested in knowing that the CPSU meets regularly with officers who deal with superannuation matters in the Department of Finance and Administration. We have a very good working relationship with them. We are certainly very pleased with the consultation that has occurred over a number of years over the major changes that have been taking place to public sector superannuation, particularly in the choice environment. We certainly believe that the changes are critical to ensuring that our members have an adequate retirement income. As an indicator, if you like, of the level of interest amongst our membership on superannuation matters, every year we do a survey of women in our sector. Of course, they are a majority of not only our members but workers in the Public Service. In that survey, superannuation recently rated higher than pay in terms of level of interest to women. That is an indication of the interest out there with public servants, you could say, and particularly women. That is something that has been growing over time.

The CPSU, as our submission indicates, generally supports the changes that are before the committee in relation to superannuation, but we are unable discern how the claims of Senator Minchin on budget night, that these changes would encourage Commonwealth public servants to remain in the workforce longer, would actually operate in effect. We will talk to that a bit later. We agree that the changes will provide some welcome but, in our view, limited flexibility for Commonwealth public servants. We want to highlight some of the risks associated with the changes. We particularly seek support for employer-funded financial advice to enable Commonwealth public servants affected by the changes to be able to make an informed choice. We think it is critical for the future adequate retirement income of those people that they make an informed choice. We also seek to identify a couple of lost opportunities for more substantial changes, which could have been included in these amendments, including the removal of discrimination for interdependency, including same-sex couples.

With regard to the actual detail of the proposed changes, our response is structured in line with the proposed bill. In terms of schedule 1, we agree with the removal of compulsory contributions in the 1976 scheme—the CSS, as it is known. The CPSU is concerned that the CSS is a complex scheme and believes that employees should be required to make an informed choice, and that informed choice is dependent on the provision of adequate information and necessary financial advice. I might remind the committee that in the past, when the CSS was closed and the PSS defined benefit scheme was being proposed, there was extensive employer-funded consultation with the affected employees. We would seek the same level of consultation and advice being given to people who may contemplate the changes made available to them under these amendments.

In terms of schedule 2—choice of funds for employees in the 1990 scheme, the PSS defined benefit scheme—the CPSU supports the ability of employees in the PSS to leave this scheme and, if eligible, move into the PSS accumulation scheme. We also support the ability of these employees to then have the option to exercise choice of fund if they so wish. Given the defined benefit nature of the PSS, the potential financial impact of moving into an accumulation type scheme is noted by us. Importantly for the CPSU, the benefit for employees moving into the PSSAP is a mandated 15.4 per cent employer contribution. That is the rate that we negotiated with the government before that scheme was actually created and put into legislation. Any reduction in that 15.4 per cent employer contribution for employees who leave the PSS defined benefit scheme and move into the PSSAP could obviously significantly disadvantage these employees. We would oppose that vigorously. I will ask Peter Feltham to now expand on how this may happen so that members of the committee can understand how that would work.

Mr Feltham—For a while, we have been identifying an issue with regard to the ability of a certified or collective agreement to allow or not allow the maintenance of the employer contribution of 15.4 per cent. We believe there is a high level of risk that we have to deal with industrially in negotiating agreements to ensure that that 15.4 per cent employer contribution is carried over into another fund of the employee's choice. As Margaret said, the issue of the 15.4 per cent is covered within the PSS Accumulation Plan, because that is contained within the trust deed of that scheme, but the same is not true of any other fund. In collective agreements we are endeavouring to ensure that that 15.4 per cent is locked into any relevant fund that the employee chooses.

We have now also uncovered a risk with regard to salary sacrificing arrangements which may apply in that an employee could have their salary discounted by the amount that they are salary sacrificing. Therefore, their discount salary is used for things like determining their employer's superannuation contribution, their redundancy entitlement and matters like some forms of leave, like purchased leave, which is based on an annual salary. If that annual salary is discounted, then there is clearly a risk that the superannuation and salary sacrificing arrangements will disadvantage people. We note the SCOA submission. I would assume that, as you have just met with the Superannuated Commonwealth Officers Association, that matter would have been raised. We support their submission with regard to this point.

The CPSU has recently conducted an audit of those salary sacrificing arrangements. It has identified a number of non-union agreements which in our view could allow employees to be

disadvantaged with regard to the determination of their salary and allow an effectively discounted rate of superannuation to be paid on their behalf, because the superannuation contribution is not based on the actual salary; it would be based on the discounted salary. In our view, that reaffirms the need for people to get informed advice and be given financial support to be able to receive that advice, because there are complex decisions that employees will need to make.

Ms Gillespie—I will now move through the other schedules and note our support or otherwise. In relation to schedule 3—early release of benefits—we strongly support this proposal which we believe will bring the early release of benefits to employees in the CSS consistent with the general standard. We note that similar amendments will be made to the PSS via changes to the trust deed or rules. In relation to schedule 4—changes to the military superannuation—as advised in our submission, we make no comment about the proposed changes. In relation to schedule 5—technical changes to the CSS—as advised in our written submission, we support these changes. In relation to schedule 6—further changes to military superannuation—we make no comment.

A number of other matters are covered in our written submission. They are matters that we have raised previously with the Senate committee, the minister and/or the department of finance and/or federal Treasury, relating to recent changes to superannuation. We believe that the changes that are currently before the committee give the opportunity for further consideration of some of these amendments. With your permission, we would like to briefly address those matters. I will hand over to Peter to go through them.

Mr Feltham—Again in the order they appear in our written submission, the first point we would like to raise is in the context of salary sacrificing and the ongoing frustration of our members in the defined benefit scheme—that is, the CSS and the PSS defined benefit scheme—to not be able to salary sacrifice. We accept that part of the rationale for the changes that are proposed, which this committee is looking at, is to provide more flexibility. We accept that, allowing employees in the PSS scheme to leave that scheme and move to another scheme, and/or allowing employees in the PSS defined benefit scheme or the CSS scheme to reduce their compulsory contributions to zero, would allow them to salary sacrifice elsewhere, but we have a difficulty reconciling that with the government and the general financial sector's view that what we ought to be doing is consolidating superannuation accounts. What this has caused over a number of years is for the employees who have wanted to salary sacrifice to effectively have to join another scheme to salary sacrifice. We have never, in our view, been able to get a satisfactory explanation as to why it is not possible to allow people in the PSS defined benefit scheme or the CSS to salary sacrifice directly into those schemes. We note that that point is also covered in the Superannuated Commonwealth Officers Association submission, and we support their submission in that regard as well.

The second point that we would like to raise is with regard to transition to retirement. CPSU notes that transition to retirement is now generally available in most, if not all, superannuation funds in Australia other than the defined benefit schemes, and specifically in that regard in our sort of patch the PSS defined benefit and the CSS schemes. We have continued to actively pursue allowing transition to retirement arrangement options to be provided in those schemes. When transition to retirement was first mooted in a Treasury

discussion paper in November 2004, the CPSU responded to that paper in December 2004 by supporting the introduction of transition to retirement and encouraging it to be made available across the community. Our submission to that Treasury inquiry reported that the public sector workforce is ageing. At the time that that report was provided, 39.3 per cent of Australian Public Service employees were over the age of 45. The trend since that time in the Australian Public Service Commission *State of the service* reports would confirm that the public sector is continuing to age.

Notwithstanding our submission, in April 2005 regulations were introduced which established transition to retirement from 1 July 2005. The regulations did not require any compulsion on behalf of superannuation funds to introduce it, and in our follow-up discussions with the department of finance it was confirmed to us that the government did not agree to provide transition to retirement to people in the CSS or the PSS defined benefits scheme. As Margaret Gillespie indicated earlier, we do question the impact that these changes are going to have. Senator Minchin's media release No. 38 of 2007, delivered on budget night, indicates:

While these measures will allow eligible members to access schemes which suit their individual needs, Commonwealth public servants can still choose to remain with their current superannuation schemes.

In addition to that, it states:

These measures, to be offered to eligible members of Australian Government superannuation schemes, will provide flexibility and encourage Commonwealth public servants to remain in the workforce longer

In our view, the offering of transition to retirement arrangements within the CSS and the PSS defined benefits would do more to attract Commonwealth public servants over the age of 55 to remain in the public sector by allowing them to access the transition to retirement arrangements.

The issue of flexibility with regard to transition to retirement is really a nonissue, in our view. Transition to retirement is made available on the basis of an employee being able to access their accumulated benefits. The changes that the government are proposing in the bill that the committee is considering will have employees leave the PSS defined benefits scheme with their contributions and all their money retained in that scheme. Transition to retirement can only take effect when an employee can access their accumulated contributions, and by them leaving that scheme they will start in a new scheme with no contributions in a superannuation fund and therefore no funds to be able to use with regard to transition to retirement. So there is no flexibility in the short to medium term for employees to leave the PSS defined benefit or to even zero out their contributions in the PSS defined benefit or CSS and go into another scheme, because they will have no accumulated benefits in those schemes to be able to use to transition to retirement. I might now hand back to Margaret on the third point, which is rectifying reversionary benefit pension discrimination with regard to interdependence.

Ms Gillespie—The CPSU has raised this matter with the Department of Finance and Administration and the minister for a number of years now. The matter was raised by the Democrats in the Senate after the 2007 budget, and it was also raised in a Senate estimates committee hearing in February 2007. We are at a loss to understand why changes have not

been made to prevent discrimination. We understand that the amount of money involved is minimal compared with the close to \$100 billion of the government's unfunded liability that goes to government employees and Defence personnel. As we know, the Future Fund has been set up to deal with that matter. In an interchange with Senator Sherry on 23 May this year in the Senate, an amount of \$2 billion was mentioned in relation to the actual cost of this matter. My reading of the *Hansard* indicated that the cash was not a problem; it was basically the compounding effect of the unfunded liability. The Future Fund has been established; so, from our point of view, the government has now run out of excuses as to why it has not included, in this raft of amendments, the removal of the discrimination, particularly with regard to independent and/or same-sex relationships. We certainly believe that the Senate committee should have a long, hard look at that, and we would like to put on the record our bitter disappointment when, on budget night, we realised that these changes were not being promulgated as part of the changes.

There are two other matters that Peter will now very briefly speak to: one is indexation, which I am sure SCOA has already covered, and the other is the taxation arrangements for employees in untaxed superannuation schemes. That is something that our members who are close to retirement are becoming very agitated about.

Mr Feltham—I missed the sequencing of our proposal to change the CSS and PSS pension indexing arrangements away from CPI to MTAW. We have put in a number of submissions on this point, as have a number of other organisations, as Margaret indicated, including SCOA. Two Senate committees, including the Senate Select Committee on Superannuation's report of April 2001, recommended that the government examine the feasibility of adopting an indexation method other than CPI for Commonwealth public sector and Defence Force superannuation schemes to more adequately reflect the actual increases in the cost of living. That is one which we continue to seek to have rectified through any method we can.

The final point in our submission, as Margaret indicated, is with regard to the changes in the taxation arrangements introduced out of simplified, simple or better superannuation, as it has been known since the budget in 2006. We have—I guess it is reflective of the ageing workforce in the public sector—increasing interest in superannuation and increasing concern about what is seen to be the inequitable treatment of employees in untaxed funds compared with taxed funds with regard to superannuation. We note the recommendations earlier this year of the Senate Standing Committee on Economics and the unanimous recommendation specifically that the government should consider separately assessing for taxation purposes superannuation income streams and additional assessable income. We support the recommendation of the Senate economics committee.

Ms Gillespie—That just about covers the matters we wanted to raise with the committee. As I said at the beginning, we believe that there is now an ideal opportunity to allow that PSS and CSS provide a range of options that are now generally available to employees in more contemporary superannuation schemes, such as salary sacrifice. The changes to abolish the compulsory employee contributions in the CSS and the PSS and the option of contributors to leave the PSS will provide employees with more options, including the ability to salary sacrifice. But we do not accept that these changes will, in the short to medium term, provide any benefit to employees—for instance, for employees in same-sex relationships or

employees who wish to establish a transition to retirement arrangement—as the employee is required to leave their superannuation in the CSS and PSS defined benefit schemes and to start afresh elsewhere. Transition to retirement can work only where an employee has an accumulated benefit and they can access it as a non-commutable pension. With regard to employees in a same-sex relationship, again it is the accumulated benefit in the CSS or PSS that provides the benefit, not providing an option for these employees to contribute to another scheme from a zero dollar base. We would certainly like to thank the committee for providing us with the opportunity to speak to you today.

CHAIR—Thank you. Firstly, I have a couple of points of clarification on some of the items you covered that do not relate to the legislation. In terms of a reversionary pension for those in an interdependent relationship, clearly you are arguing that in the future that should be available. Are you proposing that that be looked at going back to previous public servants who have been in an interdependent relationship but whose partner may have died?

Mr Feltham—We are seeking it from now.

CHAIR—Yes, you are seeking it from now, but you are not seeking to go back over the years to—

Mr Feltham—Retrospective for those partners of people in same-sex relationships who have already died?

CHAIR—Yes.

Mr Feltham—I believe we are. If it is meant to be equitable, contributors should be treated the same way as they are in other superannuation schemes where there is not the discriminatory tradition based on the definition of ‘spouse’ historically in superannuation funds. Especially since the CSS amendment a number of years ago to broaden the definition of ‘independence’, from that point there was not an issue generally in CSS compliance superannuation schemes. The issue for us is that the 1976 and 1990 schemes do not comply, and we have been seeking for a number of years to rectify that level of discrimination.

CHAIR—So you are proposing to look back as well as forward?

Ms Gillespie—Yes. As we know now, it is a finite group. You can actually cost it. It is not an ongoing thing; it is actually a finite group.

Mr Feltham—The defined benefit scheme is closed as of 30 June 2005.

CHAIR—Thank you for that information. With regard to your proposal for the CSS and PSS pension indexation moving from CPI to MTAW—**E**—and the government’s position on this is clear—is there a parliamentary party that does support your position there?

Mr Feltham—I am not sure I can answer that. I suppose it is a matter on which the CPSU will be asking questions of parliamentary parties in the lead-up to the coming federal election.

Ms Gillespie—We would certainly invite submissions!

CHAIR—Finally, in relation to the need for financial advice for anyone who may be seeking to move funds or to cease making contributions to the CSS, clearly you are arguing that that be employer funded financial advice. Are you aware of any parts of the private sector where there is employer funded advice in relation to superannuation changes? I appreciate

that this is a significant change that the government is bringing in, but are there any parallel examples?

Mr Feltham—I think there may be parallels in regard to redundancy. It is now pretty common practice that an employer will fund an employee to go and get independent financial advice in circumstances of redundancy—where to invest their money, whether to go on their world trip or whatever. I think that is a general standard that now applies as part of general redundancy entitlements.

In the change from a defined benefit scheme to an accumulated benefit scheme, there are a number of layers of complexity. There is the basic concept of the holder of the risk effectively changing from the employer—in the case of the CSS and the PSS defined benefit scheme, that is the government—to the employee. With an accumulation scheme, the risk transfers to the employee, the contributor, and that makes this a very significant change. As Margaret Gillespie has indicated, this has been the case in the public sector in the past because of the complexity of the changes—and that was only a change from a hybrid scheme, the CSS 1976 scheme, into the defined benefit scheme, the PSS scheme, in 1990.

CHAIR—Has the union put to the Department of Finance and Administration the proposal for employer funded advice?

Mr Feltham—Not at this stage. We met with the department of finance about three days after the federal budget this year. We can arrange another meeting with them. We do that on a six-monthly basis or when anything significant happens. So we can certainly put that to the department of finance, but, from a CPSU perspective, we would be looking at having that progressed through negotiations. Ideally, we would like to have that supported by government to facilitate that.

Ms Gillespie—The other reason, of course, is that we had not seen the legislation. It is hard to have a position until we have seen the legislation. All we had was press releases and the budget papers. But that would be something we would probably want to pursue.

Senator SHERRY—Have there been any discussions between the CPSU and the trustees of the existing PSS and CSS schemes about the need for properly funded, ethical financial advice as to options?

Mr Feltham—Directly, no. The CPSU does have meetings with Steve Gibbs, the CEO of ARIA, which is the organisation that administers the three public sector schemes. It is something we can discuss. I note from the SCOA submission that they are seeking from both ARIA and ComSuper detailed information on the implications for people who may be considering moving from a defined benefit scheme into an accumulation scheme. From a CPSU perspective, we are seeking to extend that by one level to have the employer fund the financial advice.

Senator SHERRY—I understand that and I think it is quite reasonable. We have just heard evidence from Mr Garraway, the Victorian president of the Superannuated Commonwealth Officers Association, who was involved in that process when this option was offered through the Victorian defined benefit schemes. The employer funded, to the value of \$250, financial advice that was bulk purchased and contracted on an independent and arm's-length basis.

Mr Feltham—I do not think the CPSU was directly aware of that, but thank you for that information. As state government schemes have evolved over the years as well, I would imagine that that sort of need for independent advice would have occurred around the country in all state schemes at one point or another.

Senator SHERRY—My understanding is that it is relatively common in both the private sector and the public sector—but you might have a look at that. I want to come to the issue of salary sacrifice. In the recent changes that were dubbed ‘simpler super’, there were new contribution caps. I think the cap is \$50,000 if you earn less than \$50,000—and we have seen the \$1 million rush in the last year—and \$150,000, going forward, for people who are older than 60. In advocating salary sacrifice, would you accept that those caps would apply?

Mr Feltham—I do not know that we have considered it in that sort of detail. I do not think we are after anything above and beyond what generally applies to the community. I would think, off the top of my head, that we would support whatever the community standard is in that regard.

Senator SHERRY—So effectively at the moment, because of the restrictions on the schemes—these schemes anyway—a member cannot salary sacrifice up to the new limits that are being prescribed in ‘simpler super’?

Mr Feltham—They cannot salary sacrifice into those particular funds. I would imagine that small thousands of public servants have probably salary sacrificed elsewhere. We understand that the bulk of those may have salary sacrificed into a fund like AGEST.

Senator SHERRY—I was going to raise that because it seems to me that the ongoing rationale for having two separate funds—one an accumulation fund offering salary sacrifice, a DB fund, and from 1 July 2005 an accumulation fund—is lacking now.

Ms Gillespie—It is a matter that, of course, has come to our attention. It is an obvious matter. We have certainly taken the view that, while all things are equal, we are not overly concerned. But if competing funds ratcheted up so much for the employee dollar, if you like, then we would see more members’ money being spent on advertising in a competition sense than would be warranted. It is one of those things that we are observing. The new scheme has been in place for only just over a year, so things are emerging, but it is something that we are keeping an eye on in terms of two competing schemes. The main point we were making was that all advice at the moment is to consolidate your superannuation into one fund. Public servants in defined benefits schemes have to open another account in order to salary sacrifice, and that is the issue that we are bringing to the attention of the committee today.

Senator SHERRY—Isn’t it correct that most members of ARIA are also members of AGEST?

Ms Gillespie—No, not at all.

Senator SHERRY—What is your understanding?

Ms Gillespie—If they salary sacrifice, they will have two accounts.

Senator SHERRY—What about the three per cent contribution that goes into AGEST?

Mr Feltham—No—the three per cent contribution goes into the CSS defined benefit scheme or the PSS. That is a three per cent productivity component.

Senator SHERRY—So that is not going into AGEST at all?

Mr Feltham—No, it is not.

Senator SHERRY—What is going into AGEST? I want to clarify that for the committee.

Ms Gillespie—The key point is that, at the moment, if you want to salary sacrifice and you are in the CSS, you open up an AGEST account normally or you can choose another one. That is a common practice across the service in particular. What we have been arguing for is that there is no reason why a public servant should be mandated to go somewhere else. They should be able to if they want to, but the common advice is that you actually keep all your money in the same place.

Senator SHERRY—I accept that rationale. I just want to be clear about the members in AGEST. Are their 60,000 or 70,000 members in AGEST?

Mr Feltham—I think there are more than that. AGEST is now an open fund and it can attract or retain contributors from anywhere. I think AGEST has focused on retaining public servants after they leave the Public Service. AGEST was the Public Service and federal public sector default fund for employees who were previously not eligible to join the PSS defined benefits scheme because of the entry qualification—that is, three months service or three months within the space of two years. It was determined that you were not allowed to join the PSS defined benefits scheme—

Senator SHERRY—I want to clarify the position of AGEST. Are you saying to the committee that the only members of AGEST at the moment who are active members—let's differentiate between active members and inactive members—are those who are salary sacrificing?

Mr Feltham—I am not sure we can give a definitive answer to that one. There would be a large proportion, but I am not sure it would be 100 per cent.

Ms Gillespie—I think there would probably be temporary employees who have accounts in AGEST—of course, we are not trying to pretend that we are experts on AGEST—and there would be a large number of contributors with very small accounts.

Senator SHERRY—There would be a large number of members of AGEST, whatever the number is, who are also members of ARIA.

Ms Gillespie—That is correct.

Senator SHERRY—There has to be an overlap in membership.

Ms Gillespie—Definitely.

Senator SHERRY—You do not have any data on that?

Ms Gillespie—No, we do not.

Senator SHERRY—Okay. Just to be clear on this, in the current changes before us and the current structure of the CSS-PSS, there is no salary sacrificing and there is no transition to retirement. Is there any portability of accrued benefit?

Mr Feltham—There is limited portability to reciprocal defined benefit schemes. There are only about half-a-dozen schemes around the country where there is portability from the CSS and the PSS, but that is the PSS defined benefit scheme. The accumulation plans are different.

Senator SHERRY—But, if a person joins the Public Service and they are in an accumulation fund and they are in the PSS-CSS, they are not able to transfer that accumulated amount into what is now ARIA, are they? They cannot transfer money in and they cannot transfer their accrued balance out if they leave the public sector.

Mr Feltham—Only to about half-a-dozen funds around the country. I think Telstra's super scheme is included and most of the university schemes are included in that, but there is a very small number of schemes where portability is available currently.

Senator SHERRY—Really what I am getting at is that, at a time when the government has promoted 'choice', portability, transition to retirement and salary sacrificing, it is not providing those facilities within the current mainstream public sector funds.

Ms Gillespie—Yes, that would certainly be our view.

Senator SHERRY—We have touched on portability, transition to retirement and salary sacrificing. Are there any other options, if I could describe them in that way, that are not available in the current arrangements?

Mr Feltham—If you want to extend the debate further, I suppose it is investment choice. The CSS and the PSS defined benefit schemes introduced a cash investment option, but clearly superannuation funds more generally provide a range of investment options. That can number from half-a-dozen to probably 20 different investment options. In the CSS and PSS defined benefit schemes there are only the two options: the default option and the cash option. I understand that work is being done to change the way in which the investment returns are paid out of both the CSS and the PSS defined benefit funds currently in the lead-up to a consideration of offering broader investment choice. So I think that one is under control, if I could describe it as such. That is the only other one that I think is provided generally in superannuation funds that is denied to people in the CSS and PSS defined benefit schemes.

Senator SHERRY—To finish, would the options that are more broadly available in the general community that are not available to the public sector funds require changes to law and/or regulation, as you understand it?

Mr Feltham—Yes, they would. As I understand it, most of the changes would have to be made to the CSS act. The PSS defined benefit scheme provides a bit more flexibility. The bulk of the options, I would suspect, would probably be able to be achieved by changes to either the trust deed or the rules.

Senator SHERRY—It has just struck me in discussing these changes to the PSS-CSS that the same changes are not being made to the military superannuation funds. Do you have an explanation as to why that is the case?

Mr Feltham—No, and I think we tried to keep ourselves out of any discussion about the military, except where there are issues that are common—for example, the indexation arrangements.

CHAIR—Thank you for joining us this afternoon.

[1.15 pm]

GRIFFITHS, Mr Richard David, National Secretary, Regular Defence Force Welfare Association Inc.

JAMISON, Mr David, National President, Regular Defence Force Welfare Association Inc.

CHAIR—Good afternoon. Would you like to make any amendments to your written submission?

Mr Jamison—No.

CHAIR—Would you like to make an opening statement?

Mr Jamison—Firstly, we would like to thank you for the opportunity to appear before you and reinforce our submission to you. Our submission is in the name of the Regular Defence Force Welfare Association but we are now dropping the word ‘regular’ from the title because we cover both the reserves and the regular parts of the ADF. Our detailed submission is about two aspects of the bill: schedule 4, the restoration of a pension that was previously cancelled on remarriage; and schedule 6, the reversionary spouse benefits under the DFRDB Act. We are very pleased that the restoration of the pension in schedule 4 is being proceeded with. We feel that this is a long overdue action.

We are concerned, however, about the unfairness of the delays in implementing the 2006 budget announcement regarding the reversionary spouse benefits under the DFRDB Act. The reason is given in our submission, and we seek your assistance to correct that. We believe there is no legislative or financial reason that this measure cannot be made retrospective to at least the date of the 2006 budget announcement, or preferably back to 1 July 2003 when a similar provision was made for the Public Service schemes. That concludes my opening remarks.

CHAIR—At the outset I might refer to the item on page 2 of your submission where the association indicates that it received correspondence from Minister Billson which suggested:

... that there is the possibility of Act of Grace payments for cases arising between the 2006 Budget announcement and the commencement of Schedule 6.

Firstly, in what context was that letter issued from Mr Billson and, secondly, might it be possible for that to be tabled?

Mr Griffiths—This was the result of a third letter to Minister Billson about when the legislation was going to appear and continually asking whether it was going to be retrospective. Eventually we received two responses in which the question of retrospectivity was not addressed and in which the minister said it was hoped the legislation would be introduced ‘before the end of’ and giving a series of deadlines—none of which were met until this latest one. I am not entirely sure whether we should table the letter because it is a letter from the minister to us. Perhaps Minister Billson should really be the one who decides whether the letter can be made public.

Mr Jamison—I have no objection to it being made public.

Mr Griffiths—We have no objection, but Minister Billson is at the other end of the correspondence. I am not sure what the protocol is.

CHAIR—I think as it is a letter in your possession the decision is yours. Is it something you would prefer to take on notice?

Mr Jamison—We would be happy to table it now.

CHAIR—Thank you. Also on the same page you mention a particular case of an individual who you think could be adversely affected. Could you take us through that?

Mr Griffiths—Senator, we were approached towards the end of 2006 by our Victorian branch regarding a widow who had approached them because she had seen that we had been explaining that the legislation was going to be introduced to allow this pension eligibility period to be reduced to three years. Her husband had died in August 2006 after just over 37 months of marriage. If the provision had been in force, she would obviously have been entitled to full pension. We then contacted the minister. That was when we first started writing to the minister asking, ‘What is happening?’ and ‘Is this going to be retrospective?’ The minister started responding about act of grace payments even if the legislation had not been passed. The widow had gone to the delegate of the Defence Force Retirement and Death Benefits Act in Victoria, who had rejected her claim because the legislation had not been amended. That is as far as that has gone.

Senator SHERRY—On this issue, it does seem to me a reasonable expectation that if something is announced but not yet legislated it would be reasonable for an individual in those circumstances to receive the benefit. Do you have any idea of the number of people this would concern? Say we were to recommend that this change be retrospective to the date of announcement. I ask for the number because it has a cost implication. I frankly would not have thought it would be significant—other than for those who would receive the benefit, obviously.

Mr Griffiths—Budget Paper No. 2 of 2006, at page 146, identifies this particular measure. There were in fact no numbers given by the department, because they said that the cost of this measure would be met fully from within the existing resourcing of the department. They estimated that the total cost over four years would be about \$600,000—\$0.06 million over four years—which suggests \$150,000 a year. By our estimates, the average sort of widows pension of this kind is somewhere between \$10,000 and \$20,000. So that suggests no more than 10 widows a year. I keep using the term ‘widows’ in general. This measure mainly applies to widows. So it is not very many people and it is not very much money.

Senator SHERRY—I accept that. We will see what your correspondence says, but if the minister is indicating that X number of these people can apply for an act of grace payment, why shouldn’t they have the certainty of the act? Why should they have to apply for an act of grace payment?

Mr Griffiths—That is exactly our question.

Senator SHERRY—And there is clearly not a significant cost issue in terms of the legislation. Obviously I will explore that with the department. On your estimate, we are probably looking at about 10 people at a cost of \$150,000.

Mr Griffiths—Senator, it depends on the kind of payment that the minister is proposing to make. I was under the impression that an act of grace payment is a lump sum.

Senator SHERRY—It is.

Mr Griffiths—If we are talking about a lump sum, then presumably the lump sum that is going to be paid out is going to have a much more significant budgetary effect because it is going to be a lump sum equivalent to the lifetime pension received by the widow.

Senator SHERRY—I think that is worth exploring. I have some sympathy for the situation. It is a very small number of people. It is not a big cost in any sense. Although you are right—if it is paid out as a lump sum, if it is lump sum equivalent, ironically it would be a much more significant cash cost for that year if those payments were made. It is a pretty tortuous process. You are aware of the act of grace payments provisions. It takes some time to resolve. Do you think a widow in those circumstances—it could be a widower, I suppose—should have to go through that sort of process: an act of grace payment application? It is lengthy, it is complex, it is not an easy process.

Mr Jamison—We think it sends the wrong message to the ex-service community that such a process has to be gone through on something that is seen to be an act of fairness and equity on behalf of the government and its treatment of the ex-service community.

Senator SHERRY—Okay. You have obviously referred to backdating to May 2006 the date of announcement. Do you have any explanation as to why, given this was acted on in the general public sector from July 2003, the issue was not dealt with until almost three years later in respect of military defence personnel?

Mr Jamison—No, we do not, and it is one of a number of issues that puzzles us, because we thought that members and former members of the ADF would have been worthy of at least the level of equity in the treatment that is given to public servants. It is something that we have no explanation for or an understanding of.

Senator SHERRY—If your costings are accurate—and you have referred to the \$600,000 over four years, which the department has provided—if we recommended backdating to July 2003, which is four years, presumably we would not be looking at a cost any greater than what the department has provided for the four out years: \$600,000.

Mr Griffiths—That seems logical, but obviously ComSuper would be in a better position to estimate that. I presume they worked this figure of \$600,000 over four years from the number of pensions that were terminated in the previous four years.

Senator SHERRY—Yes. ComSuper are not appearing before us, but the department may be able to give us some detailed information. It just seems to me not unreasonable, given the announcement of May 2006, but also the previous change for the general public sector from July 2003, that it is not exactly going to break the budget to make it retrospective to either of those dates.

Senator FIERRAVANTI-WELLS—With regard to communication with and the contacting of beneficiaries about the restoration of pensions that were previously cancelled on remarriage, do you have some recommendations in relation to that? How you would see that

most effectively being done? The ex-defence community is quite tight-knit, so how do you envisage that happening?

Mr Griffiths—It is tight-knit and it is not tight-knit, if you see the issue. It is easy to lose contact with, particularly, widows in these sorts of circumstances. They meld into the general community. Some of the suggestions we would have on how to rectify that is that there ought to be public announcements and advertising, and ComSuper should actively go out and seek them out.

Senator FIERRAVANTI-WELLS—Given that some have not had contact with the Commonwealth for many years, you feel that that is the way of doing it?

Mr Griffiths—I cannot think of another effective way of doing it.

Senator FIERRAVANTI-WELLS—Through the networks of—

Mr Griffiths—We certainly would be publicising it through our networks, but we suspect that we would not reach the total number.

Senator FIERRAVANTI-WELLS—Given that ex male members tend to fraternise, whereas once women are widows they do not tend to be as interactive. Thank you.

CHAIR—Mr Griffiths and Mr Jamison, thank you very much. Although brief, your appearance has been very helpful for our understanding, particularly in relation to the issue of the potential act of grace payments.

Proceedings suspended from 1.29 pm to 1.46 pm

GRZESKOWIAK, Mr Steven Richard, Director-General, Personnel Policy and Employment Conditions, Department of Defence

WELLSPRING, Mr Adrian, Director, Defence Superannuation Policy, Department of Defence

CAMPBELL, Ms Kathryn, Deputy Secretary, Department of Finance and Administration

ROBINSON, Mrs Rosemary Ann, Director, Superannuation Policy Branch, Department of Finance and Administration

SOTIROPOULOS, Mr George, Assistant Secretary, Superannuation Policy Branch, Financial Management Group, Department of Finance and Administration

CHAIR—Welcome. Ms Campbell, I invite you to make an opening statement.

Ms Campbell—I am responsible for superannuation policy. The Superannuation Legislation Amendment Bill 2007 makes a number of enhancements to the Australian government's civilian superannuation schemes, namely, the Commonwealth Superannuation Scheme, the CSS, and the Public Sector Superannuation Scheme, the PSS. The main focus is to provide members of those schemes with the same flexibility and incentives to contribute to superannuation that are available to the broader community. These flexibilities and incentives are available to members of the Public Sector Superannuation Accumulation Plan, PSSAP, which was introduced on 1 July 2005. The PSSAP is a fully funded accumulation scheme and its commencement marked a significant change in the superannuation arrangements for newly appointed civilian government employees.

The majority of the government's current employees are, however, members of the CSS and the PSS, which are both largely unfunded defined benefit schemes. The overall design of both the CSS and the PSS is prescriptive and can be inflexible for many members of these schemes. This can act as a disincentive for members to remain in government employment. The proposals set out in the bill have been designed to align with the government's long-term objective of encouraging people to remain longer in the workforce. They provide some flexibility for CSS and PSS members to tailor their retirement and superannuation arrangements to best meet their needs and would assist with employee retention in response to the challenges of an ageing Australian Public Service workforce. The bill also contains amendments to address anomalies in the Defence Force Retirement and Death Benefits Act 1973 and to ensure consistency with civilian schemes. My colleagues from the Department of Defence will be able to answer detailed questions on the Defence changes.

We have been talking about the reinstatement of benefits for widows from whom benefits had previously been taken away. It is worth noting that these people have been able to apply to the Commissioner for Superannuation to have those benefits reinstated, should they be in necessitous circumstances. That has been in place for some time.

CHAIR—Thank you. I will kick off. Something that has been common in the submissions is the suggestion or request that employer-provided independent financial advice be provided

to people, explaining the virtues or otherwise of staying where they are, doing what they are doing, or doing something else. Is that something that government has considered?

Ms Campbell—The government has considered the need to inform members of their choices. This will be provided by the ARIA board, the trustees of the superannuation schemes. As for independent financial advice that a member may choose to accept, the government and previous governments have not provided that in the past. In 1990, with the offer to CSS members to transfer to the PSS, the then government did not provide individual financial advice for those members. It is general community norm that independent financial advice be paid for by a member. This option that is now provided is not a fixed-term option—it is an open-ended option, so people are not rushing to make a decision. Back in 1990 when the changes were made to the CSS and the PSS, there was a fixed time limit where people had to make those decisions. That is not the case on this occasion. The government plans on ensuring that there is a broad disclosure provided to members to assist in making these decisions.

CHAIR—The ARIA advice would advise people not to rush and to seek independent advice?

Ms Campbell—The ARIA advice would be on the circumstances, the changes, and that they should seek independent financial advice and that there is no time limit on this decision.

CHAIR—Why would a member of the PSS be required to join the PSSAP before exercising a choice of fund? When looking at the legislation, it struck me as curious that you would not be able to exercise a choice at the outset and that you had to, firstly, park yourself somewhere—which I guess is one expression of choice—before you then express a choice again. What is the rationale there?

Ms Campbell—For a number of staff, and those primarily employed under the Australian Public Service Act, the PSSAP is the default superannuation scheme. When the PSSAP was being established, a key element of the negotiations with the CPSU was the rate of 15.4 per cent. In developing this policy it was considered that that would provide assurance to members that this was not about reducing their incentives; they would be put into the PSSAP and then they could exercise further choice from there.

Mr Sotiropoulos —The other reason for introducing the first step to PSSAP is the benefit structure within the PSS itself. It does not currently operate within the choice framework. To introduce that would be extremely complex, whereas the PSSAP currently operates within the choice framework. It is a simple transition for people.

CHAIR—In relation to the restoration of pensions previously cancelled due to remarriage, do you have a handle on how many people could be eligible and how many people may come forward?

Ms Campbell—We do not have a handle. We do not have any numbers. ComSuper does not have those types of records. Obviously, we tried to seek this information in developing the policy. We are not aware. We expect it to be a small number, but we do not have any firm numbers.

CHAIR—That means you would not be able to cover everyone. If you are seeking to advise them of this change, you would have to do that through public advertising of some sort?

Ms Campbell—We do not have a list of names. We do not know who those people are, so it would be by public advertising. Mr Sotiropoulos can talk a little further about proposals on how to communicate this policy to the general community.

Mr Sotiropoulos—As SCOA indicated earlier this morning, we have spoken with them about advertising through their biannual newsletters. We will be working with them on the wording to incorporate in their newsletter to advise their members. We have also spoken with both Centrelink and the Department of Families, Community Services and Indigenous Affairs about incorporating messages within their age pensioner newsletters. We have already provided wording for the international newsletter, which will shortly be released. We will also be doing it nationally. It will not be just a one-off. We will be doing it in a couple of newsletters to ensure that people have an opportunity and that a broad cross-section are advised. ComSuper will also incorporate the change within their newsletters that they provide to members. In other words, those members will then be able to talk to fellow members and identify people. Those are the three avenues we have so far identified on the civilian side. On the Defence side, Defence colleagues may be able to expand a little.

Mr Grzeskowiak—We have a Military Superannuation Communication Committee, which includes membership, for example, from ComSuper and the various boards of the military superannuation schemes. We will be working through that committee to develop a strategy, clearly using similar sorts of things that you have heard about from the civilian schemes. In our case, we anticipate using the good offices of some of the various ex-service organisations, through their regular newsletters as well, to try and get out to them; in a similar way, we do not have a list of these people. We anticipate small numbers.

CHAIR—Given that you do not know who these people are, it would not be straightforward to determine the average age of the people? Or is that something that is a bit easier?

Ms Campbell—I think some of the evidence that was provided earlier suggested that people became widows when they were as young as 24 or 25 right through to a more mature widow base, so we do not have that information.

CHAIR—Thank you for that. You no doubt heard the evidence from the Regular Defence Force Welfare Association in relation to the letter that they received from Minister Billson about the possibility of act of grace payments for reversionary benefits. Are you aware of that letter? I guess you are, because you heard the evidence, but were you previously aware of that correspondence and the fact that Minister Billson's portfolio would be putting it to your portfolio for consideration?

Ms Campbell—I was not previously aware of that letter, but I am not responsible for act of grace payments within the Department of Finance and Administration, and I expect that—

CHAIR—I appreciate that.

Ms Campbell—maybe the deputy responsible for that may be aware.

CHAIR—Sure, and I appreciate that it is, I think, Senator Colbeck who—

Ms Campbell—Yes, the parliamentary secretary is responsible.

CHAIR—is responsible for act of grace payments. Senator Sherry raised whether it would make more sense that they be considered an entitlement rather than something which was determined through the act of grace process and that there are, no doubt, cost differences between the two. I know that you are not responsible for act of grace payments, but was consideration given to having them as something that is automatically an entitlement?

Ms Campbell—I might ask my colleagues from Defence to answer that one.

Mr Grzeskowiak—We are talking about the post 60 retirement marriage rule changes announced in the budget in May 2006. I believe that consideration was looked at. Ultimately, the Office of Parliamentary Counsel advised that the legislation should be prospective. As part of that advice it was noted that there were alternative means of the filling the gap, primarily through the use of an act of grace payment. As I understand it, when the civilian schemes were changed in this regard in 2003, the process of act of grace payments was the mechanism used then to deal with the gap between the announcement of the legislation and the enactment of the legislation. It is the intent of Defence to negotiate with DOFA officials on the issue of act of grace payments in this regard back to the date of the announcement.

Senator SHERRY—I want to start with this issue first. The operative date in the civilian funds was back in July 2003. Why is the change to apply to the military funds four years later?

Mr Grzeskowiak—At the time of the change to the civilian schemes in 2003, I understand that that consideration was driven by a number of cases on the civilian side that had emerged at the time. At that time in the military scheme there was no such pressure and the view was taken that we would have a look at options. The Minister for Defence, or possibly the minister assisting—and I am not sure which at that time—asked in 2004 for options to be canvassed in this regard. That was done and that culminated in a bid in the development of the 2005 budgetary process. The bid was unsuccessful in 2005. It was resubmitted in the context of the 2006 budget and that bid was successful. It was announced in the May budget in 2006 and is now proposed as part of this legislative amendment.

Senator SHERRY—You seem to be saying that there is a need in both sets of funds—and the need is obvious—but because of a different process the change was delayed in the case of the military funds because it went through Defence to Finance. Whereas the change with respect to the mainstream civilian funds came directly from Finance to Finance and they got in earlier as a consequence.

Mr Grzeskowiak—I cannot comment on the processes Defence would be involved in. It is fair to say that in 2003 in terms of the Defence schemes, this was not presenting as an issue.

Senator SHERRY—I accept that, but you accept that it is an issue now?

Mr Grzeskowiak—Yes, Senator, that is why it is now in this proposal

Senator SHERRY—So it just begs the question, doesn't it: why should they be treated differently—same problem but different operative date?

Mr Grzeskowiak—There are a number of differences between the military schemes and the other Public Service schemes.

Senator SHERRY—Yes, sure, I understand that.

Mr Grzeskowiak—It does not necessarily follow that the schemes are identical in every respect.

Senator SHERRY—But, nevertheless, the same issue is now being dealt with four years later as with the civilian funds.

Mr Grzeskowiak—That is correct.

Senator SHERRY—Just going to the costing—and coming back to you, Ms Campbell—the earlier witnesses referred to the costing on this measure, I think, of \$600,000 in the four years of the out years. Is that correct?

Ms Campbell—I think that related to the 2006 measure. I am sorry, I do not have the budget papers from 2006 with me, but I think they were referring to the cost that Defence put in as \$600,000.

Senator SHERRY—I just want to clarify this because we are faced with a situation where the Minister Assisting the Minister for Defence, Mr Billson, has indicated—he has not committed and there is a big difference—that an act of grace payment is a possibility for the group of people between the time of the announcement a year ago and the time of the legislation passed in parliament. Why shouldn't certainty be conferred on what is apparently a very small group of people? If they are going to be recognised and a payment made as an act of grace payment, why shouldn't the act simply reflect that so that there is certainty for those individuals?

Mr Grzeskowiak—The advice that Defence got through its legal officers when we put this legislation forward was that it was not to be retrospective and that there was an alternative approach through act of grace payments. I am not in a position to offer you certainty on that now. There needs to be negotiation between departmental officials, but it is certainly our intent to seek act of grace payments for any cases that may emerge.

Senator SHERRY—But you see the issue here. The cost is going to be covered apparently, although there is no commitment, by act of grace payment—whatever that cost is and whatever the number is—through a less certain and more tortuous process, I have to say. Why should an individual go through a more tortuous and less certain process than simply one where this provision was made retrospective?

Mr Grzeskowiak—Certainly act of grace payments is a different process, and I cannot give you the certainty on that now. But the lack of retrospectivity here aligns with the views of the legislation drafters in terms of the best way forward.

Senator SHERRY—I was going to get to that advice that you have mentioned a couple of times. What was the reason for not applying retrospectivity?

Mr Grzeskowiak—The primary reason that I am aware of was that there is essentially another avenue and that other avenue is through act of grace payments.

Senator SHERRY—So there is no legal restraint on applying retrospectivity?

Mr Grzeskowiak—That is a bit out of my specialist field here.

Senator SHERRY—I am going to the advice that you have received or that you have knowledge of.

Mr Grzeskowiak—I am not aware whether there is any legal constraint—

Senator SHERRY—Could you take that on notice?

Mr Grzeskowiak—I can take that on notice.

Senator SHERRY—I am just a bit puzzled as to why the drafters would recommend no retrospectivity to the time of the budget announcement—and I cannot see a legal impediment, frankly—but then say, on the other hand, that you can still make payment but do it in a different way which is less certain and, at least in terms of the cash cost, going to be more expensive.

Mr Grzeskowiak—I cannot answer that question for you, Senator.

Senator SHERRY—You can take that on notice and give us some more information on that. When you referred in your evidence to a ‘small number’, that can be 10, 100, 1,000, 10,000 depending on your perspective of a small number. So what is your definition of a small number? Are we talking about fewer than 50?

Mr Grzeskowiak—In this regard I mean small in the generally accepted definition of small. Fewer than 50 would be good.

Senator SHERRY—Fewer than 20?

Mr Grzeskowiak—I do not know.

Senator SHERRY—So we can at least be down to fewer than 50?

Mr Grzeskowiak—It is almost a guess, but it is just based on a knowledge of people who practise in this area. We do not believe that there are many people for whom this legislation would change the effect.

Senator SHERRY—I do not like the word ‘guess’. You are as informed as anyone could be, presumably, in this area. What is your best estimate?

Mr Grzeskowiak—I would suggest that lower than 50 is a reasonable estimate.

Senator SHERRY—Did you attempt to discover what the number has been through communication with the military funds?

Mr Grzeskowiak—I think we did ask the question. I think that, in the same way as for the civilian schemes, it is really impossible to know a definitive answer.

Senator SHERRY—Coming back to you, Ms Campbell, there are costings on the figures of withdrawal from the defined benefit funds—

Ms Campbell—Yes, Senator.

Senator SHERRY—so therefore you would have to have an estimate of the number of people likely to take that option up. Can you give me the actual number of the estimated people who would do that?

Ms Campbell—We have actuarial assessments and those assessments really relate to the actuaries' best advice, particularly in the PSS, on numbers of people who are contributing at, say, two per cent. I think in the past we have not gone into the details of what we think those assumptions—

Senator SHERRY—You have not, and that is why I am asking. You have got a cost, so there has got to be a figure there because there is an assumption.

Ms Campbell—We expect the numbers to be quite small. Particularly with the CSS, we expect the numbers to be very small.

Senator SHERRY—You have had an actuarial assessment and I got the figure of 'very small' and 'quite small'. What is the figure, because the actuary must have made a calculation?

Ms Campbell—The actuaries with regard to CSS expect minimal—

Senator SHERRY—What does that mean?

Ms Campbell—Not much.

Senator SHERRY—Seriously, you have got an actuarial estimate, so there must have been a number in there.

Ms Campbell—We have got those numbers and because of the large magnitude of the CSS we worked on an estimate of close to zero per cent of people taking out—

Senator SHERRY—Close to zero.

Ms Campbell—Because it is due to people's individual circumstances. We did not see a trend and there was no better data to use, because you cannot change your contribution in the CSS from five down to two per cent. You have to put in the five per cent. With the PSS we were able to look at the two per cent contributors and say that there was a tendency for these people to want to put their money, if they had any money, somewhere else so they have chosen to lower it. Because that is not available in the CSS it was very difficult for the actuaries to make an educated estimate of those who were likely to withdraw their money. So they used zero per cent, noting that there would be people who would accept it because of their personal circumstances, but they did not have a basis on which to change that.

Senator SHERRY—What about the PSS?

Ms Campbell—We estimated approximately 10 per cent may take this option.

Senator SHERRY—Coming to the issue of informed choice, the selection to opt out of a defined benefit is a complex equation, and I am sure that you would appreciate that. You have indicated that in general people will be informed of the new option, but how are they to be specifically informed? There is a complex calculation as to loss of benefit in exiting a DB based on an individual circumstance.

Ms Campbell—The ARIA trustees have the responsibility for informing their members of these changes, and they will be putting out detailed information on what the changes mean. Individuals' circumstances are not always only aligned with their contributions to defined benefit schemes. Obviously, as I think one of the earlier witnesses suggested, there may be two parties in a household who have income and who may have a number of other sources of

income, so each individual will have their own circumstances. In giving general advice, it is always recommended that individuals seek their own informed financial advice on their own personal circumstances.

Senator SHERRY—I understand the distinction between general and specific advice, but will there be a capacity for an individual to go to ARIA and get specific advice as to their individual circumstances?

Ms Campbell—ARIA do not provide financial advice, but people can go to ComSuper and find out their current level of benefits. They are provided on an annual basis with the annual report of their benefits. They are able to do that, but ComSuper and ARIA do not provide financial advice.

Senator SHERRY—Shouldn't they? In terms of this provision, wouldn't it be a good idea for them to do so, at least on a contract basis? I am not suggesting they go out and employ lots of financial planners.

Ms Campbell—We consider that ARIA's responsibility is for the defined benefit scheme. We have separated the provision of financial advice, and we continue to believe that that is a valid separation.

Senator SHERRY—There is a legal impediment on the fund that is significant, but most funds provide contracted or, for that matter, direct financial advice.

Mr Sotiropoulos—As Ms Campbell has mentioned, ARIA do not hold a licence to provide financial advice, but they do have financial advisers that they can refer members to.

Senator SHERRY—I am aware of that. But will they be doing anything specific as a consequence of this? It is a significant change with potentially very significant impacts on those who determine to exercise an informed choice.

Mr Sotiropoulos—Are you talking about 'specific' for a member or 'specific' for all members?

Senator SHERRY—Potentially open to any member who wishes to make an informed decision about exiting a defined benefit fund.

Mr Sotiropoulos—As Ms Campbell mentioned, they will be issuing product disclosure statements in accordance with the CSS requirements. They have also indicated that they will hold seminars across the country.

Senator SHERRY—But this is general advice, not specific advice.

Mr Sotiropoulos—That is right.

Ms Campbell—It is general advice, and the intent is that if a member wanted individual advice they would need to seek individual financial advice.

Senator SHERRY—There is some potential there for mis-selling. An individual could go off to a so-called independent financial planner, but are you aware of what happened in the UK when the government there introduced a similar opt-out provision of a DB? People were mis-sold, unfortunately, by some financial planners to move out of their DB. They ended up with a financial scandal of truly monumental proportions. I am just concerned that you do not seem to have thought through the safety implications of this. You do not see any onus on the

department or on the funds to ensure that there is specific advice available to members of the fund and provided by the fund before they opt out?

Ms Campbell—Senator, are you thinking about something along the lines of options that ComSuper would provide to them—this is what they would get if they continued in the fund; this is what would happen if they left?

Senator SHERRY—Yes, specific advice. I know you understand that an individual's circumstances and benefit in a DB are incredibly complex. As of today, the benefit can be significantly different from the benefit if, hypothetically, they work through to, say, 55 or 60—there are issues around the reversionary benefit; it is a very complex set of calculations—versus leaving the fund and doing something else with the contributions.

Ms Campbell—Senator, we are very conscious of not stepping into the line of giving individual finance advice or having ComSuper, that do not have that licence, doing that.

Senator SHERRY—My point is: shouldn't they? Given this important change, shouldn't they have a licence or, alternatively, contract people they believe will be reliable in terms of providing this advice? You would have to have a knowledge of the public sector fund to start with to give specific advice, wouldn't you?

Ms Campbell—It might be worth us revisiting what happened in 1990 with the changes from CSS to PSS to see what type of advice was provided at that stage to see whether we can learn any lessons from that.

Senator SHERRY—But the difference between the change then and now is that that was a change from a DB to a DB; this is a change from a DB potentially to a DC, and then a DC outside the public sector. There is a loss in a DB to a DC—there is less certainty and there are issues around fees and commissions. Those issues were not involved in the 1990 movement from a DB to a DB.

Ms Campbell—One of the goals that the government is seeking to achieve here is to provide members with choice.

Senator SHERRY—I am not denying that. I am not arguing about that. I am just putting to you that there are some implications in making that change that need to be thought through.

Ms Campbell—It is the intent at the moment to provide the general advice that the trustees are required to under the SI(S) legislation and to refer members to seek individual financial advice. I think it is open for the trustees to have a look at how they provide the general advice—they cannot obviously provide the individual advice—and how they can provide that general advice in a manner which addresses some of the issues that you have raised.

Senator SHERRY—Perhaps you could contact ASIC. ASIC have just caught a planner group that targeted some teachers in a defined benefit fund in New South Wales, as I understand, and convinced them to shift out of what was a good fund into an accumulation fund—a mis-selling. I just cite that as an example of some of the abuse that could occur. It might only be a few people, but at the end of the day I do not want to see any people suffer a disadvantage as a result of abuse of the system. I am a bit concerned that you seem to believe that there could be abuse around this provision.

Ms Campbell—I do not think I said that. I think I said that the general intent was that the general advice provided by the trustees—

Senator SHERRY—But general advice is not good enough in the circumstances. You post the changes once the law is changed and it goes out to all the public sector members and they go off to a planner. That planner may not have knowledge of the public sector super—may not even be able to do any calculations—but even if they do, that planner may see an advantage in recommending a switch because they are being paid a commission. We have had examples of this in the Australian system over the last couple of years.

Ms Campbell—This is of course a choice. It is up to individuals to make that choice.

Senator SHERRY—I have heard all that before: it is their choice. Have you read the product disclosure statement recently?

Ms Campbell—Yes, Senator.

Senator SHERRY—How many members of the public sector can read and understand a PDS 50 or a hundred pages long?

Ms Campbell—Senator, I do not think that I am in a position to be able to give you an estimate of that.

Senator SHERRY—I have used the example of teachers. If 150 teachers can be conned—which is what happened, and presumably they are reasonably well educated—and cannot read and understand a PDS, then we have got to have potentially some issues around mis-selling. I am concerned that the department is not adopting best practice to ensure that this is minimised.

Ms Campbell—I think that we have already said that we will work with the ARIA trustee board to provide the advice that they can provide without having a financial licence and not providing individual advice to members.

Senator SHERRY—I suggest to you that that is not good enough. That becomes general advice, not specific advice, and it is the specific advice around the circumstances of the individual which vary enormously in a DB. However, I have made the point. In the UK there was an enormous scandal around mis-selling and people were convinced to move out of DBs into DC schemes based on commission based selling. I am not suggesting it would be as significant here, but there were significant issues around this matter because people were not provided with independent, ethical advice about the disadvantage that could occur. I do not want the department or a future government—and there will be a change of government at some time, whenever that may be—having to handle a scandal and then pay out compensation such as occurred in the UK around this issue.

Mr Sotiropoulos—If I could clarify just one point on this matter: in terms of what ComSuper can provide, they will be able to provide a member with what the benefit will be if they stay in the scheme and also what the benefit would be if they were to leave the scheme—in other words, preserving their benefit. The other aspect of—

Senator SHERRY—There is one thing that they cannot do: they cannot provide a comparison with the ‘to’ scheme. They can only provide information on the ‘from’ scheme.

Mr Sotiropoulos—That is right. The other protection for members is that they are not taking their money and putting it somewhere else.

Senator SHERRY—It is future contributions.

Mr Sotiropoulos—That is right. They will be leaving what they have got within the schemes.

Senator SHERRY—They do not have any option on that, do they? There is no choice.

Mr Sotiropoulos—But that is a protection for them.

Senator SHERRY—Isn't this the irony? You can talk all about the jargon of choice—and I do get slightly bemused—but there is no portability provision being applied, is there?

Ms Campbell—No, Senator, portability is not being applied.

Senator SHERRY—That has been applied elsewhere but it is not being applied to funds. We are getting choice but not portability.

Ms Campbell—It has not been applied elsewhere in the Commonwealth, Senator.

Senator SHERRY—No, but I am talking about the general superannuation funds.

Ms Campbell—But there have been other examples of portability, yes—often of fund schemes.

Senator SHERRY—The government has required portability in respect of general superannuation funds, hasn't it? It has only recently legislated to that effect.

Ms Campbell—Yes, Senator.

Senator SHERRY—But it is not applying in this case. We are having choice applied but not portability. Do you detect a bit of a contradiction?

Ms Campbell—I do not think that it is a contradiction. I think the government has decided to provide choice for PSS members.

Senator SHERRY—But not portability.

CHAIR—The government has not decided to apply portability.

Senator SHERRY—Correct. What about the issue of salary sacrifice?

Ms Campbell—The PSS and CSS come as a package deal. Members contribute post marginal tax salary. In the PSS they have a matching contribution provided by the government and the taxpayer and what are considered to be generous pension conversion factors and a reversionary pension. That comes as a package. Were the government to decide that those contributions were to be paid post the 15 per cent tax rate, that will come at an additional cost to the taxpayer—

Senator SHERRY—Sure, but that is an option. Under the salary sacrifice provision—where the employer offers it, and I accept that the majority do not offer it—within the old caps, and within the new caps for that matter, you can salary sacrifice on top of the employer contribution up to those caps. Why shouldn't it be allowed for the public sector?

Ms Campbell—And in the public sector you can as well.

Senator SHERRY—In this fund?

Ms Campbell—Not into this fund but into other funds. And now with these changes you can reduce your contribution to these funds to zero and you can—

Senator SHERRY—But this gets me to the point that you have got to go to another fund. You are in the mainstream public sector fund—DB—but you have got to go to another fund to salary sacrifice.

Ms Campbell—That is correct, Senator.

Senator SHERRY—It is not a hybrid fund, is it, in the sense that it offers both DB and BC salary sacrifice if you want it?

Ms Campbell—No, Senator.

Senator SHERRY—Why is that case?

Ms Campbell—The funds have been closed. They are closed funds and contributions of new members joining funds into PSSAP, which allows salary sacrifice into the PSSAP system—

Senator SHERRY—But there are lots of examples of hybrid defined benefit-DC funds that allows salary sacrifice in the private sector, but not here.

Ms Campbell—Yes, but on this occasion the taxpayer picks up the additional costs through the revenue forgone were the government to decide to do this.

Senator SHERRY—Sure, but part of the government's simpler super propaganda we are seeing on the TV at the moment is: go out and do it. But unfortunately the members of these funds, who are still active members, albeit the fund has closed, cannot do it. Why are public servants being denied this?

Ms Campbell—They can do it. They can contribute to another fund to salary sacrifice.

Senator SHERRY—Why should they have to be in two funds when most superannuation funds offer salary sacrificing in the one fund?

Ms Campbell—The current structure of the PSS and CSS is for a postmarginal tax salary contribution or, with the changes proposed in the legislation, there is no requirement to contribute to those funds and people can take their money and salary sacrifice somewhere else.

Senator SHERRY—One thing that puzzles me about these changes we are considering is why the same changes are not being made to the military superannuation funds.

Ms Campbell—My military colleagues can probably deal with that better than I.

Mr Grzeskowiak—Senator Sherry, I think you would be aware that we are running a review of the military superannuation schemes at the moment.

Senator SHERRY—Yes.

Mr Grzeskowiak—That review is due to report to the government at the end of July and we anticipate that changes to the military schemes would flow from the government's

decision based on the recommendations of that review when the government is ready to make that decision.

Senator SHERRY—But, like with the earlier change we discussed, it seems to me that we get these changes on choice and improvement in benefits in some areas occurring in the mainstream public sector funds but the poor old military personnel end up getting the changes a few years later.

Mr Grzeskowiak—In this case, there is nothing to say that the changes that may or may not result in military schemes as a result of this review would mirror any changes that are currently ongoing with the civilian schemes. They may be quite different in nature, reflecting what we like to call the special nature of military service. The review is scheduled to report in four weeks time. Then the government will consider that and decide what to do.

Senator SHERRY—But the policy is about choice and I just do not see it being applied to the military funds. Surely there is a contradiction here, Ms Campbell.

Ms Campbell—The government has the military funds under review and, as my colleague has indicated, that report is due shortly.

Senator SHERRY—I have one last question, Mr Grzeskowiak. I looked at the military super website last week and I was somewhat concerned to see in the example provided on the lump sum payout that, as of 1 July, the simpler super changes are actually increasing the tax payable by military personnel and not reducing it. Are you aware of that?

Mr Grzeskowiak—Yes, I am aware of that. This issue has been canvassed at previous estimates.

Senator SHERRY—Sorry. I had not canvassed the military super fund website which showed the reduction benefit as a result of the 1 July changes because it was not on the website at that point in time.

Mr Grzeskowiak—That calculation is not showing a reduction in benefits but a reduction due to a change in the taxation treatment.

Senator SHERRY—Yes. Their tax is going up and their benefits are being reduced.

Mr Grzeskowiak—As a point of technicality, I was saying that the tax treatment is different.

Senator SHERRY—The tax treatment is different and they are ending up with less money. Are you aware of that?

Mr Grzeskowiak—I am aware of that.

Senator SHERRY—Is this matter being fixed?

Mr Grzeskowiak—We are continuing to seek clarification on the effect of some of the Better Super changes that came into effect a few days ago.

Senator SHERRY—There is an example—which I think is accurate, by the way; that is the advice I have received—which shows that the tax for military personnel goes up and their benefit goes down as a result of the changes on 1 July. When are we going to get some clarification on this, because there are a lot of very worried military personnel out there?

Mr Grzeskowiak—That is understood. I was advised by ComSuper only this morning that the examples on the website that you referred to are accurate given the state of the legislation under regulations that existed prior to 28 June this year. You may be aware that on 28 June this year the Treasury issued a revised set of regulations. ComSuper is currently working through that with the Australian Taxation Office to see if that has any effect on the way that they will treat that. We are really looking at partial lump sums here rather than the MSBS scheme. That is being looked at as we speak. I sought advice from the ATO and the Treasury earlier on this issue, and I am now reseeking that advice based on the regulation changes that occurred last week. I do not yet have a definitive answer to my questions.

Senator SHERRY—I do not blame you personally because you are the meat in the sandwich in this mess, frankly. When do you anticipate that you will get this clarification, based on the new regulations?

Mr Grzeskowiak—It is being worked on now so I would hope within a few weeks. When I get that clarification, through our own internal networks we will be advising our military people of what we know. As with the civilian schemes, I cannot give financial advice but I can give factual advice about the way things—

Senator SHERRY—I accept that you can only do your best in what is a difficult set of circumstances. In getting that clarification, are you going to an outside actuary?

Mr Grzeskowiak—At this point I am not using an actuary. My understanding of this is that the issue is really more about how the taxation system treats partial lump sums compared to the way that used to be done. Therefore, actuarial assessments may not be what I need. It may be more a question of the detailed clarification of how ComSuper will apply the new regulations and the effect that that would potentially have on a number of people, because the effect only occurs for somebody who chooses to access a partial lump sum before the age of 60.

Senator SHERRY—Just as a matter of interest, do you have any idea what proportion of members would access a partial lump sum?

Mr Grzeskowiak—That is very much a matter of individual choice.

Senator SHERRY—I understand that it is an individual choice, but—

Mr Grzeskowiak—I do have some rough figures, but not about who might access a partial lump sum. Because of the preservation rules and the way that they work, I believe that in the order of 80 per cent of current MSBS members cannot access partial lump sums before they are 60 anyway. Therefore, that leaves in the order of 20 per cent of current MSBS scheme members who would have the option of accessing before they are 60. Because of the way the proportioning regulations stand, once somebody reaches 60 there is no issue. It is only an issue for someone aged between 55 and 60. Probably 20 per cent of our MSBS scheme members fall into that category, and therefore we need to help them understand what the regulations mean.

Senator SHERRY—Since you have—in my view quite correctly—ensured that an accurate description of the effect of the regulations is on the military super website, has the minister issued any clarifying statements?

Mr Grzeskowiak—Which minister?

Senator SHERRY—The minister responsible for the defence forces—Mr Billson, Mr Nelson or the Assistant Treasurer.

Mr Grzeskowiak—There was an announcement by the Assistant Treasurer on 10 April—

Senator SHERRY—Yes, I am aware of that one.

Mr Grzeskowiak—concerning the DFRDB schemes.

Senator SHERRY—Yes, but not the MSBS.

Mr Grzeskowiak—No, we have not been able to advise the Minister Assisting the Minister for Defence of a definitive statement on the workings on the proportioning pool because, as yet, we do not have that detail. I am awaiting that detail before I can put out any information within Defence.

Senator SHERRY—Is the Minister Assisting the Minister for Defence aware of this issue?

Mr Grzeskowiak—He is aware of the issue.

Senator SHERRY—It is fair to say that it is causing concern?

Mr Grzeskowiak—Yes, the minister is aware of the issue.

Senator SHERRY—I have had contact with a significant number of current fund members who want to know why their tax will potentially go up and not down if they access a lump sum. Is it your understanding that the tax was supposed to go down and not up—that that was the policy intent?

Mr Grzeskowiak—It is my understanding that, once somebody turns 60 and takes a pension, for defined benefit schemes there will be a 10 per cent reduction in taxation liability. That is a separate issue from—

Senator SHERRY—It is a rebate; it is not a 10 per cent reduction in tax liability.

Mr Grzeskowiak—It is a rebate; sorry.

Senator SHERRY—So the tax variation will depend on the application of the rebate. Ms Campbell might be able to help me. Was it the policy intent that an individual's tax would go up if they accessed a lump sum prior to age 60? I cannot recall any statement about this.

Ms Campbell—The Department of Finance and Administration does not have responsibility for the taxation, and I am afraid I do not have any insights into that.

Senator SHERRY—As I say, I just hope you can sort this mess out as soon as possible, because there are a lot of worried military personnel out there wondering why their tax has gone up and not down.

Senator FIERRAVANTI-WELLS—We were talking about the restoration of pensions previously cancelled on remarriage, both civilian and non-civilian. We are talking about limited numbers, but I assume the application would at least have some degree of complexity. Do we envisage some degree of assistance for widows in relation to compiling those sorts of applications?

Ms Campbell—We envisage that people will contact ComSuper if they think they are in these circumstances and then ComSuper will pull out their files and assist in going through that process.

Senator FIERRAVANTI-WELLS—Thank you.

CHAIR—I remind the Department of Finance and Administration and the Department of Defence that the deadline for responses to questions on notice is 10 July. I think there were a couple of questions that both departments took on notice—maybe it was the Department of Defence that took two questions on notice. I thank officers of both departments for joining us today. That concludes this public hearing of the Senate Standing Committee on Finance and Public Administration.

Committee adjourned at 2.37 pm