



Submission by the
DEFENCE FORCE WELFARE ASSOCIATION
to the
SENATE STANDING COMMITTEE ON FINANCE AND PUBLIC
ADMINISTRATION
Legislation Committee
in regard to the
Governance of Australian Government Superannuation Schemes Bill
2010, the ComSuper Bill 2010 and the Superannuation Legislation
(Consequential Amendments and Transitional Provisions) Bill 2010

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- The enduring and **real differences between military service and civilian service will be further blurred** in the eyes of the Parliament and the people of Australia.
- The **unique conditions of military service will be subordinated to, and subsumed by, civilian conditions** of service even though the two are fundamentally and materially different. The **composition of the proposed Board** will facilitate this unintended consequence.
- Noting that the Government chose not to consult with DFWA or other Ex-Service Organisations on this issue, DFWA can find **no evidence of any benefit**, tangible or intangible, to serving or former members of the ADF. Nor can DFWA identify any material or financial benefit to the wider Australian community.
- Serving and former servicemen and women, who are not employees of the Commonwealth and who in turn do not enjoy representation by any employee organisation, will be **even more remote from decision-making that affects their future wellbeing** than they are at present.
- The proposal is **inconsistent with all former and extant legislation** regarding military superannuation, and is therefore out of step with the expressed will of the Parliament to provide for separate superannuation arrangements for the ADF.

Differences between Military and Civilian Service

DFWA is concerned that it and other ESOs in recent years have had to keep repeating the reasons why military service is unique. If governments and parliamentarians do not comprehend and accept the unique nature of military service then how can governments expect the wider Australian community to understand?

If the Government genuinely recognised the unique nature of military service it would not have proposed this Board merger. Unique service requires unique solutions.

For the record, DFWA reiterates that military service is unique for one reason above all others.

Servicemen and women certainly experience danger, hardships, family disruption, loss of spouse income, education interruption, long and irregular hours of work, 'workplace' health and safety conditions that can be and often are far from community norms, frequent relocation, and unusual physical and mental stresses during both peace and war.

But it can be argued that certain other occupations can also experience some of these same conditions of service at least for some of the time. Emergency services such as police, fire and ambulance come quickly to mind, although DFWA contends that employees of these services will not experience the same range or quantum of unsocial conditions as do members of the ADF.

And although individual servicemen and women are held to significantly higher standards of personal discipline, education and training achievement, and medical fitness than is normal in the wider Australian community, it can again be argued that some other occupations may require similar high standards for at least some of the time.

Additionally, positive personal qualities such as courage, integrity, judgement, independence, endurance and others are essential for, but not necessarily unique to, ADF people.

It is not conditions of service that make military service unique, even though other occupations do not require their members to accept the ADF's range or degree of unsocial conditions. Nor is it personal standards or qualities, even though DFWA contends that no organisation other than the ADF wants all of its people to demonstrate all of these attributes all of the time.

Military service is unique because it is servicemen and women, and only servicemen and women, who, when lawfully directed by the Australian nation through our Government, are required to give up their human rights in the nation's service even to the point of sacrificing their ultimate human right, their life.

This key point bears repetition if only because recent history demonstrates that it has been forgotten or, worse, overlooked by those who should know better:

Military service is unique because it is servicemen and women, and only servicemen and women, who, when lawfully directed by the Australian nation through our Government, are required to give up their human rights in the nation's service even to the point of sacrificing their ultimate human right, their life.

It does not matter whether the military person is a volunteer or a conscript, willing or unwilling, man or woman, married or single, young or old.

No member of the ADF, not even one, enjoys the *inalienable* human right to life that is at the heart of Australia's democracy. That is why military service is unique.

And unique service requires, indeed demands, unique solutions. That is why Australia has a unique Department of Veterans' Affairs. And that is why Australia must retain a unique Board for its unique military superannuation schemes.

Unique Conditions of Military Service Subsumed by Civilian Conditions

One size does not fit all. To roll ADF members in with the Commonwealth's civilian employees under one Board is wrong in principle and will prove wrong in practice.

The principle has been addressed above. If the Government's merger proposal proceeds, the practice will develop – wrongly – over time.

Even now the Government and its civilian advisers see that the ADF's unsocial conditions of service can be compensated for by in-service pay and allowances at the expense of 'whole of life' issues including military superannuation.

By way of recent example, Minister Combet in an important speech titled *Delivering Defence Capability through our Service People* on 26 November 2009 at the Australian Defence College said that "Defence's workforce strategies should...be targeted at ensuring that every aspect of a member's *working* life is considered and addressed." (DFWA emphasis).

But, despite saying that the “...Government views military superannuation as a key component of the benefits provided to ADF members”, his words on military superannuation could apply to any civilian audience and did not acknowledge the unique nature of military service. (The Minister’s speech is available at www.defence.gov.au.)

Indeed, the word ‘unique’ was used but once in a substantial speech. The Minister said that “my responsibility is to ensure that members of the ADF have conditions of employment that reflect the *unique circumstances of your work*.” (DFWA emphasis). Electricians and doctors and plumbers and MPs and all other occupations have ‘unique circumstances of their *work*’. But only the ADF’s *service* is unique.

The minister’s focus, while very laudable as far as it went, was on in-service issues and not on whole-of-life issues. This is perhaps understandable from a person with a strong and effective trade union background but is a good illustration of DFWA’s contention that parliamentarians and their civilian advisers see the ADF as just another job; a difficult job and a specialised job, but a job nevertheless.

DFWA applauds Minister Combet’s open and consultative approach to matters within his portfolio. He is a breath of fresh air. DFWA does not intend to single him out for particular criticism but merely to illustrate the point that if a parliamentarian and minister with his many strengths is unintentionally blurring the distinctions between military and civilian service then what hope is there that lay people will comprehend the differences?

This speech flags the slow but insidious, if unintentional, move to a ‘one size fits all’ world by saying “...the full time ADF will...grow to approximately 57,800 members and non-military (sic) members (sic) will grow to around 21,900...”.

But only military people are ‘members’¹. ADF civilians are ‘employees’.

The distinction between ‘members’ and ‘employees’ may seem trite to the lay person but has important legal and duty-of-care ramifications for the ADF hierarchy in the short term and for Government in both the short and long terms. Inter alia, ADF members do not have representatives (unions) while ADF ‘employees’ do. If the assertion that civilian employees of the ADF are ‘members’ is true then it follows that those civilian members should be denied union representation and should give up their regulated working conditions. Conversely, if an ADF member is termed an ‘employee’ then perhaps he/she could join a union – but would then be no more than a mercenary. Clearly, neither option is sensible or rational.

Without wishing to labour this issue, DFWA merely points out that sailors, soldiers and airmen & women are *members*. Civilians are *employees*. The rules that apply to each are very different. So are the obligations of Government in the short *and long* terms. Superannuation is one of those very different obligations.

¹e.g. on 1 April 1996 The Industrial Relations Commission determined that members of the armed forces are not “employees” within the meaning of the Industrial Relations Act 1988.

Government's acceptance of its long term duty-of-care responsibilities to ADF members is acknowledged through the unique Department of Veterans' Affairs and the military's unique superannuation schemes with their special provisions for disability and death compensation.

In the same way and for the same reasons that DVA should never be absorbed by, say, a civilian-focused Department of Human Services, the military superannuation schemes should never be absorbed by a civilian-focused merged Board.

Additionally, DFWA strongly contends that merging the Boards is the first step towards merging the funds, a clearly unacceptable outcome from any rational perspective. One size does not fit all.

(DFWA regrets that the minister's speech only used the term 'injured' members when talking about rehabilitation and compensation issues. The key distinction between 'wounded' and 'injured' was lost and would, by extension, be lost on others. So would the distinction between the words 'killed' and 'died'. Only *military* superannuation and compensation schemes must encompass 'killed' and 'wounded' members, a further mark of their unique nature. DFWA can, but should not need to, enlarge upon the distinctions between military and civilian service if the Committee so requires. DFWA emphasises that it has no personal or professional criticism of the minister - quite the contrary.)

Composition of the Proposed Board

The proposed composition of the new 11 member Board is further cause for significant concern.

DFWA notes that the Government will appoint five members, the ACTU three, and the CDF two. The Chair will be nominally independent in that s/he will be proposed by the Minister for Finance and approved by the Board.

DFWA understands that Board decisions may be made by a 9:2 majority, meaning that the CDF's representatives may easily be overruled even if their case is sound. Conversely, the ACTU's representatives cannot easily be overruled. Given that a former ACTU head is now the junior Defence minister, and given that even he with his many strengths may not fully comprehend the unique nature of military service and its whole-of-life ramifications, it is unreasonable to expect that either the ACTU representatives or the Government's appointed representatives or even the Chair will enjoy a better comprehension. They have less reason to do so than the Minister.

In particular, the ACTU constituency is the vastly larger Commonwealth civilian workforce, not the small military 'workforce'. It is no criticism of the ACTU or its people for DFWA to contend that the interests of military members will be swallowed up by the interests of the larger polity. It would be surprising if it were otherwise.

Little imagination is needed to see that, as the real and enduring distinctions between military and civilian service become even more blurred in parliamentary and public eyes, the conditions of military service will be merged with civilian conditions to the clear detriment of serving and former ADF members and the wider Australian community.

The wider community will lose because it is not in Australia's national interest for ADF service to be seen as just another job. Why would a young person join the military with its attendant hardships and disruptions and suspension of his or her human rights in order to be treated like anybody else? Or, as is the case with the well-known indexation issue, worse than anybody else?

The proposal to merge military and civilian schemes under one Board is a clear step in the wrong direction.

Even if the Committee dismisses all the above, which DFWA trusts it will not, the Government's one-size-fits-all approach has two glaring omissions. If the merged Board proposal had so much merit, DFWA expected that Australia's parliamentary and judicial superannuation schemes would also be included. But these schemes are not part of the Government's merger proposal. They are excluded.

This begs the question: Why did the Government choose to quarantine the parliamentary and judicial schemes?

If the Government's motivation for the merged Boards was, as it claims, efficiency and cost reduction, then surely the parliamentary and judicial schemes should also be administered centrally. If not, why not? The Government does not say.

DFWA concludes that the Government, perhaps with good reason, sees that the parliamentary and judicial schemes require special treatment because parliamentarians and judges are unique.

But, noting that a calling is either unique or not ('uniqueness' does not have degrees), DFWA does not see how the parliamentary or judicial schemes can receive special treatment on the basis of the uniqueness of parliamentarians and judges while the military schemes can not.

If parliamentary and judicial superannuation schemes require special administrative treatment because their contributors and beneficiaries are unique, then how much more do the military schemes and *their* contributors and beneficiaries require special administrative treatment?

No Evidence of Benefit

DFWA strongly endorses the RSL's contention in its submission to this Committee that there are no hard facts to back up the need for a change to a merged Board. DFWA, like the RSL, is unaware of any evidence in the public domain other than the unsubstantiated assertions of Ministers Sherry and Tanner.

While DFWA need not repeat the RSL's other arguments here, DFWA sees no tangible or intangible benefits to military superannuation contributors or beneficiaries or, importantly, to the taxpayer from the Government's proposal. Indeed the opposite will be the case.

DFWA emphasises that it has no objection to the amalgamation of the management of current or future *military* superannuation schemes. DFWA has advocated this amalgamation in other forums because, unlike the Government's current proposal, there is no perceived disadvantage to serving or former ADF members. Some may claim that resolution of issues such as military rehabilitation and compensation would be speedier and therefore cheaper if the management of military schemes was amalgamated. And if the Government's unsubstantiated contention that

any amalgamation will save money is true, DFWA's proposal to amalgamate the management of military schemes may have tangible, if small, benefits. The Government's proposal does not.

The Government claims tangible benefits from its proposal because all the extant superannuation boards and authorities will be amalgamated into one. But the Government has already acknowledged that each scheme will remain untouched. This means that specialist knowledge of each scheme and each constituency must be maintained as at present. In turn, this means that extant bureaucracies must remain much as they are, except that they will now all report to one Board instead of to three.

Each new Board member will be accountable for decisions affecting no fewer than six major civilian and military schemes as well as for the 1922 and PNG schemes. Noting that specialist knowledge is vested in the extant boards/authorities as well as in the small bureaucracies supporting them, it is a small step to conclude that members of the new Board will require additional clerical and/or specialist assistance to cope with their much wider responsibilities.

And DFWA can but speculate on the different salary and supporting staff requirements for the proposed Chief Executive Officer as opposed to the present Commissioner.

If the Government claims that tangible benefits for members will emerge through better investment outcomes, DFWA merely asks how members of military or civilian defined benefits funds can possibly be better off when investment outcomes are irrelevant to these schemes?

In any event, contributors to military superannuation schemes are in a different demographic from the civilian schemes. Their average age is younger and therefore different investment strategies such as longer term, more robust investments may be more appropriate for existing or future military schemes with a global or partial accumulation element. The Government's 'one size fits all' approach may well disadvantage today's and tomorrow's military contributors. It certainly is not to their advantage.

DFWA sees no tangible or intangible benefit for servicemen and women from this proposal. Nor can DFWA see a tangible benefit to Government through better or cheaper administration of the military schemes. It is up to the Government to demonstrate the benefits. The Government has yet to do so.

ADF Members Remote from Decision Making

ADF people are remote from decision making on superannuation matters as things are. They will be more remote if the merged Board proceeds, even if the merged Board chose to meet at Russell Offices.

It is disingenuous to claim that the CDF's two appointees can or will succeed in representing the interests of ADF members. With the best will in the world, they will be outnumbered.

And who will CDF appoint? The proposed period of appointment is up to three years. If CDF seeks continuity in his appointee(s), a good thing at least at first glance, he may lean to at least one Defence civilian appointee because military appointee(s) regardless of rank are subject to frequent postings and to other disruptions.

But the disadvantages of a Defence civilian appointee are obvious. Apart from probable credibility issues at both Board and constituency levels, a civilian appointment poses possible governance issues because of Defence's unique 'diarchy' whereby two people, CDF and Secretary, run one department. (No other department does this, pointing further to the unique nature of military service and giving further reason, if any was needed, to question the rationale behind the proposal to create one merged civilian and military Board.)

As previous CDFs and Secretaries have said, the diarchy only functions when the CDF and Secretary of the day can work well together on a personal basis, which fortunately they do for most of the time. DFWA need not pursue this topic further in this submission except to ask what happens when the CDF and Secretary disagree on a future military superannuation issue, particularly if one or more of CDF's Board appointees is a Defence civilian – who is, like all Defence civilians, ultimately accountable to the Secretary?

DFWA also notes that the ACTU appointees are required to consult with their (civilian) constituency while CDF's appointees are not. Implicit in this is the long-standing convention that CDF is the 'employees' (members) representative while the Department of Education, Employment and Workplace Relations in its various incarnations is the 'employer' representative for ADF salary negotiation purposes.

Because CDF is the 'employees' representative he does not need to consult ADF members on superannuation issues.

Without bogging down in the rationale behind this Gilbert and Sullivan arrangement, it is sufficient to say here that anyone who believes that a soldier on patrol in Afghanistan is either preoccupied with superannuation issues or believes that a Canberra-based two, three or four star understands his or her situation and can represent him or her either in salary negotiations or on a civilian dominated superannuation Board is not living in the real world.

Sailors, soldiers and airmen & women just get on with what they are doing and trust that CDF and the Government will look after their short and long term interests. They are too remote from the centre of power to do otherwise. They will be even further from the centre of power under the Government's proposal.

Inconsistent with Legislation

As the RSL has touched on in its submission, the legislated right of military superannuation scheme members to have their own boards of governance are to be exchanged for unquantified and uncertain benefits to Government – with no benefit to members. And all this is being done without consultation with those affected, remembering that ADF people do not have employee representation. Nor should they need to if Government is doing its job.

DFWA reinforces the RSL contention that the proposed merger is inconsistent with extant legislation and hence the will of the Parliament. This is not to say that the Parliament cannot change its mind but that it requires good reasons to overturn long-standing legislation. Good reasons are yet to emerge, if indeed any exist.

Conclusion

DFWA holds the strong view that the proposal to merge military and civilian superannuation boards and authorities into one new Board is seriously flawed. Military service is unique. Unique service requires unique solutions.

DFWA has no objection to, and indeed has advocated, creating one Board to manage all military superannuation schemes.

The Government's proposal:

- Does not recognise the unique nature of military service,
- Will subordinate unique military requirements to broad civilian requirements,
- Offers no evidence of any tangible or intangible benefit to ADF members or to the taxpayer,
- Is highly likely to result in a further diminution of military whole-of-life benefits, and
- Is inconsistent with extant legislation and the will of the Parliament since Federation.

Recommendations

DFWA recommends that:

1. The Government not proceed with its proposal to merge military and civilian superannuation boards.
2. Existing and future military superannuation schemes are managed by one Board.

David K Jamison AM
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Glossary

ACTU – Australian Council of Trade Unions
ADF – Australian Defence Force
CDF – Chief of the Defence Force
DFWA – Defence Force Welfare Association
DVA – Department of Veterans' Affairs
RSL – Returned and Services League of Australia