

2 March 2010

Committee Secretary
Senate Standing Committee on Finance and Public Administration
PO Box 6100, Parliament House
CANBERRA ACT 2600

To the Government of Australia

WE WANT A FAIR GO WITH OUR ADF SUPERANNUATION

The veteran community has and continues to make representations to Government, through members of Parliament, to express their real concerns about the *Governance of Australian Superannuation Schemes Bill 2010* and related Bills, as this proposal intends to lump military super with other Commonwealth superannuation schemes for the first time! This intention fails to acknowledge the “special and potentially deadly situation” accepted by those who join the Australian Defence Force. Such a grouping belittles those in uniform and damns the decision makers, as it can only further depreciate the reality of Armed Service on behalf of the nation.

The Government’s proposal to merge all Commonwealth civilian and military superannuation schemes into one new authority, with a 10-person board comprising: three trade union representatives, two Defence representatives, and five representatives chosen by the Finance Minister, ignores the reality of Military Service on behalf of the Nation and well practised Parliamentary precedents.

Since Federation, Members of the House of Representatives and Senators (The Parliament) have legislated for almost all aspects of service in the nation’s armed forces, including superannuation schemes, because of the separateness of the requirements of military service. Therefore it is NOT solely a Government prerogative.

An examination of legislation for the Australian Defence Force shows that in almost all respects, the Parliament has been consistent since Federation in regarding the nation’s armed forces as a separate and quite distinctly different part of Australian society. The Defence Act 1903, Naval Defence Act 1910 and Air Force Act 1923 provide the heads of power for the Chiefs of the Army, Navy and Air Force and set out the governance of the nation’s armed forces

including the notion of military command and the requirement to obey lawful orders. Of particular note in this context is that the Australian Department of Defence established under this legislation is the only Commonwealth Department with a diarchy. The Chief of the Defence Force commands the Australian Defence Force while the Secretary of the Department of Defence has the same responsibilities for administration and management of the department's civilian employees, as does his or her peers heading other Commonwealth Departments. The differentiation between service personnel and civilians cannot be more starkly demonstrated.

Sailors, soldiers and airmen serve the Australian people and nation as directed by the democratically elected Commonwealth Parliament. They are not employees of the nation. They do not have an employer/employee contract in the traditional civilian context because each must make the ultimate commitment, that of offering up their lives in defence of the nation.

On three occasions spanning 43 years the Parliament of the Commonwealth of Australia has enacted superannuation legislation framed specifically for members of Australia's armed forces. In so doing, the Parliament has established and maintained a principle that those who serve in Australia's Navy, Army and Air Force **have a need for superannuation arrangements and entitlements separate in all respects from superannuation arrangements and entitlements from all others paid by the Australian Government**.

The same applies to the Military Superannuation and Benefits Act 1991 assented to on 7th September 1991. Of particular note in this legislation is the establishment of "a board called the Military Superannuation and Benefits Board of Trustees No 1". **This demonstrates the continuing intention of the Parliament that this superannuation scheme was to have a Board of Trustees defined as Military and to be quite separate from those for other Commonwealth superannuation schemes.**

In conclusion I request that this matter in its entirety continue to honour the precedents that have been set by our forebears to ensure adequate pension provisions for all Service men and women, as a distinctly separate group of Australians, whose service is unique, who forego the human rights enshrined in law when in action, and commit themselves solely for the good of the Nation.

There is no finer calling.

Yours faithfully,

Signed Phil Davies

Brig Phillip Davies AM (Ret'd)

Note:

1. In preparing this submission, I have referred and utilized information provided by ESOs through other representations and presentations to parliamentarians.
2. A signed copy of this representation is in the mail.