



President:
Peter (Casey) Jones

Secretary:
Kevin Wilson

Vietnam Logistical Support Veterans' Association Incorporated in Queensland



03 March 2010

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

Dear Sir or Madam,

On behalf of the President and Members this Association desires to set before the above named Senate Standing Committee the attached Submission concerning the proposed "Governance of Australian Superannuation Schemes Bill 2010 and related Bills".

I remain yours faithfully,

Rodney T. Nott

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Attachment:

1. VLSVA Qld (Inc) Submission.

"STRENGTH THROUGH SUPPORT"

GOVERNANCE OF AUSTRALIAN SUPERANNUATION
SCHEMES BILL 2010 AND RELATED BILLS

A Submission to the Senate Standing Committee on Finance and Public Administration

by

The Vietnam Logistic Support Veterans' Association Queensland (Inc)

1. Introduction

1.1 The proposed "*Governance of Australian Superannuation Schemes Bill 2010 and Related Bills*" is not supported by this Association and this submission will be at lengths to provide a reasonable argument in support of that view.

1.2 The current three Military Superannuation Schemes are unique and available only to Australian Defence Force personnel, surviving spouses and dependant children. As each scheme was introduced the method of governance was also imbedded in the legislation.

1.3 This Association has, over years, made numerous submissions to successive Government Inquiries and Reviews and individual Ministers of the Crown concerning conditions that impact on members and superannuants of the three current Military Superannuation Schemes. Many of those submissions have challenged various aspects of the governance of those Schemes.

2. Executive Summary

2.1 This submission:

- a. Strongly advocates that the Senate Standing Committee rejects this Bill out of hand,
- b. Strongly recommends maintaining the *status quo* regarding the make up of the various Military Superannuation Management Boards,
- c. Contends that if this Bill is enacted it will have a detrimental impact on members and superannuants of the three current Military Superannuation Schemes, and
- d. Also contends that the influence of the two military members of the proposed board will be diminished to such an extent as to be irrelevant.

2.2 This submission arises from the legitimate concerns of members of the VLSVA QLD (Inc), who are mostly recipient members of one or the other of the current military superannuation schemes, that the management of their respective schemes will be transferred to a central Board of Trustees and that the proposed two military representatives on that board will be subsumed by the superior numbers of Trade Union officials and others persons appointed to the board, who will have little or no in-depth knowledge of Defence Force service and the reason for certain superannuation benefits to flow to Defence Force personnel in retirement.

2.3 This submission also identifies the inconsistency in the Bill that proposes to amalgamate Military Superannuation schemes with those of the Public Service under one Board of Trustees but excludes the Parliamentary and Judicial Officers superannuation schemes. This is seen as an eventual re-alignment (downwards) of military superannuation benefits to civilian standards.

3. The Separateness of Military Superannuation

3.1 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 overall responsibilities for administration and management of the department's civilian employees, similar to that of his or her peers heading other Commonwealth Departments. The differentiation between service personnel and civilians cannot be more starkly demonstrated.

3.2 Other legislation is consistent in maintaining this difference for the Defence Force. The Defence Force Discipline Act 1982 established a legal system for members of the armed forces to meet military requirements. The Defence Force Remuneration Tribunal was established in 1982 under the heads of power in the Defence Act 1903 to be the determining authority for pay and allowances for members of the Navy, Army and Air Force. And when the Australian Honours System was established in 1975, there was provision for a Military List quite separate from the General List. In addition, each of the armed forces includes its own health branch with its own doctors, dentists and supporting staff, and the services have created their own private health insurance schemes such as Navy Health and Defence Health.

3.3 Since the Second World War the same principle of separateness has applied to legislation for superannuation for members of the Australian Defence Force. The Defence Force Retirements Benefits Act 1948, the Defence Force Retirements and Death Benefits Act 1973 and the Military Superannuation and Benefits Act 1991 all recognise that civilian superannuation schemes for Commonwealth employees are unsuited for members of the Australian Defence Force.

3.4 Given these facts, it is difficult to understand why successive Governments have, from time to time, sought to align military superannuation to former Commonwealth employees. Former members of the Australian Defence Force remain part of the "Defence Family" with many continuing to serve in the Reserve Forces long after they have completed full time service. Their circumstances are quite different from those of former public servants and they have a right to have their superannuation benefits made without reference to the regimes of others, which will surely happen if this proposed legislation is passed into law. The continued existence of the Department of Veterans' Affairs and legislation such as the Veterans' Entitlements Act 1986 and the Military Rehabilitation and Compensation Act 2004 attest to this.

3.5 The foregoing shows that the nexus between military superannuation schemes and other Commonwealth superannuation schemes for retirement, invalidity and surviving spouse benefit and indexation of those payments is a government policy aberration and is inconsistent with the legislative base of the Military schemes. The VLSVA Qld (Inc) strongly recommends it be abandoned.

4. The Parliamentary Perspective of Military Superannuation

4.1 On three occasions spanning 43 years the Parliament of the Commonwealth of Australia has enacted superannuation legislation framed specifically for members of the Australian Defence Force.¹ In so doing, the Parliament has established and maintained a principle that those who serve in the 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.

4.2 Nothing in the legislation appears to preclude this principle of separateness from applying to all aspects of the military superannuation schemes, including retirement, invalidity, surviving spouse and dependant benefits and, in particular, the indexation of superannuation payments.

4.3 Act number 31 of 1948, the Defence Forces Retirements Benefits Act 1948 assented to on 26th June 1948, is explained in the legislation as an “Act to provide Retirement Benefits for Members of the Defence Force of the Commonwealth, and for other purposes.” The intent of the Parliament is affirmed by the inclusion in the legislation of the interpretation that “in this Act, unless contrary intention appears...member means a member of the Defence Force on full time service...”² Though there are sections of the Act covering such circumstances as preservation of rights for members who might stand for election to Federal Parliament, there is nothing in the legislation to suggest any linkage to other Australians who, unlike service personnel, are employees of the Commonwealth, or to their own superannuation schemes or entitlements.

4.4 The intent of the Parliament for a separate military superannuation scheme was described by the Minister for Defence, Navy, Army, Air Force and Supply, the Hon Lance Barnard MP, in a speech in the House of Representatives on 25th May 1973. “The Defence Force Retirement Benefits Act came into force in 1949 following the Government’s consideration of a report of a Committee chaired by the then Minister for Defence and Post-War Reconstruction, the Hon J.J. Dedman MP. The scheme created by that legislation was designed to meet the special conditions of service in the armed forces...” A part of this Act also recognised the need for a Board to oversee the superannuation scheme and for this Board to include military representatives.

4.5 An examination of legislation passed by the Commonwealth Parliament in 1973 shows a similar intent. The Defence Force Retirement and Death Benefits Act assented to on 19th June 1973 has as its full title “an Act to make provision for and in relation to a Scheme for Retirement and Death Benefits for Members of the Defence Force.” Nothing in the Act suggests it applies to citizens employed by the Commonwealth in various occupations who are not members of the Defence Force. Once again the Parliament included in the legislation provision for a Board of Governance with military members.

4.6 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.”³ This demonstrates the continued 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.

¹ The Defence Force Retirement Benefits scheme established under the *Defence Force Retirement Benefits Act 1948*; the Defence Force Retirement and Death Benefits scheme established under the *Defence Force Retirement and Death Benefits Act 1973*; and the Military Superannuation Benefits scheme established under the *Military Superannuation and Benefits Act 1991*.

² *Defence Force Retirements Benefits Act 1948*, Part 1, Section 4(1), p. 1-2.

³ *Military Superannuation and Benefits Act 1991*, Part 6 Section 18, p.11.

4.7 By these actions the Parliament has made clear that superannuation for members of the nation's armed forces cannot be provided by superannuation schemes enacted for Commonwealth public servants, police, fire fighters or others paid by the Commonwealth Government regardless of whether some of these civilian occupations entail exposure to danger as part of their employment. Parliament also made clear that it required military representation on Boards governing these superannuation schemes to be in the majority unlike the proposed legislation where they will be an inconsequential minority; just two members from a total of nine.

5. A Divergence between Parliament and Government

5.1 In 2008, Senator the Hon Nick Sherry, Minister for Superannuation and Corporate Law, invited Mr T.J. Matthews to review "the indexation of pensions from the following Australian Government superannuation schemes:

- a. The Commonwealth Superannuation Scheme;
- b. The Public Sector Superannuation Scheme;
- c. The Defence Force Retirement and Death Benefits Scheme;
- d. The Defence Force Retirement Benefits Scheme;
- e. The Military Superannuation and Benefits Scheme;
- f. The scheme under the Superannuation Act 1922; and
- g. The scheme under the Papua New Guinea (Staffing Assistance) (Superannuation) Regulations"⁴

5.2 In tendering this invitation the Minister did not differentiate between the superannuation schemes and thus overlooked the intention of Parliament that military superannuation schemes are separate from all other Commonwealth superannuation schemes.

5.3 The VLSVA QLD (Inc) asserts that the principle of Parliament is paramount and the omission of this principle from the terms of reference provided to Mr Matthews makes the findings of his review questionable and his recommendations unsafe.

5.4 In making this judgement the VLSVA QLD (Inc) has taken account of legislation suggesting a contrary view. Section 5 of the Financial Management and Accountability Act 1997 established ComSuper as a prescribed agency to administer the "Australian Government sponsored superannuation schemes which apply to Australian Government civilian and Defence Force members."⁵ This legislation concerns solely the administration of superannuation, identifies Defence Force members as a separate group and in no way diminishes the intention of the Parliament that superannuation for members and former members of the Australian Defence Force must be quite separate from all other Commonwealth funded superannuation schemes.

5.5 The VLSVA QLD (Inc) notes with concern that this trend continues. In October 2008 the Commonwealth Government announced "that it intends to merge the boards of the MilitarySuper and the DFRDB (Defence Force Retirement and Death Benefits) Authority with the ARIA (Australian Reward Investment Alliance) board (the trustee of the CSS, PSS and PSSap civilian schemes)" the subject of this submission, and that it intends "that the boards will merge from 1 July 2010."⁶ The VLSVA Qld (Inc) is strongly of the view that this proposal is unsafe in a legislative context and is definitely not in the best interests of military superannuants.

⁴ Matthews, T.J., *Review of Pension Indexation Arrangements in the Australian Civilian and Military Superannuation Schemes*, Department of Finance and Deregulation, 24 Dec.2008, Appendix A, p.48.

⁵ Commissioner for Superannuation 2008-09 Annual Report, p.7

⁶ MSB Board Annual Report 2008-09, p.11.

6. Inquiries into Military Superannuation

6.1 During the last half century there have been several inquiries into military superannuation. Those directed by Government have tended to combine military superannuation with superannuation for employees of the Commonwealth⁷. Those undertaken by the Parliament have tended to focus on military superannuation. The inquiries considered in this submission are:

- a. the Government directed 1957 review by Sir John Allison;
- b. the Joint Parliamentary Select Committee review of 1972;
- c. the Senate Select Committee review of 2001;
- d. the Government directed review of 2007 by a team headed by Mr Andrew Podger; and
- e. the Government directed review of 2008 by Mr Trevor Matthews.

6.2 The 1957 Allison Review.

6.3 The operation of the 1948 Defence Force Retirement Benefits Scheme for the decade following its introduction highlighted sufficient shortcomings in the legislation to warrant action being taken to improve the scheme. As a consequence Sir John Allison was appointed in 1957 to review the Defence Force superannuation scheme. The outcome was a series of new arrangements for contributors, known as the post 1959 scheme. Unfortunately “the measures adopted in attempts to alleviate the severe problems faced by pre-1959 entrants in maintaining high levels of contributions...resulted in a multiplicity of contributions and benefits arrangements...so complex, as to be almost incomprehensible to the great majority of members...”⁸

6.4 The 1972 Joint Select Committee Review of Military Superannuation.

Complaints about the Defence Force Retirement Benefits scheme persisted and by 1970 had become so numerous that Mr John Jess MP and other Members of Parliament persuaded Prime Minister J.G. Gorton to agree to the establishment of a Joint Select Committee to review military superannuation. This all party Committee of the Parliament undertook a thorough review of all aspects of the Defence Force Retirements Benefits Scheme and published a detailed report of its findings and recommendations on 18th May 1972.

6.5 It is noteworthy in the context of this submission that in the late 1950's and the early 1970's both the Government and the Parliament held that the superannuation needs of members and former members of the Defence Force were different from those of the Commonwealth Public Service.

6.6 Also that within the conclusions of all these inquiries, including those of the Senate Select Committees of parliamentarians from both sides of politics, none recommended a change to the constituted make up of the Boards of management set up under the various Military Superannuation Acts. The consequence is that all these inquiries/reviews recognized the separateness of military superannuation matters from all other Commonwealth superannuation Schemes. This fact is most relevant to the thrust of this submission.

⁷ Members of the Australian Defence Force are not employees of the Commonwealth. They have no employment contract; they serve the Australian people; they are bound by law to obey orders even if this entails risking their lives; and they cannot withdraw their services at a time and place of their choosing.

⁸Barnard, Hon. L., House of Representatives Hansard, 25th May 1973, p.2707.

6.7 The Government directed review of 2008 by Mr Trevor Matthews

For reasons he did not question or explain, Mr Matthews accepted that Parliamentarians and Judicial Officers are separate persons for superannuation purposes, presumably because their entitlements are covered by separate Acts of the Commonwealth Parliament. This calls into question his decision not to apply the same standard of separation to those with superannuation entitlements under the three military superannuation Acts. This lack of differentiation undermines the objectivity, substance and findings of his review.

6.8 The reality is that members of the Australian Defence Force have less in common with their fellow Australians than do Parliamentarians or Judicial Officers with other Commonwealth employees. While all are remunerated by the tax payer and all have specific roles within the Australian democracy, only one group, the Australian Defence Force, commits to obeying the directions of Government to go in harm's way and to accept that this may entail making the supreme sacrifice.

6.9 Members of the Australian Defence Force are citizens who commit to serving for the ongoing security of Australia and its people and who, together, constitute the ultimate safeguard of our nation. They are remunerated by the Australian tax payers but are no less deserving of separate consideration than are Parliamentarians or Judicial Officers.

7. Summary

7.1 This examination of an intractable issue which has the potential to impact adversely on persons with past service in the Australian Defence Force brings into sharp focus a fundamental question about the Australian democracy. Which body is paramount? The Parliament elected by the Australian people or the government appointed by those elected in the lower house of Parliament?

7.2 The VLSVA QLD (Inc) holds that Parliament is paramount and contends that only this representative body of the people has the authority to make decisions on issues such as that raised in this submission. A unilateral review of an Act of Parliament on the initiative of a Minister is considered a breach of the authority of the Parliament.

8. Acknowledgement

The Returned & Services League of Australia has recently forwarded a comprehensive submission to the Government on matters concerning the "INDEXATION OF MILITARY SUPERANNUATION PAYMENTS". This submission highlights the concerns and financial plight of thousands of military superannuants due to the erosion of relativity in retired pay when compared with the cost of living index. The VLSVA QLD (Inc) wholeheartedly supports the RSL in this submission.

8.1 The referenced historical data on military pension matters used by the RSL in their submission has parallel relevance in this submission and where applicable has been directly transcribed.

8.2 The VLSVA QLD (Inc) would like to acknowledge the use of this RSL data in compiling this submission.