



Submission No 1

Review of the Defence Annual Report 2010 - 2011

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DEFENCE FORCE WELFARE ASSOCIATION

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A member of the Alliance of Defence Service Organisations

Submission to the Joint Standing Committee on
Foreign Affairs, Defence and Trade

Review of the Defence Annual Report 2010-2011

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DFWA thanks the Committee for the opportunity to comment upon (and appear in relation to) the Defence Annual Report 2010 – 11.

As Committee members will be aware DFWA while having a general interest in all issues pertaining to Defence has a specific interest in ADF Personnel Conditions of Service, including Pay and Superannuation matters.

The Unique Nature of Military Service

The unique nature of military service is rooted in the nature of society itself. Most democratic societies recognize the central place of the individual as the primary unit of sovereignty. Sovereign individuals are vested with inalienable human rights, recognized in the Universal Declaration of Human Rights as, among others, life, liberty and the security of the person (Article 3). Australia is a signatory of the Declaration, adopted by the General Assembly of the UN in 1948

Implicit in Article 3, there is also a right to defence of self and of others from attack, and this right inevitably gives rise to an obligation to do so if it is the State which is under threat or attack.

The inter-relationship of rights and responsibilities borne both by the State and the individual is complex and based on the principle of the social contract. The State may not alienate the rights of the individual without his assent. The individual, while preserving the integrity of his or her rights, may assent to the State's demand for surrender of some of them for the common good, but in all circumstances save one, the State is obliged to uphold and defend the individual's rights.

In volunteering for military service, the individual accepts the surrender of his basic rights under Article 3 and places his life, liberty and security of person in the hands of the State. This surrender is not unconditional, though *in extremis*, it is absolute. The State, for its part, accepts the obligation to preserve, as far as is consistent with the achievement of the military mission, the physical and spiritual wellbeing of such individuals who place themselves at its disposal. This obligation extends beyond the period of service itself, to the physical and psychological consequences of that service.

Attached at ANNEX A is a DFWA paper on the concept of the Unique Nature of Military Service. We wish to draw the Committee's attention to the fundamental 'human rights' ADF members surrender on enlistment and the consequent obligation that this imposes on the Nation and its representatives.

In the context of the Committee's current deliberations, DFWA can do no better than to draw the Committee's attention to the Overview contained in Chapter 1 of the Defence Annual Report 2010 – 11, which in our submission totally supports the view that service in the ADF is a unique calling, involving unique mutual obligation.



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Specifically, the Department in its Report acknowledges:

- 2010-2011 financial year represents one of the most intense and sustained operational periods in recent history.
- The ability of the Department (and ADF) to achieve its goals is ‘...a tribute to the quality and dedication of all Service & Civilian personnel...’.
- ‘...Defence simultaneously supported whole-of-government humanitarian and disaster relief efforts at home and abroad while remaining committed to Afghanistan, East Timor, Solomon Islands, border protection and a variety of smaller operations. This speaks volumes for the people who have chosen to serve our nation - they are dedicated, professional and selfless...’.

From this succinct summary it is possible to discern that the core obligation of ADF members, in particular, is to serve wherever and whenever required. Indeed it is this obligation that has traditionally and in the view of DFWA, continues to be a very significant part of the foundation upon which ADF Conditions of Service are predicated. It is equally possible to form a view that the present commitments of the ADF are taking a toll on its members and their families. If the current tempo of activities continues there is every likelihood that the physical and emotional consequences will have an increasingly adverse impact on our defence capability and the wellbeing of ADF members and their families.

DFWA recommends that ***the Committee;***

- ***Might care to affirm the Unique Nature of Military Service.***
- ***Might sponsor an evaluation of the methodology by which the Government commits the ADF to operational tasks.***

A Military Covenant

DFWA believes the Australian people do accept, that ADF service is ‘Unique’ and that such service imposes mutual obligations. It cannot be said however, that the acceptance of the nature of the “contract” the Government has with its service personnel has been fully understood and acknowledged by our elected representatives. Nor has the obligation this places on the government of the day to comprehensively meet its responsibilities to its service men and women been fulfilled in recent years as testified by the many representations made by DFWA, ADSO¹ and other national ex service organisations addressing long standing matters of concern to them. In the opinion of DFWA, the concept of mutual obligation has been ignored by a succession of Federal Governments in recent years. This is a matter of great concern for DFWA and we are evaluating the United Kingdom initiative to legislate a “Military Covenant”.

DFWA believes it would be appropriate for an “Australian Military Covenant” to be developed in which the principle obligations of the Government to the Nation’s service men and women and in turn those obligations of members of the ADF to the Nation are spelt out. Such a Covenant

¹ Alliance of Defence Service Organisations (Navy Assn of Australia, RAAF Assn, Royal Australian Regiment Corp, Australian SAS Assn).



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between the Parliament, as representative of the Nation and the CDF as Commander of the ADF, might well give expression to this 'Unique Nature of Military Service' and the mutual obligations so imposed. The covenant should be a document stating principles against which policies and standards can be measured. DFWA will progress this initiative further.

The Centenary of the commencement of World War 1 in 2014 suggests itself as an appropriate time for Parliament to honour the Nation's military heritage and to reaffirm the mutual commitment between the Nation and its service personnel.

DFWA recommends that ***the Committee might care to consider sponsoring a Military Covenant through Parliament.***

Contemporary ADF Issues Relating to ADF Conditions of Service

Turning to more contemporary ADF conditions of service matters, that reflect issues raised in the Defence Report 2010 -11, but which of course in our considered opinion, should be viewed within the context of the discussion above.

Strategic Reform Program (SRP).

The Committee will be aware SRP is mandated to generate \$20B over 10 years at roughly \$2B per annum. As acknowledged in the Defence Report, SRP generated over \$1B savings in FY2010/11. The SRP website within Defence, Service Newspapers and Ministerial speeches are replete with comment upon the success of SRP and the critical role played by ADF (and APS) personnel in generating these efficiencies and savings.

Examples of SRP initiatives small, medium and large, ranging across dollar values of thousands to multi-millions are lauded and associated with Senior Leadership Group exhortations and expectations of similar sustained commitment from all ADF members. However it is fair to say that ADF members receive little recognition and no reward for their achievements in contributing to these important efficiency gains and savings.

ADF Remuneration and Conditions of Service.

Within the context of 'mutual obligation', intense operational tempo and the mandated SRP efficiency & savings requirements, DFWA highlights the recent history in relation to ADF Remuneration and conditions of service.

Defence Force Remuneration

ADF remuneration arrangements are overseen by the Defence Force Remuneration Tribunal (DFRT). This tribunal was created by a previous Labor Government to provide a transparent way of determining Salary and Salary Related Allowances for serving ADF personnel in accordance with its Industrial Relations policy. The DFRT is an independent body legislated under the Defence Act. The core of the arrangement is that the CDF presents a case on behalf of ADF members through the Defence Force Advocate and the Commonwealth would put the government as "the employer" case through an Advocate from the appropriate Department. At the discretion of the Tribunal other entities known as 'Interveners' are allowed to present views. Over the years



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DFWA, RSL and ARFFA (now defunct) have been recognised as “interveners” and given the right to appear before the DFRT.

ADF Workplace Remuneration Arrangement 2011 – 14

Several years ago, a provision (S58KD) relating to what is known as an ‘Agreed Case’, was incorporated into the Defence Act. This provision allows the Tribunal to have regard to any agreed case on a matter arrived at by CDF on behalf of ADF members and the Minister (currently the Special Minister for State) on behalf of the Commonwealth. This provision facilitated a perhaps speedier process where agreed matters, being non-contentious could be presented to the Tribunal without the full evidentiary and adversarial requirements that might otherwise occur.

It was in this context that the most recent ADF WRA case was heard by the Tribunal on the 27th October 2011.

As part of the process, the CDF is required to consult ADF members on the case he intends to put before the Tribunal. This was done and the response to the case that eventually went before the Tribunal was a 62% rejection out of a total response of 26,370. There were a number of unsatisfactory aspects in the way the process was handled including;

- The fact that the ADF & Commonwealth only released their 150 page submission to the Interveners (DFWA & RSL) some 40 minutes prior to the commencement of the hearing.
- The ADF & Commonwealth stating that any alternative substantive submission proposing variation to the Agreed Case would almost certainly necessitate delays of about four months or so.
- The ADF & Commonwealth advising the Tribunal that any delay in their determination in the current Agreed Case beyond 1600 hrs on the day following the hearing would occasion a delay of about three months in the actual payment of any pay-rise to ADF members.

These circumstances arose despite the knowledge that the 2009 - 2011 WRA was due to terminate in early November 2011.

The manner in which this agreement was processed as well as the consequences of asking for a direct expression of ADF member opinion and then to expressly over-rule that expression of opinion and impose the very outcome they deemed unacceptable, raises very serious issues about the Government’s attitude on the provision of service (“employment”) conditions for the ADF. In the opinion of DFWA, it reinforces the need for a clear statement that articulates the uniqueness of service in the ADF and the Government’s obligations to the Nation’s service personnel.

The Committee might care to consider to what degree this demonstrates a disregard by the Government of its part in the ‘mutual obligation’ between it and the Nation’s ADF members , and whether a clearly stated set of “principles” as proposed in a “Military Covenant” would help ensure fairness in its dealings with its service personnel.



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Diminution in Conditions of Service.

Integral to the WRA case presented and indeed in the context of SRP is an assurance of “no diminution in conditions of service”. While it might be correct to say that “no conditions of service have been revoked or eliminated”;

The Committee might care to consider if ADF members are justified in finding a contradiction between an imposed 3% pa pay increase and:

- ***Defence Housing Rental and Accommodation contributions increasing 10% for significant numbers in 2011 alone.***
- ***Uniform replacement costs increasing by 10% or more without any increase in appropriate allowances.***
- ***Reimbursement of pre-paid costs under Defence Assisted Studies Schemes being reduced from 75% to about 60%.***
- ***Changes and reviews of messing and catering arrangements reducing services, menu choices and availability to members.***

While each of these in isolation might well appear matters of little import, collectively ADF members do see them as a diminution in conditions of service.

Strategic Reform Program Personnel Reform Initiatives.

While not contained within the Defence Report 2010 – 11, DFWA understands that from SRP focus groups there are about 1000 ‘personnel initiatives’ listed for consideration in pursuit of SRP savings.

The Committee might care to seek details of these initiatives and form a view as to how they might impact upon ADF members in future years.

Superannuation

Another very significant condition of service issue which affects all ADF members, both serving and retired is that of Superannuation. Indeed perhaps more than most issues discussed above, this issue containing as it does both ‘retirement and death benefit’ implications for ADF members fits more easily in the long-term concept of ‘mutual obligation’. The committee will be aware of the longstanding campaign by DFWA and other Ex-Service Organisations which centres on:

- Fair indexation. The government refuses to give ADF personnel Fair Indexation. The main reason is cost but the government has steadfastly refused to provide any detail on the costing model and an explanation as to why the Future fund is not included in any cost considerations as that fund has been set up specifically to fund commonwealth superannuation liabilities.
- Review into Military Superannuation. The Government has had this report since 2007 and there are a number of recommendations that if implemented will remove some superannuation inequities that affect ADF personnel under both schemes (DFRDB and MSBS). DFWA has made numerous approaches to responsible Government Ministers on



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these matters yet no action has been taken and serving and former ADF members continue suffer from these inequities.

- ***The Committee might care to once again review the lack of progress on Superannuation issues which are of paramount importance to ADF members.***

Conclusion & Recommendations

DFWA believes that there are several very important issues that the Committee might care to consider in its deliberations relating to the Defence Annual Report 2010 – 2011. These issues go both to the fundamental relationship between the Nation and members of the ADF and to contemporary ADF Conditions of Service and Strategic Reform arrangements.

Attached as ANNEX B is a copy of a letter to the Minister for Defence detailing those conditions of service issues that DFWA believes require priority analysis and resolution.

Specifically DFWA would recommend the Committee might care to:

- Affirm the Unique Nature of Military Service.
- Sponsor an evaluation of the methodology by which the Government commits the ADF to operational tasks.
- Consider sponsoring a Military Covenant through the Parliamentary process.
- Evaluate the Government's understanding of and commitment to its role in the 'mutual obligation' between it and the Nation's ADF members, and whether a clearly stated set of "principles" as proposed in a "Military Covenant" would help ensure fairness in its dealings with its service personnel.
- Consider if ADF members are justified in finding a contradiction between an imposed 3% pa pay increase and significantly higher increases to Defence imposed costs for accommodation, food, education assistance and uniforms etc.
- Seek details of the foreshadowed '1000' personnel reform initiatives and form a view as to how they might impact upon ADF members in future years.
- Once again review the lack of progress on the many outstanding Superannuation inequities which are of significant concern to serving and former ADF members.

17 JANUARY 2012

ANNEXES:

- A. The Unique Nature of Military Service
- B. DFWA Letter of 30 November 2011 to Minister for Defence regarding Conditions of Service Issues.



DEFENCE FORCE WELFARE ASSOCIATION

Patron-in-Chief: His Excellency Mr Michael Bryce AM AE

The Unique Nature of Military Service.

Introduction

1. This paper is intended to help clarify and strengthen an understanding of the elements of military service which render it unique as an activity (or vocation) within a democratic society such as Australia. It should be seen as an exploratory discussion rather than a definitive and complete examination of the question.

Background

2. In recent years there has been a tendency among those responsible for administration of public finances to question some long – held assumptions about the way those who render military service should be compensated. This questioning not only relates to the just reward due for the serviceman’s labours, but also to the restitution owed to him and his dependents if he becomes disabled due to disease, injury or death suffered in the course of his service. There is being heard more frequently a notion that the serviceman’s salary and conditions contain an element of “danger money” which represents substantial compensation ”in advance” for any disability incurred while serving and that this reduces the obligation to provide compensation after the event. It should be the Association’s position, in my view, that the questions of pay and conditions and compensation for disability should be kept strictly separate, as matters of policy. Pay and conditions are directed not only towards just recompense for services rendered, but also to attraction to service of high quality volunteers. They may vary from time to time to suit changing circumstances. Compensation for disability is a matter of justice alone, and reflects recognition of the essential nature of military service. Allied to the notion of “compensation in advance” is a growing perception that military service can fairly compared to a number of other callings in our society that involve those engaged in them an element of exposure to danger. Police and Emergency services are most often cited in this context.
3. In examining military service as a unique calling we should understand that exposure to danger and the courage to face it are of themselves not unique features of military service. In arguing our case, we do not maintain that the serviceman has a higher requirement to show courage, nor a greater willingness to make sacrifices – even of his life – than others who serve the society and protect it from danger.



We claim only for the serviceman a distinction from all other callings, in that he, and he alone, is under a compulsion to face danger and make sacrifices – even of his life – once either he has committed himself to serve, or has been compelled to serve by the State.

Rights and Obligations.

4. The spirit of the times places great emphasis on the concept of Human Rights and their close ally, Civil Rights. The concept is usually taken to apply to the rights of an individual citizen in relation to other citizens or to the State. The Universal Declaration of Human Rights adopted by the General Assembly of the United Nations on 10th December 1948, in Article 3, declares baldly that “Everyone has the right to life, liberty and security of the person.” The first paragraph of the Preamble describes the rights that should be recognized as being “equal and inalienable.” Australia has acceded to the declaration. These Human Rights are equivalent to those “inalienable” and God-given rights set out in the American Declaration of Independence – Life Liberty and the Pursuit of Happiness. Australia, and indeed all modern liberal democracies pay at least lip service to these rights, and none would argue with their spirit. Our discussion will take these three undisputed rights as its starting point. It will be based firmly on the proposition that these are rights possessed by each and every citizen as an individual.

5. The origin of these rights lies in the recognition of the individual citizen as the unit of autonomy in a liberal democratic society. Social structures are composed of individuals freely associating, or freely assenting to imposed association, for the common good. The most basic and most strongly coherent of social structures is the family; others are both more complex and less coherent as they progress through communities, municipalities, states or provinces, up to the nation state itself. In the community of nations, each state possesses a sovereign right to manage its own affairs in relation to other states. This sovereignty is exercised on behalf of, and in the name of, “the people”. Within the state sovereignty rests with the individual, who possesses his basic rights, and his vote, as an individual. He is governed, and takes his place in the social structure by his own consent. This is true even in cases where he disagrees with the actions of state to which he belongs, or with the outcome of a particular election in which he cast his vote. Recognition of the right of the majority of individual citizens to determine the colour of the government of the state is an inescapable consequence of acceptance of the democratic state itself.



6. It is obvious that the position of the individual in a democratic system is not sustainable unless there is general assent to the system by the population as a whole. There must be in all matters essential to the peace and good order of the state, a body of shared values. It is these shared values that underpin acceptance of rights and obligations by both individuals and the State.
7. Though not usually identified as a “human right” in social discourse, the right of an individual to defend himself from attack – physical or moral – is almost universally acknowledged and is enshrined in law in all democratic societies. Though primarily related to the individual himself, this right extends to his right to assist in the defence of others; family, community, fellow citizens and the state itself.
8. The right to assist in the defence of family, community and nation does not of itself create an obligation to do so, though shared values may well act to induce in an individual a sense of obligation. His act in offering himself to assist in the defence of others is, nonetheless, a free act of the will. For its part the state may impose on the individual an obligation to assist in the defence of the nation as a whole, but it is able to do so only with the assent of the governed, through the mechanism of shared values. In this way even compulsory military service, in which the basic human rights of those called to service appear to be appropriated, are, and in fact voluntarily surrendered.
9. Practically all modern states maintain standing forces to discharge the responsibility entrusted to them by their citizens, of protecting their people from threats of coercion by use of military force. Usually these standing forces’ role is to support the policy objectives of the state, principally in the area of foreign relations. To maintain force levels they usually rely on citizens’ voluntary service. But the highest purpose of military forces is to maintain the capability of meeting an enemy on the battlefield and winning.
10. The State has been entrusted by its citizens with the obligation to protect them. If it is to discharge this obligation, it therefore has a right to expect, even to demand, that the people will provide the means do so, in the form both of treasure and manpower. The right to self-defence thus inevitably imposes a general obligation to render military service.



The Individual and the State

11. The relationship between the individual and the State in a democratic society is a very complex one. It rests on the somewhat imprecise concept of shared values, and manifests itself in a not very clearly defined network of mutual rights and obligations, and the expectations they create. The mechanism by which the relationship is moderated has been termed the “social contract”. Under the social contract the individual citizen accepts that he or she must contribute to maintaining the means of defence. He expects that the state will organize, administer and regulate the defence forces, and that it will set limits by way of laws and regulations on the manner in which the forces may be employed.
12. Those who offer themselves for military service accept that they place themselves under the authority of the State to the degree necessary to achieve the State’s military objectives. Though the authority of the state may be bound and moderated by policies, customs and usages, even by laws, all understand and accept that at bottom the relationship is one of obedience. For all practical purposes the authority of the state over the individual as exercised by military superiors on its behalf, is limitless. The obedience required by the exigencies of military service is total.
13. The State for its part accepts as an obligation that the individuals under its authority who render service are sustained in bodily health and are entitled to be treated at all times with fairness and justice. This is not to say that in extreme circumstance extreme demands will not be made; but in all circumstances the social contract requires that the highest possible value will be placed by the State on the safety, welfare and life of each individual. It also requires that in recognition of the service rendered, the State will assume, as an obligation, responsibility for the dependents of those who have lost their lives in its service, and responsibility for the care of, and compensation for, those who have suffered disability as a result of their service.

Unique Service

14. It is precisely here that the unique nature of military service lies. In ordinary times military service is freely rendered by volunteers. In extreme circumstances the social contract may be invoked by the State by compulsion. In either case, however, once the individual has entered military service, the relationship of obedience is established. This relationship **necessarily** requires the surrender of the individual’s “inalienable” right to liberty, and alienates his right to life and security of the person, by placing responsibility for their preservation in the hands of others.



Not every person who renders military service encounters the enemy on the battlefield, but every person who enters military service must accept that he is expected to do so, if ordered, and is trained to do so.

15. A consequence of military service is that individual autonomy, the fundamental repository of sovereignty in a democracy, is surrendered to the common good. Freedom of choice as to the individual's own destiny, which lies at the heart of all civil liberties, is negated. In their place is the truth that the service person may be, by the decision of others against which there is no appeal, placed in extreme peril of life, and lose that life, if that were the outcome of the decision.
16. In no other activity or vocation within a democratic state does the relationship of obedience to the authority of the State in the face of danger to life or bodily damage exist. Emergency services have an obligation **not** to accept extreme risks to their safety, lest they become consumers of the very service they are attempting to provide. Members of the Police Service are entitled to defend themselves from violent offenders, but are under no compulsion to endanger their lives or safety by the orders of a superior. The fact that many of them do, and display courage to the point of heroism in doing so, should not obscure the fact that they may not be compelled, nor be punished for failure, to incur serious danger.
17. Very different is the lot of the sailor, soldier, airman or airwoman. No matter what the danger, the clear duty is to the military mission, and to play his or her part in its achievement, obedience is required. The most abject coward, most terror-stricken faintheart, has no alternative but to expose him or herself to life-threatening danger, if so ordered. He or she may no longer invoke Civil or Human Rights to review his or her position as an autonomous unit of Society. Should the attempt be made, and a decision arrived at that is in opposition to that of his or her superiors, the individual service person commits an offence punishable by law. The offence is Dereliction of Duty, at the least. When engaged on the battlefield there is nowhere to go, morally or physically. The danger must be faced, and the consequences accepted, whatever they may be.

A service person's calling is unique.



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30 November 2011

The Hon Stephen Smith MP
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I am writing to seek your assistance on a number of matters which are of continuing concern to the defence community. As President of the Defence Force Welfare Association and national spokesman for the Alliance of Defence Service Organisations (ADSO)¹, I have approached various ministers in this and the previous administration seeking resolution of these concerns. Suffice to say we have been very disappointed with the responses received and the general lack of action by the Government on what we see as legitimate matters needing resolution. Our collective memberships are becoming increasingly disaffected with the present Government's lack of any positive response, which they represent back to me and my fellow leaders as Government neglect of its service men and women and an absence of respect for the professional way they undertake difficult and dangerous missions to which the Government deploys them.

A summation of the significant matters for which we seek resolution are:

1. *Military Superannuation.*

In early-2007 the Howard Government commissioned a comprehensive review of Military Superannuation. The report (RMSA) was completed before the 2007 elections and released by the Rudd Government in late December 2007. The government response to this report has been under consideration for 4 years and is regularly cited as a reason to defer action on any military superannuation matter. The issues we have been seeking action on are;

- a. ***Indexation.*** The current indexation is by the CPI which is a measure of inflation not purchasing power. The Government has recognised this and has adjusted the indexation for the Age Pension so it maintains its purchasing power. The issue for us is not the purpose of the payment but long standing "employment" promise to maintain the relative value of the superannuation pension so that (as outlined in the MSBS book) "the \$1 in 2011 will be equivalent to \$1 in 2028". We are

¹ Member Associations are DFWA, Naval Association of Australia, RAAF Association, Royal Australian Regiment Corporation and the Australian Special Air Services Association.

seeking the same percentage adjustment used for Age/Service pensions be adopted for all components of Military superannuation pensions (DFRB/DFRDB/MSBS) including preserved funds and the total reversionary pension for partners of deceased military superannuation pensioners.

- b. Access to employer benefits. This is imposing a significant financial shortfall on members of MSBS who leave the service after a short time and do not have access to the employer benefit to roll over to an approved superannuation fund of their choosing. Members should be given the option of accessing the employer benefit on discharge. Acting on recommendation 8 of the RMSA has the potential to reduce any superannuation liability from the Commonwealth at the time of discharge thereby reducing unfunded liabilities.
- c. Commutation. The continued use of out of date life tables means that the amount of money deducted from each DFRB/DFRDB fortnightly pension payment to repay the lump sum far exceeds the amount that would apply if the latest life tables had been used. We believe that the Government should immediately adopt up to date life tables in calculating commutation and fortnightly payments for all new DFRDB superannuants and rectify the injustices associated with the application of inappropriate life tables over the life of these schemes.
- d. Maximum Benefits Limits (MRLs). I have written to the Minister for Defence Personnel on three occasions requesting that consideration be taken to action recommendation 12 of the RMSA that the MSBS MBLs be abolished. Meanwhile loyal long serving members of the ADF continue to be financially penalized.
- e. Extension of Military Superannuation to ADF Reserve Members. We seek more flexible MSBS membership for all ADF reserve members and Commonwealth employer contribution of the legislated % under the Superannuation Guarantee (Administration) Act 1992 for all reserve service not presently covered.
- f. Taxation of Military Superannuation. The only reason the military schemes were classed as “untaxed” was because of a Government convention that it did not pay tax to itself. Had it done so, the net cost to the Government would have been exactly the same. The *Better Super* distinction between “taxed” and “untaxed” schemes is artificial. However even with the rebate, it leads to distinct disadvantages for military superannuation pensioners in that their pensions are fully taxable and any additional income is taxed at the individual’s marginal rate. We are seeking the removal of income tax on DFRB/DFRDB and MSBS military superannuation pensions for the over 60s, as well as for all invalidity super pensions.
- g. Single Governance Structure. The formation of the Commonwealth Superannuation Corporation has been implemented and as such the government has chosen to act on one recommendation of this report but in doing so appears to fallen short of its stated intentions in that Comsuper has not been placed within the Corporation. This would seem to represent a significant departure from the Government’s intentions as advised to us and could mean that promised administrative efficiencies and saving targets will not be met. Such shortfalls will be to the detriment of the members of both the military and civilian superannuation schemes.

We understand the budgetary challenges confronting the Government, but never the less are in no doubt that there are opportunities for the Government to fund the fixes required. Additionally we are confident from our consultations across the political spectrum, that positive actions to achieve these would have the support of the Opposition, the Greens and independent MPs.

2. *ADF Workplace Remuneration Arrangement 2011 – 2014*

Remuneration of ADF members should take account of the uniqueness of military service², the skill levels required, as well as representing fair recompense for the value of the work carried out by ADF individuals at various rank levels. We campaigned hard to achieve a fair outcome for ADF members. We suggested a fair outcome would have been an 11.5% increase over the three years to retain real salary value and an annual productivity bonus of 1.5% to recognise the efforts of ADF members in achieving efficiencies towards the \$20bn saving target under the Strategic Reform Program. In the event the Commonwealth wouldn't budge so an increase of 9.265% was awarded. With the federal budget under further pressure members of the ADF will be called on to provide further "productivity" improvements when the ADF is already under considerable pressure coping with the demands of the Government ordered operational deployments and the Strategic Reform Program. Considering that the outcome is below the current Employee Living Cost Index and even the projected CPI for the period, we believe the decision represents an effective and unfair reduction in salary.

3. *Release of Service Records*

Under the relevant provisions of the *Archives Act 1983* the service records of ADF and former ADF members held by National Archives (NA) are made available for public access during the "open access period" which the Act presently prescribes as 30 years since the creation of the record concerned. The term of the "open access period" is to be progressively reduced to 20 years, over a 10 year period. This will mean an increase in the proportion of ADF and former ADF members who will still be living at the time when their service records enter the open access period. We are concerned that the current access provisions have the potential to cause embarrassment and distress to serving and former ADF members and their families where the records released contain personal or confidential information such as medical records, performance evaluations and reports and disciplinary records. The Act does allow exemption for records of a personal or confidential nature and we are asking that exemption be extended to protect the privacy of ADF and former ADF members.

4. *Jet Fuel Exposure*

We are concerned to ensure that a future study to encompass the Army (& other ADF) petroleum operators/handlers and maintenance workers emerge from the present Jet Fuel Exposure Study which concentrates on F111 maintenance operations. So we are supporting the call for a separate investigation into the petroleum operator and maintenance work related fuel and chemical exposure during tank cleaning and related operations.

5. *Military Court of Australia (MCA)*

Whilst legislation to provide for the Court to be established has been delayed, we continue to strongly oppose the provisions of the Bill which would provide for the trial of serious service offences in the MCA by judge or federal magistrate alone. The right to a trial by jury is the right of every Australian citizen, conferred by s.80 of the Constitution and members of the ADF are citizens of Australia and are no less entitled to receive fair treatment in the justice system simply because of the nature of their profession. In our view no real or substantial reason which can withstand close scrutiny has been given by the Government for the proposed withdrawal of this right and we have sought to have the bill redrafted to provide that trials in the MCA should be before a judge/federal magistrate and a military jury. To date the Government has not responded to our submission.

² A Brief explanation of the basis for this uniqueness is attached.

6. Unfair Balance of Legal Resources at the Administrative Appeals Tribunal

Veterans, when appealing to the Administrative Appeals Tribunal against the rejection of a claim for compensation (or the Department is appealing against the acceptance of one) are entitled to Legal Aid funding. This funding covers the preparation of the case, one medical report, the appearance of the author of the medical report at the Tribunal to defend it, and a barrister to argue the case before the Tribunal for one day. But more and more cases are not conforming to these limits. More and more cases are lasting two, three and four days and require more than one medical report. However Departmental legal representatives do not operate within these limits and can take as many days as they like. Neither are they limited in the number of medical reports they commission nor the number of medical specialist appearances at the Tribunal hearing. To make matters worse, the best qualified doctors are reluctant to provide reports for veterans because Legal Aid funding does not cover their usual fees. They have no such reluctance to provide reports for the Department which pays the higher fees. To make matters even worse, many law firms simply refuse to take on veterans' cases citing inadequacy of remuneration but exercise no such reluctance in working for the Department which pays higher fees. In the interest of fairness, the Department of Veteran Affairs must restrict itself to employing similar legal resources to those available to the veteran and observe the Model Litigant Rules. In this proposal we are suggesting a rebalancing of financial resources allocation rather than advocating additional funding to cover this proposal.

Meeting to Discuss the Way Ahead

As you can see there are many issues for which we seek Government action and for which we feel a considerable degree of frustration at the lack of progress in seeking to resolve these. I would appreciate the opportunity to meet and discuss a way ahead with you so that we can address these issues in a positive and constructive way.

Yours sincerely



David Jamison
National President

CC

The Hon Warren Snowdon MP, Minister for Defence Science and Personnel

The Hon Robert McClelland MP, Attorney-General

Senator the Hon Penny Wong Minister for Finance and Deregulation

The Hon Gary Gray AO MP, Special Minister of State

Senator the Hon Nick Sherry Minister, Assisting on Deregulation and Public Sector Superannuation



THE UNIQUE NATURE OF MILITARY SERVICE

In recent years there has been a shift in assumptions and attitudes underpinning the way military service is viewed. Those in government who shape policy are increasingly attracted to the idea that the soldier (sailor or airman) is adequately provided for by salary and allowances that compensate for his service both while it is being given and after it has ceased. Military service can be mistakenly seen as comparable to other forms of service that involve risk and danger, and therefore no longer viewed as unique.

The unique nature of military service is rooted in the nature of society itself. Most democratic societies recognize the central place of the individual as the primary unit of sovereignty. Sovereign individuals are vested with inalienable human rights, recognized in the Universal Declaration of Human Rights as, among others, life, liberty and the security of the person (Article 3). Australia is a signatory of the Declaration, adopted by the General Assembly of the UN in 1948

Implicit in Article 3, there is also a right to defence of self and of others from attack, and this right inevitably gives rise to an obligation to do so if it is the State which is under threat or attack.

The inter-relationship of rights and responsibilities borne both by the State and the individual, is complex, and based on the principle of the social contract. The State may not alienate the rights of the individual without his assent. The individual, while preserving the integrity of his or her rights, may assent to the State's demand for surrender of some of them for the common good, but in all circumstances save one, the State is obliged to uphold and defend the individual's rights.

In volunteering for military service, the individual accepts the surrender of his basic rights under Article 3 and places his life, liberty and security of person in the hands of the State. This surrender is not unconditional, though *in extremis*, it is absolute. The State, for its part, accepts the obligation to preserve, as far as is consistent with the achievement of the military mission, the physical and spiritual wellbeing of such individuals who place themselves at its disposal. This obligation extends beyond the period of service itself, to the physical and psychological consequences of that service.

Even when the State demands surrender of these rights by imposing a compulsion for service, the terms of the social contract imply that such compulsion is done only within the democratic framework and is therefore with the assent of the individual, who at all times is party to it.

In no other calling, occupation or profession has the State the power to accept or demand the surrender of these rights. Military service in this fundamental respect is unique, and the obligation this places on the State is inescapable, as it is enduring.

A service person's calling is unique.