

**Committee Secretary
Senate Economics Committee
Department of the Senate
PO Box 6100
Parliament House
CANBERRA ACT 2600**

Dear Sir

Inquiry into the provisions of the Tax Laws Amendment (Simplified Superannuation) Bill 2006

Thank you for the opportunity to make submission to the Committee. I appreciate the opportunity to provide input into the debate.

I commend and applaud the Government's initiative in developing the Tax Laws Amendment (Simplified Superannuation) Bill 2006, implementing the Government's Simplified Superannuation reforms, sweeping away the current raft of complex tax arrangements and restrictions that apply to superannuation and improving the adequacy of retirement incomes and increased incentives, initiatives and assistance for Australians to work and save for retirement.

Many Australians want a higher level of retirement income than they will receive from the age pension and their compulsory superannuation. The Government's reforms build on existing superannuation and taxation legislation and provide further rewards for people who make additional superannuation contributions to improve their standard of living in retirement.

The Government's declared emphasis underlying the introduction of the proposed superannuation plan is equity between the taxed and untaxed superannuation schemes, focussed on two essential objectives. Firstly to ensure equity between taxpayers in relation to the application of the tax laws; and secondly to provide procedural fairness to taxpayers contributing to both taxed and untaxed superannuation schemes.

However, Government initiatives over recent years, the benefits of the proposed superannuation plan and the current Bill, do not provide equity for members of the Australian Defence Force (ADF) military superannuation schemes medically discharged as a result of injury or illness attributable to military service and in receipt of an invalidity pension.

Submission

Initial concerns regarding the inequitable treatment of invalidity pension payments received from the military superannuation schemes under the proposed superannuation plan announced by the Government on 9 May 2006 were forwarded to the Government in the attached submission. (Annex A)

The submission, which I now present for consideration by the Senate Economics Committee, recommends amendment to the Government's proposed superannuation plan and amendment to taxation legislation to enable all future invalidity pension payments for recipients medically discharged from the ADF as a result of disabilities caused or aggravated by military service and in receipt of tax exempt repatriation or compensation benefits to be:

- a. tax exempt from the recipient's date of medical discharge;
- b. tax exempt for recipients over the age of 60; or
- c. tax exempt for severely disabled recipients whose incapacity is determined to be permanent earlier than age 60, from the date of cessation of incapacity classification reviews.

All current recipients of invalidity pension payments, as detailed above, should have equivalent tax exemption status from 1 July 2007 or such other date at which the proposed "Simpler Super" plan comes into effect.

The submission compares the equitable tax exemption provisions for members discharged on medical grounds from the UK Armed Forces and the US Armed Services, where invalidity pension payments are tax exempt; and the provisions of taxation legislation on pension payments from the current Australian military superannuation schemes: (Defence Force Retirement and Death Benefits (DFRDB) and the Military Superannuation Benefits Scheme (MSBS).

In supporting the case for tax exemption the submission also provides analysis of the attached High Court determination on 4 March 1977 (Annex B) that invalidity pension payments for members medically discharged from the ADF be exempt from tax, and the Government's reactive introduction of the Income Tax Amendment Bill 1977 on 21 April 1977, overturning the High Court's judgment.

Despite the compelling evidence demonstrating the vulnerability of members medically discharged from the ADF, the Government's finalised plan announced by The Hon Peter Costello MP, on 5 September 2006, fails to acknowledge their predicament and merely "offers" them the 10% tax offset provided to all members contributing to untaxed superannuation schemes.

The proposed superannuation plan fails to distinguish between "normal" retirement pension payments and "involuntary", medical discharge invalidity pension payments to members in the military superannuation schemes. While the Government initiatives have dramatically improved the awareness of the importance of saving early for retirement, members in receipt of invalidity pension payments from the military superannuation schemes cannot benefit from the Government's initiatives and incentives to improve their retirement. As a result, the living standard of retirees relying on the invalidity pension payment from military superannuation schemes cannot keep pace with those of the general community.

In fact, while the Government has publicly stated its responsibility for caring for the "vulnerable" in our society and has continually emphasized the need for fairness and equity, the proposed superannuation plan is demonstrably unfair in the treatment of members of the ADF

medically discharged and in receipt of invalidity pensions; an obvious wrong that should be remedied.

Unfortunately some recent Government statements have demonstrated a lack of appreciation of the vulnerability of military invalidity pension recipients as demonstrated in the attached Press Release (Annex C) highlighting the Government's excellent superannuation co-contribution scheme for low and middle income workers and the entitlement for employees earning up to \$28,000 to receive a government co-contribution of \$1500. As the Committee will appreciate, no amount of New Year's "super resolutions" can apply to members of the ADF medically discharged as a result of service attributable injuries, who, despite the majority being on incomes well below \$28,000, are unable to undertake gainful employment and benefit from the Government's initiative.

While I appreciate that Government and Treasury officials may be aware of the unique nature of military service and the Government's commitment to providing the most appropriate levels of support to current and former members of the ADF, some Treasury officials have repeatedly failed to acknowledge the basis for submissions seeking more equitable treatment and have recently advised the Department of Defence and other agencies that no amendment will be supported to cater for the inequitable treatment of members medically discharged from the ADF.

In fact, during informal discussions with a Treasury representative on the need for taxation exemption for military invalidity pension recipients the following view was proffered "*... the population of Australia would not support the Government providing tax exemption for a select group of former members of the ADF in receipt of invalidity pensions.*"

Acceptance of this view both denigrates the commitment of Australian servicemen and servicewomen and denies the well documented views the Government and the Australian people have for members of the ADF. It places financial considerations ahead of the moral obligation the Government claims to demonstrate for the wellbeing of members of the ADF.

As Committee members will appreciate, a similar lack of Government goodwill and appreciation toward invalidated ADF members was also particularly evident in the hasty introduction of the Income Tax Assessment Amendment Bill in 1977, when the Government overturned the decision of the High Court and, only 48 days after the unanimous High Court determination, amended the income tax law to arbitrarily ensure that "*...all pensions paid under the superannuation arrangements for members of the Defence Force are liable to tax*".

However, the High Court's deliberations and judgment related solely to invalidity pension payments from military superannuation schemes where recipients also received payment of tax exempt repatriation pensions, not to similar invalidity provisions in other Commonwealth occupational superannuation schemes. Accordingly, the Committee may consider it appropriate to review and reconsider the High Court's 1977 determination and the Income Tax Amendment Bill 1977, when considering the Tax Laws Amendment (Simplified Superannuation) Bill 2006.

Equally, as demonstrated in the attached Australian Taxation Ruling IT 2586, (Annex D), the Committee may consider it anomalous that the Government authorizes tax exemption for Australian residents for military wounds and disability pensions granted by foreign governments

on the basis of the same deliberations that constituted the unanimous decision in the 1977 High Court case, yet refuses to provide tax exemption for Australian servicemen and servicewomen.

Government advisors should appreciate that consideration for tax exemption for members of the ADF medically discharged and in receipt of invalidity pensions should be determined not solely on a financial expediency but also on moral and personal grounds to ensure that individual inequality is recognised and addressed. While I am fully appreciative of the importance of the Government and Treasury running a balanced economy on financial grounds, the Government has continually emphasised its responsibility for effective management and care of vulnerable and disadvantaged Australians.

Financial implications of Taxation Exemption for military superannuation invalidity pensions.

Unfortunately an accurate assessment of the costs associated with the provision of tax exemption for military invalidity pensions cannot be provided in this submission as the Commonwealth Superannuation Administration (ComSuper) the agency providing superannuation services for the military superannuation schemes could not legally provide the actual taxation paid on invalidity pensions and associated reversionary pensions paid to spouses of deceased invalidity pension recipients.

At the 30 June 2005, the total number of invalidity pension recipients in all military superannuation schemes was 5342 recipients for a total cost of \$115 million. Accordingly, while this number has increased slightly, the provision of tax exemption for all military superannuation scheme invalidity pension recipients would be in the vicinity of \$20 million per annum, if the Government introduced taxation exemption for all military scheme invalidity pension recipients. As the Committee will appreciate this is a relatively insignificant amount in the context of the Government's proposed superannuation reforms which have been costed at approximately \$7 billion over the first four years of operation.

However, as stated in the original submission this amount would be significantly reduced if taxation exemption was limited to invalidity pension recipients over age 60 or in receipt of a permanent invalidity classification in recognition of the Government's commitment to rehabilitate medically discharged ADF members back into the workforce within the limitations of their assessed incapacity for civil employment.

The "Face" of the Military Superannuation Scheme Invalidity Pensioner.

As the Committee will appreciate the Government has continually applauded the commitment and dedication of Australia's servicemen and servicewomen and the professionalism of the ADF. All members of the ADF are professionals, competitively selected from the "cream" of Australia's youth, highly trained and qualified, with many possessing potential for extensive advancement both within their chosen military careers or subsequent civilian employment.

Training and operational incidents involving death or disability of servicemen and servicewomen are unavoidable in the context of ADF employment and operational deployment and unfortunately some servicemen and servicewomen are medically discharged from the ADF with permanent, employment terminating disabilities, precluding them from employment not only in the ADF but in many instance all future civilian employment.

These individual medically discharged servicemen and servicewomen are “real” people with “real” families and should not be considered as expedient personnel “casualties”, a statistical “number” or a financial “cost”, but rather as individuals whose chosen military career has been unexpectedly terminated and who deserve additional recognition and support from family, friends and the Government.

Unfortunately the “face” of members of the ADF medically discharged as a result of a service related disability and forced to exist on an invalidity pension is difficult to appreciate. However, it may be no more appropriately personalised than by the attached images and biography of Lieutenant Commander Fred Goodfellow RAN a member of the RAN Fleet Air Arm who was medically discharged as a paraplegic, following a flying accident in 1969. (Annex E)

As the Committee will appreciate, Lieutenant Commander Goodfellow was the RAN Officer responsible for the successful challenge of the entitlement for taxation exemption for military invalidity pensions in the High Court in 1977.

I consider all members of the Senate Economics Committee, Treasury and the Government should spend time to contemplate the images and attempt to appreciate the personal and financial trauma experienced by Lieutenant Commander Goodfellow and his family in his transition from a professional RAN Officer to “a man in a wheelchair” when considering the justification for tax exemption for all military superannuation invalidity pension recipients.

Conclusion

The proposed superannuation plan incorporates nothing to equitably overcome the personal and financial predicament facing members of the military superannuation schemes medically discharged and in receipt of invalidity pension payments.

While the Government is to be commended for its superannuation initiatives, recipients of invalidity pension payments from the military superannuation schemes have not and effectively cannot benefit from the wide range of government incentives and initiatives available to “normal” tax payers in both taxed and untaxed superannuation schemes.

The Government’s introduction of tax exemption into the superannuation agenda warrants recognition of the extenuating circumstances facing members of the ADF forced to retire on invalidity pensions.

Accordingly, urgent consideration should be given by the Committee and the Government to support tax exemption for all recipients of military superannuation invalidity pensions medically

discharged as a result of disabilities caused or aggravated by military service, as commendably introduced by the UK and US Governments.

While appreciative of the time constraints imposed by the Government on the present review, I consider it imperative that the unintended consequences of the legislation on military superannuation scheme invalidity pension recipients be addressed within the present Committee review.

However, the Committee will appreciate that the on-going catch cry for recognition of tax exemption for military invalidity pensioners will deservedly be:

“Remember Lieutenant Commander Goodfellow RAN”.

Yours sincerely

Colin Wade

15 January 2007

Annexes:

- A. Treasury Submission: 23 June 2006.
- B. Judgment of High Court: 4 March 1977.
- C. Government Press Release: Super Resolution: 29 December 2006.
- D. Australian Taxation Ruling IT 2586.
- E. Lieutenant Commander F. Goodfellow RAN.