

Chapter 3

Military Superannuation

Background

3.1 The Superannuation Legislation Amendment Bill 2007 (the bill) amends aspects of the military superannuation schemes administered under the *Defence Force Retirement Benefits Act 1948* (DFRB Act) and the *Defence Force Retirement and Death Benefits Act 1973* (DFRDB Act).

3.2 In 1973, all contributory members covered under the DFRB Act transferred to the superannuation scheme administered under the DFRDB Act. This scheme was closed to all new members on 30 September 1991, due to the implementation of the Military Superannuation Benefits Scheme (MSBS) under the *Military Superannuation and Benefits Act 1991*. ComSuper is the Government agency that administers the Defence Force Retirement and Death Benefits scheme (DFRDB scheme) and the Defence Force Retirement Benefits scheme (DFRB scheme).

3.3 An independent review into the broad aims of military superannuation is taking place. This was announced by the Minister Assisting the Minister for Defence, the Hon. Bruce Billson MP, in February 2007.¹ The review is scheduled to report to the Government in July 2007.²

Pension restoration

3.4 Schedule 4 of the bill contains amendments to allow eligible former spouses, whose former partner contributed to either the DFRB or DFRDB schemes, to apply for restoration of a spouse pension that was previously cancelled on remarriage.³

3.5 The Explanatory Memorandum states that although the restrictions on spouse pensions were removed for military personnel in 1977, some people who remarried before that time could not access these changes.⁴ To reinstate previously cancelled spouse pensions, amendments will be made to the DFRB Act and the DFRDB Act.

1 The Hon. Bruce Billson MP, *Media Release: Review of Military Superannuation*, 27 February 2007, <http://www.minister.defence.gov.au/Billsontpl.cfm?CurrentId=6415> (accessed 9 July 2007).

2 Mr Steven Grzeskowiak, Director General, Department of Defence, *Committee Hansard*, 5 July 2007, p. 25.

3 Schedule 4 of the bill also applies to civilian pensions under the *Superannuation Act 1922* prior to 1976 which is discussed in chapter 2.

4 Explanatory Memorandum, p. 4.

3.6 The bill provides for the restoration of pensions on approval by the DFRDB Authority.⁵ The restored pensions will only be payable upon receipt of a successful application on or after 1 January 2008. Applications may be made before 1 January 2008, however, the restored pension is payable only from 1 January 2008 as specified in the bill.⁶ The Regular Defence Force Welfare Association (RDFWA) stated in its submission that in many cases, beneficiaries may not have had contact with ComSuper for over 30 years.⁷

3.7 Department of Defence (Defence) officials informed the committee that the number of spouse pensions expected to be restored is likely to be small. Furthermore officials stated that Defence does not have records of who may be eligible to apply for pension restoration.⁸

3.8 The committee investigated the issue of how to make eligible widows and widowers aware of their rights to apply for reinstatement of their pension.

3.9 The committee heard evidence from the Department of Finance and Administration (Finance) and Defence about various promotional and awareness raising campaigns that will be developed to try to contact people who may be eligible under Schedule 4 of the bill. Defence officials told the committee of several proposed avenues they will pursue to contact eligible spouses which are detailed in chapter 4 under, 'Informing members of changes to superannuation'.

Reversionary benefits for post-retirement marriages

3.10 The bill amends the DFRDB Act to provide 'reversionary benefits', where a retired pensioner commenced a marital relationship after age 60. The Explanatory Memorandum states:

Currently a spouse's pension under the DFRDB Act scheme is generally not payable if the pensioner, who commences a marital relationship after age 60, dies within 5 years of the relationship commencing.⁹

3.11 To alleviate the current inequity faced by military personnel and their spouses covered by the DFRDB scheme, the bill will amend the DFRDB Act to make it consistent with Australian Government civilian superannuation schemes. Currently

5 The DFRDB Scheme is managed by the fund trustee, the DFRDB Authority. The Chairman of the Authority (the Commissioner for Superannuation) provides administrative support to the Scheme, together with staff from ComSuper. For details on the DFRDB Authority, see: <http://www.dfrdb.gov.au/pages/about/authority.htm>

6 Superannuation Legislation Amendment Bill 2007, Schedule 4, Item 8, p. 17.

7 Regular Defence Force Welfare Association, *Submission 3*, p. 3.

8 Mr Steven Grzeskowiak, Director General, Personnel Policy and Employment Conditions, Department of Defence, *Committee Hansard*, 5 July 2007, p. 18.

9 Explanatory Memorandum, pp 4–5.

these schemes set a time frame of three years of marriage after which a spouse's pension will be paid.¹⁰

3.12 Furthermore, the bill provides for a spouse to receive reversionary benefits on a pro-rata basis if the relationship existed for less than three years before the pensioner's death. A lump sum may be payable if the amount is small.¹¹

3.13 The features of the Schedule 6 amendment will be introduced into the Military Superannuation Benefit Scheme Rules (MSBS Rules) through the MSBS Trust Deed, rather than through the bill itself.¹²

Delayed implementation

3.14 The measures contained in Schedule 6 of the bill were originally announced in the 2006–07 Budget (May 2006).¹³ By contrast these amendments have been adopted in Australian Government civilian superannuation schemes since 2003.¹⁴

3.15 Concerns about the delay in introducing and passing the bill were raised by the RDFWA. Its submission stated that although it 'welcomes this long overdue measure'¹⁵ delays in implementing the bill have already caused a considerable inconvenience for the beneficiaries of this measure:

Most would be looking for a small pension, typically of the order of \$10,000 to \$20,000 pa. Many knew of the May 2006 announcement and that the legislation to implement it had been expected to be introduced in 2006. They would probably have had to consider their future accommodation position at that time and a life pension, no matter how small, would probably be a significant factor.

...in which case they might be justified in taking out a bridging loan in the expectation of eventually receiving the back-dated arrears or, perhaps, selling their family home in the expectation that the legislation would not be retrospective.¹⁶

3.16 The RDFWA informed the committee of anecdotal evidence that some of its members are experiencing hardship due to the delays in passing the Schedule 6 amendment. For example it submitted that it was aware of one surviving spouse who

10 Explanatory Memorandum, p. 24.

11 Explanatory Memorandum, p. 5.

12 Explanatory Memorandum, p. 24.

13 For details of the announced changes in the Budget 2006–07 see: *Budget 2006–07, Budget Paper No. 2*, p. 146. http://www.budget.gov.au/2006-07/bp2/html/bp2_expense-04.htm (accessed 9 July 2007).

14 Explanatory Memorandum, p. 24.

15 Regular Defence Force Welfare Association, *Submission 3*, p. 2.

16 Regular Defence Force Welfare Association, *Submission 3*, p. 2.

has lost an entitlement to a pension because of the delays thus far. During the hearing, the RDFWA elaborated on these circumstances:

Her husband had died in August 2006 after just over 37 months of marriage...The widow had gone to the delegate of the Defence Force Retirement and Death Benefits Act in Victoria, who had rejected her claim because the legislation had not been amended.¹⁷

3.17 The RDFWA submitted that there will probably be several more spouses who will be in the same situation before the Schedule 6 amendment is implemented, and who will therefore not be entitled to a pension.¹⁸

3.18 Defence officials explained the circumstances behind the delay in introducing the Schedule 6 amendment:

At that time [2003] in the military scheme there was no such pressure [as there was on the civilian side] and the view was taken that we would have a look at the options. The Minister for Defence, or possibly the ministers assisting—and I am not sure which at the time—asked in 2004 for options to be canvassed in this regard. That was done and that culminated in a bid in the development of the 2005 budgetary process. The bid was unsuccessful in 2005. It was resubmitted in the context of the 2006 budget and that bid was successful. It was announced in the May budget in 2006 and is now proposed as part of this legislative amendment.¹⁹

3.19 The RDFWA also drew the committee's attention to another foreseeable delay in the passage of the bill. If the bill does not receive Royal Assent before the calling of an election later this year, then the delay may be stretched beyond the next 12 months.²⁰

3.20 Notwithstanding the possibility of a delay caused by the calling of an election, the RDFWA stated that it also did not accept the rationale behind the commencement provisions for the regulations to implement Schedule 6 of the bill:

...the commencement provisions in Section 2 [allow] up to six months to draft the regulations. Given that the new regulations should mirror the regulations for the existing public service scheme, a competent legislative drafter should be able to produce them for the Executive Council in less than a day. The regulations should, therefore, be ready if Schedule 6 came into force 28 days after Royal Assent.²¹

17 Mr Richard Griffiths, National Secretary, Regular Defence Force Welfare Association, *Committee Hansard*, 5 July 2007, p. 14.

18 Regular Defence Force Welfare Association, *Submission 3*, p. 2.

19 Mr Steven Grzeskowiak, Director General, Personnel Policy and Employment Conditions, Defence, *Committee Hansard*, 5 July 2007, p. 19.

20 Regular Defence Force Welfare Association, *Submission 3*, p. 2.

21 Regular Defence Force Welfare Association, *Submission 3*, p. 2.

3.21 The committee considered two possible options which would largely remedy the delayed implementation of this measure: Act of Grace payments; and retrospectivity. These options are discussed in Chapter 4 under 'Reversionary benefits for post-retirement marriages'.

Family law superannuation splitting

3.22 Item 5 of Schedule 6 amends the DFRDB Act to remove an anomaly that occurred when certain family law amendments were originally applied to the Act. Currently, family law orders do not apply to second, subsequent, or later pensions and lump sums. The new provision will provide for family law orders to apply to a second or subsequent (or later) pension and lump sums that become payable to be reduced to the amount calculated under the orders.²²

3.23 The committee did not receive any specific evidence about the family law superannuation splitting measures.

3.24 The committee supports the family law superannuation splitting measure, as outlined in the bill.

22 Explanatory Memorandum, p. 24.

