

Chapter 4

Conclusions and recommendations

4.1 During its inquiry the committee reviewed the provisions of the Superannuation Legislation Amendment Bill 2007 (the bill) and consulted with a number of organisations. Throughout the inquiry process, three major issues emerged. These issues, discussed in chapters 2 and 3, are listed below:

- Informing members of changes to superannuation;
- Pension restoration; and
- Reversionary benefits for post-retirement marriages.

4.2 In this chapter the committee makes certain observations and recommendations relating to these issues.

Informing members of changes to superannuation

4.3 A number of organisations highlighted the need to inform people of the proposed changes, in particular those changes making zero per cent contributions to the Commonwealth Superannuation Scheme (CSS) and the Public Sector Superannuation Scheme (PSS), leaving the PSS, and the restoration of pensions.

Changes relating to the PSS and CSS

4.4 The Superannuated Commonwealth Officers' Association (SCOA) raised a number of concerns relating to informing CSS and PSS members of the amendments proposed in Schedules 1 and 2 of the bill. In particular, SCOA highlighted the potential financial impact on members upon changing funds or choosing to make zero per cent contributions:

Opting out of contributing to the PSS and the CSS is in line with changes in superannuation to allow further choice. We have no difficulty with that and support the legislation in this regard. However, there are slings and arrows associated with this. Opting out of the PSS and CSS carries some penalty and potential losses. These need to be made clear to anybody at the time making a decision. If that is not made perfectly clear, then the person who has opted out may come back in years to come and sue ComSuper.¹

4.5 SCOA argued the need for the Government to instruct ARIA and ComSuper to provide members with adequate information on the impacts on future benefit entitlements prior to making a decision to make a zero per cent contribution or leave the PSS.²

1 Mr Hazell, Federal President, Superannuated Commonwealth Officers' Association, *Committee Hansard*, 5 July 2007, p. 2.

2 Superannuated Commonwealth Officers' Association, *Submission 1*, pp 6 and 9.

4.6 The Community and Public Sector Union (CPSU) extended this argument by stating that employees should be granted financial advice, funded by their employer, before being able to cease making contributions or opt to change funds.³

4.7 SCOA outlined to the committee an example of where employee-funded independent financial advice had been offered. SCOA told the committee that the Victorian Kennett government gave people the opportunity to cash their benefits into lump-sum super or a pension. In this instance the Victorian Government contracted financial planners to provide free advice to employees, at a cost of \$250 per person to the government.⁴

4.8 Nonetheless, Finance reported that there was no intention to grant employer funded independent financial advice for members:

The government has considered the need to inform members of their choices. This will be provided by the ARIA board, the trustees of the superannuation schemes. As for independent financial advice that a member may choose to accept, the government and previous governments have not provided that in the past. In 1990, with the offer to CSS members to transfer to the PSS, the then government did not provide individual financial advice for those members. It is [the] general community norm that independent financial advice be paid for by a member...The government plans on ensuring that there is a broad disclosure provided to members to assist in making these decisions.⁵

4.9 Finance told the committee that ARIA will be informing all members of the changes through its newsletters. The advice from ARIA would outline the current circumstances, the proposed changes, the ability a member has to seek independent financial advice, and would alert members that there is no time limit to make a decision (unlike the changes to the CSS in 1990).⁶

4.10 Finance outlined that neither ARIA nor ComSuper have a licence to provide independent financial advice. Therefore, ARIA is limited to providing general advice to its members. However, the committee heard that members could still contact ComSuper to establish their current benefit, what it will be in the future, and how that benefit would change if they minimised their contribution or chose to leave the

3 Community and Public Sector Union, *Submission 4*, p. 3.

4 Mr Garraway, President, Superannuated Commonwealth Officers' Association, *Committee Hansard*, pp 4–5.

5 Ms Campbell, Deputy Secretary, Department of Finance and Administration, *Committee Hansard*, 5 July 2007, p. 17.

6 Ms Campbell, Deputy Secretary, Department of Finance and Administration, *Committee Hansard*, 5 July 2007, p. 17.

scheme. Furthermore ARIA has the ability to refer members to independent financial advisers.⁷

4.11 The committee notes that there is a complex calculation as to the loss of benefit in choosing to exit the PSS or reduce contributions into either the CSS or PSS, and these calculations need to be done on an individual basis. The committee recognises that ARIA and ComSuper are limited to providing only 'general' advice to members, and that they can not provide advice on the benefits of a non-Commonwealth scheme that a member may be considering as an option.

4.12 However, the committee highlights the need to adequately inform members of their new entitlements, as well as certain disadvantages in taking up the entitlement to make a zero per cent contribution, or leave the PSS. The committee appreciates that ARIA and ComSuper will be providing general advice to all members. The committee recommends this advice be extended to invite members to contact ComSuper for further information and estimates of their future individual benefits before deciding on either of these proposed options.

Recommendation 1

4.13 The committee recommends that the Government instruct ARIA and ComSuper to advise members of the PSS and CSS of changes to their entitlements, and the general benefits and disadvantages associated with reducing member contributions and leaving the PSS. This advice should include an invitation for members to contact ComSuper to discuss their current and future individual benefits within the PSS or CSS before choosing to reduce their contributions or leave the PSS.

Changes relating to pension restoration

4.14 The CPSU, SCOA and the Regular Defence Force Welfare Association (RDFWA) all highlighted the difficulties in locating and alerting remarried pensioners to their restored entitlement as specified in Schedule 4 of the bill. Finance informed the committee that they have no record of names or contact details of the beneficiaries. Similarly, the Department of Defence (Defence) has no records.⁸

4.15 Further, RDFWA noted that some pensioners may not necessarily be a member of a Commonwealth scheme, or have had contact with one for over 30 years.⁹ SCOA stressed the importance of taking certain measures to inform these pensioners of the restored entitlement:

7 Ms Campbell, Deputy Secretary and Mr Sotiropoulos, Assistant Secretary, Department of Finance and Administration, *Committee Hansard*, 5 July 2007, pp 21–22.

8 See paragraph 2.23 and 3.7.

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

...it is going to be very difficult to find these people. However, I think it is incumbent upon the government and the superannuation funds to make a supreme effort and to be seen to make the effort in this case. Otherwise it will be seen [as] nothing more than an illusion. I cannot stress strongly enough that this needs to be done.¹⁰

4.16 SCOA argued that ARIA and ComSuper should encourage members through their newsletters to inform anyone who could be affected by the changes to contact ComSuper.¹¹ The CPSU suggested that information also be distributed through organisations such as Centrelink, the Combined Pensioners Association and SCOA.¹²

4.17 SCOA and RDFWA indicated that they would endeavour to inform members through their newsletters, and appeal to their members to inform friends and family members who may be entitled to the restored pension.¹³ RDFWA indicated, however, that this measure would be unlikely to locate the total number of beneficiaries.¹⁴

4.18 Finance officials informed the committee that they are already liaising with SCOA on a communication strategy to locate the beneficiaries. In addition, ARIA will be informing all members through its newsletters, and also working with Centrelink and the Department of Families, Community Services and Indigenous Affairs (FACSIA) to incorporate messages within their age pensioner newsletters. The newsletters will encourage recipients to contact people they know who may be eligible for the restored pension. This will be done on several occasions on both a national and international level of distribution.¹⁵

4.19 In a similar approach to Finance, officials from Defence informed the committee of how it intends to inform widows and widowers who will be affected under Schedule 4:

We have a Military Superannuation Communication Committee, which includes membership, for example, from ComSuper and the various boards of the superannuation schemes. We will be working through that committee

10 Mr Hazell, Federal President, Superannuated Commonwealth Officers' Association, *Committee Hansard*, 5 July 2007, p. 2.

11 Superannuated Commonwealth Officers' Association, *Submission 1*, p. 9.

12 Community and Public Sector Union, *Submission 4*, p. 3.

13 Mr Hazell, Federal President, Superannuated Commonwealth Officers' Association, *Committee Hansard*, 5 July 2007, p. 6; and Mr Griffiths, National Secretary, Regular Defence Force Welfare Association, *Committee Hansard*, 5 July 2007, p. 16.

14 Mr Griffiths, National Secretary, Regular Defence Force Welfare Association, *Committee Hansard*, 5 July 2007, p. 16.

15 Mr Sotiropoulos, Assistant Secretary, Department of Finance and Administration, *Committee Hansard*, 5 July 2007, p. 18.

to develop a strategy, clearly using similar sorts of things that you have heard about from the civilian schemes.¹⁶

4.20 In addition, Defence has indicated it will liaise with various ex-service networks and organisations to utilise their newsletter circulations.¹⁷

4.21 The committee appreciates the efforts that Finance has already taken to develop a strategy to effectively provide information to these pensioners. Nonetheless, the committee would like to echo the concerns and arguments of the organisations it consulted with, of the importance of making a thorough effort to utilise all avenues of communication with these pensioners to inform them of their entitlements.

4.22 On the other hand, the committee has some concerns in relation to the preparedness of Defence to inform eligible recipients of the restored pensions once the changes take effect. From the evidence it appears that Defence is yet to develop a communication strategy or discuss with the various ex-service military organisations the possibility of utilising their networks.

Recommendation 2

4.23 The committee recommends that the Government instruct ARIA, the DFRDB Authority, and ComSuper, to use their newsletter circulations to inform members of the restoration of pensions that had previously been cancelled upon remarriage, and that they liaise with SCOA, RDFWA, Centrelink, FACSIA and the Combined Pensioners Association and other relevant organisations to utilise their newsletters for the same purpose.

4.24 The committee sees benefit in using the sector specific newsletters to notify members that the pension has been restored for both the civilian and military schemes. For example, although ARIA may not usually discuss the military schemes with CSS and PSS members, it would be beneficial in this unique situation to notify members that changes have also been made to the DFRDB Act so they can contact friends or relatives who may be affected by the changes.

4.25 The committee also sees benefit in Finance and Defence exploring further avenues of locating the beneficiaries through consultation with Medicare, the Australian Taxation Office and the Australian Electoral Commission.

Pension restoration

4.26 The evidence presented to the committee strongly suggests that considerable time will be required to locate the pensioners who had their pensions cancelled upon remarriage. Given the expected delays, SCOA argues that all successful applicants

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

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

should be reinstated their pension from 1 January 2008 regardless of when their application is lodged.¹⁸

4.27 Finance noted that a widow or widower has had provision to apply for restoration of pension under the grounds of 'necessitous circumstances' as set out in the provisions of the *Superannuation Act 1922* (1922 Act), the *Defence Force Retirement Benefits Act 1948* (DFRB Act) and the *Defence Force Retirement and Death Benefits Act 1973* (DFRDB Act).¹⁹

4.28 'Necessitous circumstances' however are somewhat limited in scope and would only cover a small proportion of those who will be eligible once Schedule 4 is enacted.

4.29 The committee acknowledges the significant difficulties in locating the beneficiaries of the restored pension, and the potential for this to take a considerable amount of time. The committee notes SCOA's estimation that only a few thousand people would be eligible for the restored pension. Of this number, Finance expects there to be a small number who will become aware of the restored entitlement and apply.²⁰ Therefore the committee concludes that the cost of granting all pensions from 1 January 2008 would have a minimal budgetary impact.

4.30 The committee can see no reason to disadvantage pensioners by further delaying the restoration of their pension based on the date they became aware of their entitlement and make application to the Commissioner for Superannuation or the Defence Force Retirement and Death Benefit Authority (DFRDB Authority).

Recommendation 3

4.31 The committee recommends that Schedule 4 of the bill be amended to ensure that all successful applicants are restored their pension from 1 January 2008, regardless of the date their application is lodged with the Commissioner for Superannuation or the DFRDB Authority.²¹

Reversionary benefits for post-retirement marriages

4.32 The committee notes there has been a delay in implementing the changes to reversionary spouse benefits announced in the 2006–07 Federal Budget, as discussed in chapter 3. During the hearings the committee considered two possible approaches which would largely remedy the impact of the delay: Act of Grace payments; and retrospectivity, each of which is discussed below.

18 Superannuated Commonwealth Officers' Association, *Submission 1*, p. 9.

19 Superannuation Legislation Amendment Bill 2007, Explanatory Memorandum, p. 4.

20 Ms Campbell, Deputy Secretary, Department of Finance and Administration, *Committee Hansard*, 5 July 2007, p. 18.

21 See appendix 3 for proposed amendments to the bill relating to recommendation 3.

Act of Grace Payments

4.33 The RDFWA's submission referred to written correspondence from the Minister for Veteran's Affairs, the Hon. Bruce Billson MP. The Minister stated in a letter to the RDFWA that Act of Grace payments may be considered for people who lost their spouse pensions between the 2006–07 Budget announcement and the commencement of Schedule 6.²²

4.34 The scope and application of Act of Grace payments are defined under the *Financial Management and Accountability Act 1997*. Section 33 stipulates that the Finance Minister and his or her delegates may approve Act of Grace payments. These discretionary payments may be one-off or periodical payments to individuals in special circumstances, of an amount specified in the authorisation by the Minister. If the granting of a payment is over \$100 000 then the Minister must consider a report by an Advisory Committee.²³

4.35 The committee notes that because Act of Grace payments are discretionary in nature, the outcome of an application is inherently uncertain. This is clearly stated in the guidance provided by Finance on Act of Grace payments, which are said to be 'approved at the discretion of the decision maker.'²⁴

4.36 Finally, Mr David Jamison, National President of the RDFWA, emphasised to the committee that the use of Act of Grace payments would create the wrong impression:

We think it sends the wrong message to the ex-service community that such a process has to be gone through on something that is seen to be an act of fairness and equity on behalf of the government and its treatment of the ex-service community.²⁵

Retrospectivity

4.37 The RDFWA canvassed the option of amending the bill to make Schedule 6 retrospective in preference to Act of Grace payments. The suggested dates for retrospective application were either 1 July 2003, when the entitlement was granted to

22 The letter received by the Regular Defence Force Welfare Association from the Minister for Veteran's Affairs was tabled during the 5 July public hearing (see http://www.aph.gov.au/senate/committee/fapa_ctte/super_07/index.htm (accessed 16 July 2007)).

23 *Financial Management and Accountability Act 1997*, Section 33 (1) See: [http://www.comlaw.gov.au/ComLaw/Legislation/ActCompilation1.nsf/0/C093254E35BA6D0ECA2572E6000BECA2/\\$file/FinanMgmtAccount1997WD02.pdf](http://www.comlaw.gov.au/ComLaw/Legislation/ActCompilation1.nsf/0/C093254E35BA6D0ECA2572E6000BECA2/$file/FinanMgmtAccount1997WD02.pdf) (accessed 10 July 2007).

24 Department of Finance and Administration, *Finance Circular No. 2006/05 – Discretionary Compensation Mechanisms*, p. 2, see http://www.finance.gov.au/finframework/docs/FC_2006.05.pdf (accessed 13 July 2007).

25 Mr David Jamison, National President, Regular Defence Force Welfare Association, *Committee Hansard*, 5 July 2007, p. 15.

civilian superannuants, or from the announcement of the measure in the 2006–07 Budget (May 2006).²⁶

4.38 During the course of its inquiry the committee heard evidence from the RDFWA that Act of Grace payments are complex and hold various uncertainties for the applicants. By contrast, if the provisions were made retrospective, the recipients would be assured of their entitlement.

4.39 The committee discussed with Defence officials, why it was decided to use Act of Grace payments, rather than applying Schedule 6 retrospectively. Defence officials informed the committee that:

Ultimately the Office of Parliamentary Counsel advised that the legislation should be prospective. As part of that advice it was noted that there were alternative means of filling the gap, primarily through the use of an act of grace payment.²⁷

4.40 The committee supports the traditional approach that, in general, retrospective legislation should be avoided as it can have a detrimental effect on citizens, whereby they have acted under the understanding that their actions were lawful, only to be penalised after they have committed the act. However, the retrospective application of Schedule 6 would not cause a detrimental effect, rather it would be beneficial. It would bring the entitlements of military scheme recipients in line with their civilian counterparts.

4.41 It is common for tax bills to apply from the date of announcement, usually through a press release. This form of retrospectivity is accepted by the Scrutiny of Bills Committee. Applying retrospectivity stops those likely to be negatively affected from rearranging their affairs prior to the bill being passed. This acts as a safeguard to government revenue or policy. Further, for those beneficially affected, retrospectivity provides an assurance that the benefit will be received, despite any delays in the passage of the bill.

Financial implications

4.42 During the public hearing, in order to understand the financial implications of a change in this area, the committee sought to clarify how many widows and widowers may be affected by the delay to implement Schedule 6 of the bill. Mr Richard Griffiths, National Secretary of the RDFWA, estimated that there would be approximately 10 people per year, at a cost of between \$10 000 and \$20 000 per annum, per person.²⁸ With an approximate annual cost of \$150 000, Mr Griffiths

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

27 Mr Grzeskowiak, Director General, Personnel Policy and Employment Conditions, Department of Defence, *Committee Hansard*, 5 July 2007, p. 15.

28 Mr Richard Griffiths, National Secretary, Regular Defence Force Welfare Association, *Committee Hansard*, 5 July 2007, p. 15, and *Budget measures 2006–07, Budget Paper No. 2*, p. 146.

summed up by saying that 'it is not very many people and it is not very much money'.²⁹

4.43 In any event, the Minister for Veteran's Affairs' letter clearly indicates that the Government is open to covering the small additional cost associated with recompensing recipients for the delayed implementation of Schedule 6.

4.44 The committee notes that while the cost to the Commonwealth is relatively minor, the financial impact on those pensioners affected could be significant.

4.45 For the reasons outlined above the committee believes that the commencement of Schedule 6 should have retrospective effect. The majority of committee members support the view that the relevant date should be when the Government committed to the measure, that is when it was announced in the 2006–07 Budget. However, Australian Labor Party members believe that the schedule should be backdated to 1 July 2003 when the entitlement was granted to civilian superannuants.

Recommendation 4

4.46 The committee recommends that the commencement date of Schedule 6 in the bill be backdated to 9 May 2006.³⁰

Recommendation 5

4.47 Subject to the recommendations in this report, the committee recommends that the Senate pass the bill.

Senator Mitch Fifield

Chair

29 Mr Richard Griffiths, National Secretary, Regular Defence Force Welfare Association, *Committee Hansard*, 5 July 2007, p. 15.

30 See appendix 4 for a proposed amendment to the bill relating to recommendation 4.

