



DEFENCE FORCE WELFARE ASSOCIATION
Patron-in-Chief: His Excellency Mr Michael Bryce AM AE

National Office
PO Box 4166
KINGSTON ACT 2604
Email: national@dfwa.org.au

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The Hon Stephen Smith MP
Minister for Defence
PO Box 6022
Parliament House
CANBERRA ACT 2600

Dear Minister,

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 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

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

that (as outlined in the MSBS book) “the \$1 in 2011 will be equivalent to \$1 in 2028”. We are 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, the demands of 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.