



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

**NATIONAL OFFICE**

PO Box 4166  
KINGSTON ACT 2604  
T: 02 6265 9530 F: 02 6265 9776  
E: national@dfwa.org.au W: www.dfwa.org.au

14 October 2010

Senator the Hon Penny Wong  
Minister for Finance and Deregulation  
Parliament House  
CANBERRA ACT 2600

RE: Governance of Australian Government Superannuation Schemes Bill 2010

Dear Senator,

I, on behalf of the "Alliance of Defence Service Organisations" (DFWA, Naval Association of Australia, RAAF Association, Royal Australian Regiment Association & Australian Special Air Service Association as well as AAAA, DRA, DFA VVFA<sup>1</sup> write to you about the above bill which we understand to be on the agenda for passage through the Parliament in its next session. We continue to have serious concerns about this bill in its present form which was originally introduced without consultation with any organisation representing the interests of the serving or former members of the ADF. Our initial opposition prompted discussions with the Departments of Finance & Deregulation and Defence and also the office of your predecessor Mr Tanner. As a result of these discussions we significantly altered our position from total opposition to qualified support as long as there were sufficient safeguards written in to the bills to acknowledge and give force to the unique nature of service in the ADF. We subsequently advised the Minister's office, the Departments of Defence and Finance as well as the leaders of the ESOs<sup>2</sup> who are members of the Round Table consultative group of our conditional support of the outcome of these discussions expecting the resulting amendments to the legislation to fully satisfy our concerns. Unfortunately the amendments produced by the DOFD did not.

A summary of our concerns and position is outlined below.

A. We support the Government's objectives in proposing these bills as described to us. These being:

1. **Gain better returns on investments** by having a larger pool of funds and the greater ability of a larger fund to access investment expertise. We note the data provided in the DOFD submission to the Senate Committee hearing, the hand out (Evidence of Savings from Trustee Mergers) and in the examples of potential improvements in net investment return provided at the ESO Round Table meeting. However in the APRA Superannuation Fund-Level Profiles and Financial Performance December 2008 (issued 20 August 2009) we also note the following reported returns by the CSS and MSBS funds.

Year	CSS	MSBS
2004	13.9%	15.7%
2005	13.7%	11.8%
2006	13.7%	15.9%
2007	16.4%	16.1%
2008	- 1.6%	- 2.7%

<sup>1</sup> Australian Army Apprentice Association; Defence Reserves Association; Defence Families Association; Vietnam Veterans Federation of Australia.

<sup>2</sup> Ex-Service Organisations

In discussions, the statement was made that over a longer period of time that the CSS outperformed the MSBS fund by about 1%. We have taken that at face value but in the absence of more definitive data from DOFD we could surmise from the information in the APRA report, that although the DOFD flag the probability of better investment returns, much will rely on the expertise of the advisers and the quality of investment decisions by the Board.

2. **Cost savings.** Again we note the examples of savings provided in the hand out (Evidence of Savings from Trustee Mergers) provided to the ESO Round Table members.
  3. **Efficiency in administering the schemes.** We support any effort to achieve greater levels of efficiency in administering the schemes in question believing these should result in better quality service to all scheme members.
- B. **We believe it is an absolute requirement to specifically recognise the “uniqueness of service in the ADF” in this legislation.**

This should be reflected also in the name of the new single trustee proposed in the SUPERANNUATION SCHEMES BILL 2010 which should be expanded to the “**Commonwealth Military and Civilian Superannuation Corporation**” (CSC). DFWA further believes that in order to protect the interests of members of the ADF superannuation schemes and to properly inform the Board of its responsibilities, the following words should be included in the legislation:

*The Board of Trustees shall in its deliberations and decisions acknowledge, recognise, consider and report upon the impacts of ‘The Unique Nature of Military Service’. These are encapsulated within but not restricted to, the characteristics detailed at Annex \*\*\*\*. (Alternatively, but not the preferred option, the annex could be in the Explanatory Memorandum)*

**Annex \*\*\*\*: The Unique Nature Of Military Service**

*Military service is unique because it is servicemen and women, and only servicemen and women, who, when lawfully directed by the Australian nation through Government, are required to give up their human rights in the nation’s service even to the point of sacrificing their ultimate human right; their life. No member of the ADF enjoys the inalienable human right to life as defined in the Universal Declaration of Human Rights as, among others, life, liberty and the security of the person (Article 3) which is at the heart of Australia’s democracy. That is why military service is unique. Within this context, the following characteristics of military service which, when taken collectively, distinguish it sharply from employment in broader society.*

1. *The main characteristics of military service are:*
  - *liability for combat operations;*
  - *a military discipline code;*
  - *a regimented way of life;*
  - *long and irregular working hours;*
  - *statutory retiring ages well below the community norms;*
  - *high standards of physical fitness;*
  - *frequent relocation; and*
  - *separation from family.*
2. *The principal distinguishing feature of military service is the liability for combat operations. This liability is both compulsory and continuous and includes the very real possibility of being exposed to the risk of physical or mental invalidity or death. No other form of employment has a similar liability. Other special features flow from this liability.*

3. *ADF personnel are subject to both the civil legal code and a separate Defence Force disciplinary code. The disciplinary code supports the command structures necessary for effective conduct of combat operations and training. The Defence Force disciplinary code imposes restrictions on personal conduct; it demands different standards from those generally acceptable within the community; and it impinges on the individual's family life and leisure time.*
4. *The discipline code also impacts on the ADF collectively. For example, ADF members are precluded from engaging in industrial action. The creation of the Defence Force Remuneration Tribunal to determine pay and allowances for the ADF is recognition of the ADF's unusual industrial situation.*
5. *Another industrial aspect of ADF service is the liability to work long and irregular hours. Operational tasks, assistance to the civil community and training activities cannot be tied to set hours. The requirement to work extra hours is unpredictable and often arises at short notice. More importantly, ADF members are obliged to work whatever hours are demanded to complete an assigned task. No overtime is payable but some allowances, particularly Service Allowance, recognise the disability and provide some compensation.*
6. *Allied to the long working hours is separation from families. The periods of separation can be considerable, particularly for members in operational units. Separation causes stress to both members and families.*
7. *Another major cause of stress is the necessity to post members at irregular intervals to meet ADF manning requirements. Not only do postings involve geographical relocations, sometimes to relatively unattractive places, but also employment in positions demanding acquisition and utilisation of new or different skills. The limited capacity to laterally recruit exacerbates the posting frequency and employment in unfamiliar environments. Family life in particular can be adversely affected. Spouse employment opportunities and the quality and continuity of children's education can be adversely affected.*
8. *Operational tasks and training for combat are demanding activities. Technology in many cases reduces physical effort but ADF service requires that members maintain a high standard of physical and mental fitness. The consequence of failure to satisfy the ADF standard is severe. A member is discharged from military service where any medical condition precludes effective ADF employment.*
9. *The demands of ADF service also lead to statutory retiring ages which are considerably lower than the community norm. Most ADF personnel can serve to age 60. However, most ADF members resign prior to attaining statutory retirement age as vocational options are perceived to diminish with age. This suits current ADF personnel management practices.*
10. *Of the major characteristics of military service the liability for combat and the military discipline code are, of course, peculiar to the Defence Force. Other characteristics of military service are derived from or related to these characteristics. Some of these characteristics do also occur in other occupations but only individually. It is the cumulative impact of all the features which constitutes the special nature of the ADF and which distinguishes it from other occupations.*
11. *The special nature of military service makes it necessary for the ADF to design conditions of service that will continue to attract and retain personnel despite the hazards and hardships of military life. There is a need to compensate members of the ADF for the unique nature of military service through their superannuation, invalidity and death benefits as with their other conditions of service*
12. *The unique nature of military service poses challenges for the ADF when recruiting and retaining personnel beyond those encountered by other employers in the economy. The ADF has structured its conditions of service accordingly and those conditions, including the retirement, invalidity and death benefits, are generous relative to normal workforce standards.*
13. *It is important to maintain that relative distinction so that people considering joining the ADF and those already serving can recognise the adequacy of their conditions, given the additional hardships and risks inherent in ADF service. A diminution in the relative value of these benefits could have adverse effects on the ADF's ability to recruit and retain the personnel it needs to fulfil its functions. This could affect the viability of the ADF workforce as a whole which would have significant implications for the Government's ability to maintain its national security policies.*

- C. **Establishment of the Defence Force Case Assessment Committee.** This body is at the heart of ensuring that ADF specific issues flowing from the uniqueness of service are properly considered. In the present draft bill the CSC may rather than must establish a Defence Force Case Assessment Committee. We believe the establishment of this body needs to be legislated for. In addition we believe the importance of this “committee” should be reflected in a more appropriate title such as the “**Defence Force Case Assessment Authority**”. Presently it is proposed that the Committee comprise:
1. a person nominated, in writing, by the Chief of the Air Force; and
  2. a person nominated, in writing, by the Chief of the Army; and
  3. a person nominated, in writing, by the Chief of the Navy; and
  4. such other persons as CSC determines.
- We believe that the number of “other such persons as CSC determines” should be confined to a maximum of two.
- D. **Appointment of employer directors to the CSC Board.** As the Bill now stands, it provides for the Finance Minister to choose the 5 employer directors to represent the employer-sponsor of the relevant civilian and military superannuation schemes, being the Commonwealth. In selecting suitable candidates to act as employer directors, it is intended that the Finance Minister would consult with Ministers in the Defence portfolio. We believe the consultation aspect needs to be strengthened to **require the Finance Minister to consult** with Ministers in the Defence portfolio in choosing individuals for these appointments.
- E. **CDF Appointed members of the CSC Board.** Under clause 10 (4) the President of the Australian Council of Trade Unions is required to consult relevant organisations, as defined by clause 3, before making a nomination. The CDF has no such obligation under the present proposal. This is a small manifestation of the unique nature of ADF service but does not have to preclude appropriate consultative arrangements. **We believe there needs to be greater transparency in the selection of CDF appointees** and this could be achieved by either requiring consultation with relevant Ex-Service Organisations which have a large number of their members who are members of the DFRDB or MSBS and whose principle purpose is in relation to the interests of members in matters concerning their conditions of service and also of protecting beneficiaries of the military superannuation schemes in matters concerning their entitlements as beneficiaries. Examples of such organisations could be the DFWA, NAA, RARA and RAAFA. Alternatively if that were felt to be administratively difficult to manage efficiently, the CDF could be required to advise all DFRDB and MSBS members of his intention to make an appointment and provide details of the qualifications of his nominees.

When we finally saw the amended bills the day before they were introduced into parliament, we discovered they simply do not fully meet our concerns and as they stand, do not include the safeguards we believe are necessary for the long term benefit of serving and retired members of the military superannuation schemes.

We were pleased to see some recognition of the points outlined above (D & E) although we remain disappointed that the main message of specifically recognising the “uniqueness of service in the ADF” in this legislation has been brushed over and disregarded in any meaningful sense.

Proposed amendments 4 & 5 ensure quorum requirement includes at least one CDF nominee director when a matter before the Board relates specifically to the interests of military members and ensure decisions taken by the Board must include at least one CDF nominee director when the decision relates specifically to the interests of military members. These are a partial recognition that a “military” voice is needed in discussions on matters before the Board that relate specifically to the interests of military members but we note that only one of the CDF nominees at the moment has a military background and in any case the weight of numbers is against such a voice wielding much of an influence.

In addition the points we made regarding the importance of the “Defence Force Case Assessment Committee” have been largely ignored. The requirement for its chairman to be a board member appointed by the CDF is

welcomed although the leaving the formation of this body to the discretion of the CSC Board by and large negates this positive move.

Unfortunately for our part, despite moving a long way from our original position of total opposition to the amalgamation to try to accommodate the Government's stated objectives, the bottom line safeguards needed to ensure no gradual erosion (or erosion by stealth) of the military specific nature of our schemes, their operation and administration are not included in the proposed amendments. We therefore remain opposed to passage of these bills as they now stand.

The Association would welcome your consideration of these matters, and would also welcome the opportunity to meet with you to discuss this issue prior to the reintroduction of these bills.

Yours sincerely,

A handwritten signature in black ink that reads "David Jamison". The signature is written in a cursive style with a large, prominent 'J'.

David K Jamison. AM  
National President