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Administration
Legislation Committee

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42nd Parliament

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Governance of Australian Government Superannuation Schemes Bill 2010, the ComSuper Bill 2010 and the Superannuation Legislation (Consequential Amendments and Transitional Provisions) Bill 2010

THE INQUIRY

1.1 On 24 February 2010, the Senate, on the recommendation of the Selection of Bills Committee (Report No 2 of 2010) referred the Governance of Australian Government Superannuation Schemes Bill 2010, the ComSuper Bill 2010 and the Superannuation Legislation (Consequential Amendments and Transitional Provisions) Bill 2010 for inquiry and report by 15 March 2010. The reasons for the referral were:

To determine whether it is necessary to retain a separate board to administer the military superannuation schemes and whether these schemes differ markedly from other Commonwealth Government administered schemes.

1.2 The Committee received 197 public submissions and three confidential submissions, as well as 188 form letters, relating to the Bills and these are listed at Appendix 1. The Committee considered the Bills at a public hearing in Canberra on 11 March 2010. Details of the public hearing are referred to in Appendix 2. The submissions and Hansard transcript of evidence may be accessed through the Committee's website at http://www.aph.gov.au/senate/committee/fapa_ctte/index.htm.

THE BILLS

1.3 In October 2008, the Government announced plans to merge the boards of Australian Reward Investment Alliance (ARIA), the Military Superannuation and Benefits Scheme (MSBS) and the Defence Force Retirement and Death Benefits Scheme (DFRDB) to form a single trustee board from 1 July 2010. The Hon Lindsay Tanner MP, Minister for Finance and Deregulation, in announcing further reforms to the administration of Australian Government superannuation schemes, stated:

Consolidation will bring more than 650,000 members and pensioners under a single trustee board, establish a greater pool of assets for investment purposes and apply best practice management approaches across all schemes.

The introduction of these changes reflects the ongoing work within the Government to review and where necessary, reform its own business operations, internal governance and structures just like anybody else.

The Rudd Government will continue to work on reforming the Australian Government superannuation schemes to ensure that they are best placed to

deliver more sustainable and cost-effective superannuation services in the best interests of their members and ultimately, better value to the taxpayer.¹

Governance of Australian Government Superannuation Schemes Bill 2010

1.4 This Bill establishes a single trustee body from 1 July 2010 to be responsible for most Commonwealth Government superannuation schemes. The new entity will be known as the Commonwealth Superannuation Corporation (CSC).

1.5 The CSC will be responsible for the following schemes:

- the scheme established under the *Superannuation Act 1922* (the 1922 scheme);
- the Commonwealth Superannuation Scheme (CSS);
- the Public Sector Superannuation Scheme (PSS);
- the Public Sector Superannuation Accumulation Scheme (PSSAP);
- the Military Superannuation and Benefits Scheme (MSBS);
- the Defence Force Retirement and Death Benefits Scheme (DFRDB);
- the Defence Forces Retirement Benefits Scheme (DFRB);
- the scheme provided for under the *Papua New Guinea (Staffing Assistance) Act 1973* (PNG Scheme).

1.6 In order to implement the merger and to set out the governance framework of the single entity, the Bill:

- continues the existence of the board established by the *Superannuation Act 1990*, currently called ARIA, and establishes it as the Commonwealth Superannuation Corporation (CSC);
- prescribes that CSC is a Commonwealth authority for the purposes of the *Commonwealth Authorities and Companies Act 1997* (CAC Act) and provides for some modifications of the application of the CAC Act in relation to managing and investing scheme funds;
- sets out the powers and the functions of CSC;
- establishes a governing body of CSC consisting of the chair and ten directors, all appointed on a part-time basis;
- sets out the procedures for meetings of the board, including requirements for a quorum;
- allows CSC to employ staff and engage consultants on terms and conditions determined by the governing board;

1 The Hon Lindsay Tanner MP, Minister for Finance and Deregulation, *Media Release*, 'Government Superannuation Reforms', 26.11.09.

- sets out financial and reporting requirements in relation to the superannuation schemes for which CSC is responsible; and
- deals with a number of miscellaneous issues relating to the operation of CSC including the source of funds for remuneration of the chair and directors and the delegation arrangements for CSC.

1.7 It is stated in the Bill's explanatory memorandum that the outcome of the proposed consolidation of trustee arrangements will:

...provide an opportunity for benefits to all scheme members and the Commonwealth through lower costs and potentially, higher investment returns. It will also provide a more sustainable and cost-effective platform for delivering Commonwealth superannuation in the future.

Under the broader superannuation framework, the single trustee has a responsibility to act in the best interests of all members. Accordingly, civilian and military interests are represented on its governing body.²

ComSuper Bill 2010

1.8 The purpose of the Bill is to establish a statutory agency, to be known as ComSuper, for the purposes of the *Public Service Act 1999*. ComSuper will consist of the Chief Executive Officer (CEO) and staff.

1.9 The Bill sets out the CEO's functions as providing administrative services to CSC in the performance of its functions in relation to a superannuation scheme administered by CSC. The CEO will be subject to any reasonable direction from CSC regarding administrative services and will be required to comply, where possible, with any policies, guidelines and standards regarding administrative services determined by CSC. In the Explanatory Memorandum it is stated:

This provides a capacity for CSC to influence the quality of administration services and priorities underpinning those services. This recognises that CSC is responsible for the general administration of each Superannuation Act, and therefore each superannuation scheme, for which its has legislative responsibility. Consequently, it is envisaged that the CEO will work in partnership with CSC to ensure administrative services are delivered efficiently and effectively.³

1.10 The CEO is to be appointed by the Minister for Finance and Deregulation with remuneration determined by the Remuneration Tribunal.

2 Governance of Australian Government Superannuation Schemes Bill 2010, *Explanatory Memorandum*, p. 4.

3 ComSuper Bill 2010, *Explanatory Memorandum*, p. 3.

The Superannuation Legislation (Consequential Amendments and Transitional Provisions) Bill 2010

1.11 The purpose of the Bill is to make consequential amendments to a range of Commonwealth Acts to take account of the changes to governance arrangements for the Commonwealth superannuation schemes.

1.12 The Bill proposes to:

- make the management of the 1922 scheme and the Papua New Guinea scheme the responsibility of the CSC;
- put in place transitional arrangements to facilitate the transfer of assets and liabilities of the MSB Board and the DFRDB Authority to the CSC;
- enable CSC to transfer the assets of the MSBF to the existing ARIA Investments Trust without creating a situation whereby Capital Gains Tax would be payable provided the transfer occurs before 1 July 2011; and
- amend the *Superannuation Act 2005* to facilitate public sector employees being able to consolidate their superannuation savings under the management of one trustee.

ISSUES

1.13 The Committee received many submissions from individuals and organisations representing defence force personnel. Some of the submissions raised matters outside the Committee's inquiry into the Bills, in particular, matters relating to indexation of pensions. The Committee's report is limited to the issues specifically raised in relation to the Bills. These issues centred on:

- differences between military and civilian service and the need for these differences to be recognised;
- composition of the CSC Board;
- lack of perceived benefits for defence force members; and
- lack of consultation.

Special needs of military schemes

1.14 Many submitters argued that because of the unique nature of military service their conditions should not be subsumed by civilian conditions and thus they did not support the proposed merger of the military and civilian trustees.⁴ Mr A Mumford submitted:

⁴ See for example, Korea Veterans Association of Australia, *Submission 10*, p. 1; Royal Australian Air Force Association, *Submission 13*, p. 1; Vietnam Veterans' Federation, *Submission 16*, p. 1; Jimboomba RSL Sub Branch, *Submission 17*, p. 1; Integrated Servicepeople's Association of Australia, *Submission 19*, p.1.

ADF service, as the Government has stated in the past, is the highest calling our country can ask of its citizens. Surely then, it is the Government's responsibility to recognise the uniqueness of military service and ensure that all ADF personnel, past, present and future are fairly recompensed in retirement for the unique role they play in the security of our nation. In particular, their retirement remuneration should not be tampered with on political or bureaucratic whim.⁵

1.15 The Defence Force Welfare Association (DFWA) stated ADF personnel are members while civilians are employees with different rules applying to each.⁶ It was argued that the unique nature of military service has been recognised in the past by Government. However, as stated by Colonel David Jamison (Retd), National President of DFWA, it is thought:

...that the provisions of this intended legislation are such that they will diminish and compromise this important philosophical foundation to the detriment of present and future members of the ADF and also that of those whom these members leave behind when they pass on.⁷

1.16 Similarly, the Vietnam Logistic Support Veterans' Association Queensland commented that the circumstances of former members of the ADF are quite different from those of former public servants and 'they have a right to have their superannuation benefits made without reference to the regimes of others'.⁸ The Australian Veterans and Defence Services Council commented that there was a perception that the proposed changes result from 'a reluctance to recognise the uniqueness of military service that sets the Defence Force service apart from all civilian employment whether it be in the Public Service or in the private sector'. The merger was seen to submerge ADF interests 'in a culture that would have difficulty in accepting the circumstances of military life in the structure of conditions of service'. The Council concluded:

Until there is a clear change in attitude the protection of Defence Force interests needs structures that permit the military view to receive its due recognition. This perception is strongly held in the military and veteran communities. For their confidence that provisions for their wellbeing will be safeguarded they need to perceive that the organisational structures are in place for this purpose.⁹

1.17 The Defence Force Retirement and Death Benefits Scheme (DFRDB) Authority responded to the issue of a separate board for the military schemes. The Authority noted that while anecdotal evidence indicated that having a majority of

5 Mr A Mumford, *Submission 52*, p. 2.

6 DFWA, *Submission 18*, p. 5.

7 Colonel David Jamison (Retd), *Committee Hansard*, 11.3.10, p. 2.

8 Vietnam Logistic Support Veterans' Association Queensland, *Submission 3*, p. 3.

9 Australian Veterans and Defence Services Council, *Submission 6*, p. 1.

ADF members on the DFRDB Authority gave some confidence to scheme members that the unique nature of their employment was taken into account, in practice it is the schemes rules that provide for the uniqueness of military service.¹⁰ The Authority concluded:

In the context of the above, the DFRDB Authority accepts the assurances of the Australian Government that the interests of DFRB and DFRDB members will be appropriately represented by the CSC. Therefore it is the view of the DFRDB Authority that it is not necessary to retain a separate board to administer the military superannuation schemes.¹¹

1.18 The Authority also noted that it is expected that the ministers in the Defence portfolio will be consulted regarding the appointment of the five employee/employer nominated directors. In addition, all CSC directors will have an obligation to act in the interests of all members, and the existing Australian government provider of Australian administration services to the military schemes, ComSuper, will be retained and will continue to apply scheme rules to initial benefit decisions.¹²

1.19 Mr Tony Hyams, Chairman of ARIA and the MSB Boards, commented that it is sometimes difficult to discern exactly the nature of the concerns in relation to the distinctive qualities of the military funds and that 'most of the concern is about perception, frankly'.¹³ In addition, Mr Hyams commented that:

I gain great comfort from the fact that the government has stated that its policy is not to change any of the benefits or entitlements of any of the members of either or any of the funds under the new board, and the draft legislation bears that out. So I am comfortable to the extent that the rights and entitlements of the members do not change.¹⁴

1.20 The joint Department of Finance and Deregulation (Finance) and Department of Defence (Defence) submission noted that 'while there are particular features of the military schemes that recognise the special nature of military service, there are many similar design concepts between the schemes'. The similarities in design include that retirement benefits of the CSS and DFRDB are based on the percentage of the member's final salary, with the percentage depending on length of service. A major difference between the military and civilian schemes is the recognition of the risks of military service in the rate of accrual of benefits and the design of death and disability benefits.¹⁵

10 DFRDB Authority, *Submission 7*, p. 7.

11 DFRDB Authority, *Submission 7*, p. 11; see also Mr Leo Bator, DFRDB Authority, *Committee Hansard* 11.3.10, p. 18.

12 Mr Leo Bator, DFRDB Authority, *Committee Hansard* 11.3.10, p. 18.

13 Mr Tony Hyams, Chairman of ARIA and the MSB Boards, *Committee Hansard*, 11.3.10, p. 9.

14 Mr Tony Hyams, Chairman of ARIA and the MSB Boards, *Committee Hansard*, 11.3.10, p. 10.

15 Department of Finance and Deregulation and Department of Defence, *Submission 9*, p. 3.

1.21 The Departments went on to note that:

Notwithstanding the differences in benefit design, the MSB Board and ARIA perform broadly similar functions. One of their primary functions is to manage the investment of member funds. They also manage, and oversee ComSuper's administration of, the superannuation schemes for which they are responsible according to the legislated scheme rules and manage governance and regulatory requirements.¹⁶

1.22 Dr Stein Helgeby, Deputy Secretary, Department of Finance and Deregulation, outlined to the Committee the recognition of the special nature of military service contained within the Bills. This principally goes to the military representation on the trustee governing board as well as the ability for the board to establish dedicated committees to review military death and disability benefits and invalidity classifications. The Defence Force Case Assessment Committee will undertake the functions currently performed by the DFRDB Authority to reconsider decisions by ComSuper in relation to invalidity benefits. The Defence Force Case Assessment Committee will have representation from each of the Army, Navy and Air Force as is currently the case for the DFRDB Authority. The joint submission from Finance and Defence also added:

This recognises that the special nature of military service warrants special treatment and also acknowledges the role that the DFRDB Authority currently has in overseeing the operation of the DFRDB and DFRB, and particularly its primary role of reviewing decisions of its delegates, ComSuper staff, in relation to invalidity benefits.¹⁷

1.23 Dr Helgeby, Finance, commented that 'the inclusion of these features in the bills recognises the fact that unique service does indeed require unique solutions'.¹⁸ Mr Steve Grzeskowiak, Department of Defence, added:

We are confident that the primary area, in my view a very important area, where the special nature of military service does need to be recognised is in that assessment process for people who have disagreement with the decision that has been made primarily on invalidity pensions. By having the Army, Navy and Air Force representation in that case assessment committee—and that is in addition to the two military members on the board—we are confident that we will be able to get that military voice, that military opinion, into that process.¹⁹

1.24 The Finance and Defence concluded:

16 Department of Finance and Deregulation and Department of Defence, *Submission 9*, p. 4.

17 Department of Finance and Deregulation and Department of Defence, *Submission 9*, pp 10–11.

18 Dr Stein Helgeby, Deputy Secretary, Department of Finance and Deregulation, *Committee Hansard*, 11.3.10, p. 24.

19 Mr Steve Grzeskowiak, Department of Defence, *Committee Hansard*, 11.3.10, p. 25.

Overall, the Bills seek to recognise the special nature of military service (noting that this principle is relevant to all aspects of military conditions of service) without taking away from a superannuation trustee's essential function of managing the superannuation schemes for which it is responsible on behalf of all scheme members and safeguarding members' benefits until they retire.²⁰

1.25 In evidence, Colonel David Jamison (Retd), DFWA, commented that while not fully satisfying all its concerns, the establishment of the Committee would be a partial step to resolving them.²¹

Composition of the CSC Board

1.26 Under the proposed legislation, the CSC Board will consist of a chair and ten members. Three members may be nominated by the President of the Australian Council of Trade Unions (ACTU) and two members may be nominated by the Chief of the Defence Force. Before nominating any member, the President of the ACTU must consult relevant organisations representing retired members. All directors must meet the fitness and propriety standards specified in the *Superannuation Industry (Supervision) Act 1993* (SIS Act).

1.27 The Board may also establish a Defence Force Case Assessment Committee (DFCAC) to review decisions referred by CSC. The DFCAC, if established, will include three members nominated by the Chiefs of the three Services (similar to the current membership of the DFRDB Authority).

1.28 Many submitters did not support the composition of the proposed board.²² Of particular concern was the restriction of members representing ADF interests to two, while the ACTU would be able to nominate three board members.²³ This was viewed as a diminution of the voice of the ADF and could lead to the overruling of the two members nominated by the Chief of the Defence Force. Rear Admiral Doolan (Retd) stated, for example, that:

...if you are increasing the number of board members and you are decreasing the percentage of military representatives on the board, then the military voice must be more muted. It follows, in any board, if you have 11 members on the board and only two military, then their influence on that board is much, much smaller than if you have a smaller board where they are either in the majority or at least are even with the numbers of the rest of the board. It is a straight mathematical equation. If a board splits and the majority rules, then the military voice is muted.²⁴

20 Department of Finance and Deregulation and Department of Defence, *Submission 9*, p. 10.

21 Colonel David Jamison (Retd), *Committee Hansard*, 11.3.10, p. 5.

22 Royal Australian Air Force Association, *Submission 13*, pp 2–3.

23 See for example, Colonel David Jamison (Retd), DFWA, *Committee Hansard*, 11.3.10, pp 3–4.

24 Rear Admiral Ken Doolan (Retd), RSL, *Committee Hansard*, 11.3.10, p. 13.

1.29 Mr Peter Thornton commented that the composition of the board was flawed as there are no representatives from retiree organisations and that it was dominated by political appointees. He suggested that the legislation be amended to include representatives from Superannuated Commonwealth Officers' Association (SCOA) and the DFWA/RSL on the board.²⁵

1.30 Other submitters indicated support for the composition of the board and argued that military interests would be preserved. The DFRDB Authority considered that the membership arrangements for the new CSC, and those for the new DFCAC, adequately reflect the needs of military representation in these matters. The Authority also noted that the Department of Defence will continue to be closely involved in setting administration service standards and ComSuper will continue to be the provider of those services (albeit with some changes to its agency status).²⁶

1.31 SCOA considered that the proposed legislation provided the opportunity to have appropriate board representation of all members of Australian Government superannuation schemes. SCOA noted that military members will be well represented and as the Chief of the Defence Force will nominate two of the five member representatives and the present Chairperson of the Military Superannuation Benefits Board of Trustees, Mr Tony Hyams, is to be appointed as the Chair of the new trustee board. The ACTU must also consult with organisations representing retired members.²⁷

1.32 The Community and Public Sector Union (CPSU) commented that the composition of the board will provide a balance between the military and civilian representatives. The CPSU saw this as important as the trustees 'will be representing different constituents in some complex and very different superannuation schemes'. The CPSU also noted that the proposed structure is consistent with current arrangements of ARIA and military super. Further, that for the equal representation to be genuine, it is important that influence cannot be exerted by either employers or employees in regard to appointments from the 'other side' onto the board. It was noted that this is an important principle underpinning the operation of Industry Funds.²⁸

1.33 Mr Alan Greenslade, Department of Finance and Deregulation, commented on the composition of the board and noted that it is consistent with the SIS legislation that employee representatives are nominated by a union representative. This is mirrored for defence through the two nominees of the Chief of the Defence Force.²⁹

25 Mr Peter Thorton, *Submission 165*, pp 3–4.

26 DFRDB Authority, *Submission 9*, p. 16.

27 SCOA, *Submission 4*, p. 2.

28 CPSU, *Submission 11*, p. 2.

29 Mr Alan Greenslade, Department of Finance and Deregulation, *Committee Hansard*, 11.3.10, p. 26; also see *Committee Hansard*, 11.3.10, p. 29.

- 1.34 Mr Greenslade went on to emphasise that:

Trustees, including all the directors on the board, have an overarching duty to act in the best interests of all scheme members, whether they are civilian or military. That is an obligation. I am aware of broad industry experience, and that is exactly what individual trustees do: they act on behalf of all their members. I noted there was a submission by the Australian Institute of Superannuation Trustees—I cannot remember the number of the submission—where they actually made the point that they had done some research and that research confirmed that that is exactly the behaviour of individual trustees: they act on behalf of all members.³⁰

Benefits arising from the proposed amalgamation

- 1.35 Many submissions voiced doubts that benefits for defence force superannuants would arise from the proposed merger of the trustees under a single trustee. The RSL submission, for example, argued that the prospective improvements resulting from the merger 'are not substantiated', that benefits to military superannuants are 'ephemeral' and that bigger financial institutions are not always better at delivering savings or benefits as evidence by the global financial crisis. Rather, the merger appeared to provide greater savings to the Commonwealth through outsourcing administrative services.³¹ The RSL argued:

...it appears that the legislated right of military superannuants to their own boards of governance for their military superannuation schemes is to be traded away for an unquantified and uncertain efficiency in "trustee operation and improved service delivery to members".³²

- 1.36 Rear Admiral Ken Doolan (Retd), National President of the RSL, in evidence, provided further comment:

I reiterate that the Returned and Services League is not opposed to a sensible benefit for our members if it can be demonstrated that that is the likely outcome or, should I say, that we can be persuaded that that will be the outcome. We have been left completely in the dark on this particular issue. We were not consulted, our members were not consulted and they are the people who are actually drawing these benefits every fortnight. They wish to know, with some degree of certainty, that this merger will in fact be beneficial.³³

30 Mr Alan Greenslade, Department of Finance and Deregulation, *Committee Hansard*, 11.3.10, p. 26.

31 RSL, *Submission 1*, p. 5.

32 RSL, *Submission 1*, p. 5.

33 Rear Admiral Ken Doolan, National President, RSL, *Committee Hansard*, 11.3.10, p. 12.

1.37 Rear Admiral Doolan went on to state that because of a lack of information from Government, the RSL 'cannot make an informed decision at this stage. In the lack of the ability to make an informed decision we are opposed to the merger'.³⁴

1.38 The DFWA also commented that it saw no tangible or intangible benefits to military superannuation contributors or beneficiaries.³⁵ In relation to the advantages of scale arising from the proposed merger, Colonel David Jamison (Retd), commented that 'small funds available to the military scheme are still significant and they still can grow if the right investment decisions are made'.³⁶ In addition, Colonel Jamison commented that while there may be some reduction in costs through amalgamation, the major concern was that the distinction between the ADF and others was important and in any case, 'because of the nature of these funds, the administration and the way that the costs are spread over mainly the government with some smaller costs flowing to the members, that is not an issue that is a defining one'.³⁷

1.39 Mr Bator, DFRDB Authority, commented on the benefits that he saw as arising from the proposed merger:

I think the main benefit I see is that there will be a governance improvement insofar as there are currently four bodies responsible for administering the Australian government superannuation schemes: the DFRDB Authority for the DFRB and the DFRDB schemes; the Military Superannuation and Benefits Board for the MSB scheme; ARIA for the CSS, PSS and PSSAP schemes; and the Commissioner for Superannuation, which is another role I hold for the 1922 Act and the PNG schemes. As I noted in my submission to you, that will obviously improve governance arrangements so that is one thing. I think, two, as I mentioned, one clear benefit would be the removal of any potential conflict that currently exists where the Commissioner of Superannuation—myself—is the chair of the authority. Whilst I am certainly not aware of any conflict that has arisen, that perception will be removed and the perception would be around me defending the administration over the member benefit.

As I mentioned, given what I understand, the new Defence Force Case Assessment Committee will largely operate in terms of DFRDB cases as the authority does, and that gives me some assurance. So I am talking about governance improvements, removal of conflict and interest and the fact that in my understanding and the understanding of the authority there will be very similar arrangements in terms of case consideration for DFRDB authority members.³⁸

34 Rear Admiral Ken Doolan, National President, RSL, *Committee Hansard*, 11.3.10, p. 14.

35 DFWA, *Submission* 18, p. 7; see also Royal Australian Air Force Association, *Submission* 13, p. 4.

36 Colonel David Jamison (Retd), *Committee Hansard*, 11.3.10, p. 4.

37 Colonel David Jamison (Retd), *Committee Hansard*, 11.3.10, p. 5.

38 Mr Leo Bator, DFRDB Authority, *Committee Hansard*, 11.3.10, pp 21–22.

1.40 SCOA welcomed the proposal for a single trustee as it considered that the expanded board will enhance decision making in relation to the military schemes, as well as the civilian schemes. In addition, the single trustee will provide greater investment opportunity.³⁹

1.41 The CPSU also supported the proposed changes and maintained that the smaller military superannuation funds could potentially gain economies of scale via proportionally reduced fees and charges by merging with the larger civilian superannuation schemes. Any savings would benefit military personnel and by providing better returns could potentially reduce the Government's ongoing unfunded liability in these schemes.⁴⁰

1.42 The joint submission from Finance and Defence clearly stated that the proposed legislation would not change the member benefits, death or disability arrangements or entitlements, such as indexation of pension. These are legislated arrangements and cannot be changed by the scheme trustee.⁴¹ Finance and Defence went on to outline the benefits arising from the proposed changes.

1.43 The Departments noted that there is trend towards rationalisation of superannuation funds in Australia, particularly by the consolidation of funds. There have been significant examples of consolidation of funds over the last decade. This is in line with what is considered to be industry best practice and the view of some fund advisers that funds need to be of sufficient size and to have more than \$5 billion in funds under management to survive. Large consolidated funds will be able to compete in the future, particularly in an environment of lower investment returns.⁴²

1.44 The Departments saw the proposed changes as bringing the management of all of the Commonwealth's superannuation schemes more into line with modern industry practice and to secure a sustainable platform for delivering Commonwealth superannuation into the future. Benefits will be gained through improved governance and administration and access to the benefits of scale advantage.⁴³

1.45 Other benefits noted by the Departments included:

- a better spread of age profiles amongst members of all schemes which would allow the trustee the capacity for a better spread of assets across age bands, enabling better fund longevity and reduction of investment risk to older members;

39 SCOA, *Submission 4*, p. 1.

40 CPSU, *Submission 11*, p. 2.

41 Department of Finance and Deregulation and Department of Defence, *Submission 9*, pp 1, 6.

42 Department of Finance and Deregulation and Department of Defence, *Submission 9*, p. 5.

43 Department of Finance and Deregulation and Department of Defence, *Submission 9*, p. 7.

- scale advantage enjoyed by larger superannuation funds is substantial and research has indicated that scale offers the potential for reduced operation and investment costs and higher investment returns;
- Finance's actuarial service provider, Mercer, has considered the potential improved net investment return as a result of merging the military and civilian fund assets. Based on 2008 figures, it estimated that the potential improvement in net investment returns would have been \$10 million in 2008, would be \$15 million in 2018 and \$19 million in 2028;⁴⁴ and
- improved service delivery by ComSuper by better defining ComSuper's role and providing a clearer relationship with a single trustee, thus removing pressures associated with ComSuper responding to multiple boards. With one board, there will be an ability to drive improvements in administration.⁴⁵

1.46 The Departments concluded that military members will benefit most from the reforms. As there is a significant degree of similarity between the MSBS and the civilian schemes for their operational arrangements and investment structures, the present structure results in duplicated effort. Members of the MSBS, a significantly smaller fund, have the potential to gain substantial benefits from the merger as research has shown that small funds appear to benefit the most from a merger as scale reward is better.⁴⁶ Dr Helgeby went on to note that Finance's actuarial service provider, Mercer, had estimated that \$7 million of \$10 million improvement in net investment return in 2008, or 70 per cent of the benefit, would relate to the MSBS and to military members. Further that:

This level of benefit to MSBS members can only be achieved by bringing the funds together under management of a single trustee, something that a separate military board could not achieve on its own. Indeed, if the MSBS trustee remained separate it would be disadvantaged in the future as it would become relatively smaller compared with other funds. In other words, maintaining⁴⁷ the existing arrangements would carry a price for military members.

1.47 Mr Greenslade went on to comment:

There is a really strong trend within the industry to consolidate, to do the things these bills are seeking to do to protect members' interests, to protect their returns. It is not just to give them better opportunities in the future; there is a downside risk as well. The risk is, particularly for MSBS members, that in future they will become relatively smaller in size compared with an industry which is consolidated. This would reduce their

⁴⁴ Department of Finance and Deregulation and Department of Defence, *Submission 9*, pp 7-9.

⁴⁵ Mr Steve Grzeskowiak, Department of Defence, *Committee Hansard*, 11.3.10, p. 27.

⁴⁶ Department of Finance and Deregulation and Department of Defence, *Submission 9*, p. 9.

⁴⁷ Dr Stein Helgeby, Department of Finance and Deregulation, *Committee Hansard*, 11.3.10, p. 24.

ability to obtain good investment value and good fees. As we say in our submission, one of the industry advisors is of the view that the trend is so strong that funds need to be at least \$5 billion to avoid that downside risk. In a sense there is a danger to standing still. It is perhaps a false assumption that one can stand still and the world will stay unchanged. There can be a down escalator if you try and stand still.⁴⁸

- 1.48 Mr Greenslade concluded:

In terms of the benefits from the consolidation of the funds and the trustees, the benefits essentially flow through to members. Improved returns and reduced expenses on investment management flow through to members.⁴⁹

Consultation

1.49 The Committee was told that there had been no consultation about the proposed changes.⁵⁰ Rear Admiral Doolan indicated that the Government had provided the RSL with some details of the proposals and commented that 'it was insufficient for the national executive of the Returned Services League to make a judgment about these matters. If all of the matters had been disclosed to us and we had been able to make a detailed examination of it, we may have come to a different conclusion.'⁵¹

1.50 The Finance and Defence submission noted that the development of the legislation had been undertaken in partnership between the Finance and Defence Ministers and their respective Departments as well as in consultation with the MSB Board, the DFRDB Authority and ARIA. Mr Bator, DFRDB Authority, noted that one of its authority members had attended the discussions about the merger and had kept the Authority informed.⁵²

1.51 The Departments also stated that a range of views 'expressed over time', by a number of other stakeholders were also taken into account and:

This includes the priority of maintaining and protecting the features of military superannuation that reflect the special nature of military service.⁵³

48 Mr Alan Greenslade, Department of Finance and Deregulation, *Committee Hansard*, 11.3.10, p. 28.

49 Mr Alan Greenslade, Department of Finance and Deregulation, *Committee Hansard*, 11.3.10, p. 27.

50 DFWA, *Submission 18*, p. 3; Rear Admiral Ken Doolan, National President, RSL, *Committee Hansard*, 11.3.10, p. 13.

51 Rear Admiral Ken Doolan (Retd), *Committee Hansard*, 11.3.10, p. 13.

52 Mr Leo Bator, DFRDB Authority, *Committee Hansard*, 11.3.10, p. 18.

53 Department of Finance and Deregulation and Department of Defence, *Submission 9*, p. 1.

1.52 In addition, Dr Helgeby commented that the bodies consulted provided a range of information to their members, for example, ARIA and the MSBS informed members through their annual reports.⁵⁴

CONCLUSION AND RECOMMENDATION

1.53 The Committee considers that it is important to note that the proposed reforms do not change member benefits, death and disability benefits or any other entitlements such as indexation of pensions. The individual military schemes will remain under their own legislative basis and with their own identity. ComSuper will remain responsible for administering the schemes.

1.54 The intent of the legislation is to introduce reforms which will improve governance and administration of both military and civilian superannuation funds. These funds provide benefits to thousands of former ADF personnel and public sector employees and their dependants. It is therefore imperative that industry best practice is the basic standard for trustee operation, structure and governance, that there are continued improvements to reduce costs and that the potential to improve investment returns is available for the benefit of all members. The reforms proposed by this legislation will ensure that Commonwealth superannuation arrangements are strong and sustainable into the future.

Recommendation 1

1.55 The committee recommends that the bills be passed.

Senator Helen Polley

Chair

March 2010

54 Dr Stein Helgeby, Department of Finance and Deregulation, *Committee Hansard*, 11.3.10, p. 24.

Coalition Senators' Dissenting Report

INTRODUCTORY COMMENTS

These bills represent a significant change to the management of superannuation arrangements for the Australian military and veteran community.

In the short period allowed for this inquiry, many veterans' groups and individuals have made plain their opposition to the amalgamation of the military superannuation boards with civilian management boards.

This opposition has been based on several factors, including the failure of the Government's proposal to recognise the unique nature of military service, the lack of consultation, the fear that it will dilute the representation of defence members and the composition of the new board.

Coalition Senators oppose the recommendation of the Government majority of the Committee to support passage of these bills in their current form.

THE UNIQUE NATURE OF MILITARY SERVICE

One of the issues raised by many veteran groups was that this proposal undermined the longstanding commitment to and understanding of the unique nature of military service. As outlined by Colonel David Jamison (Retd), National President of Defence Force Welfare Association (DFWA):

... the provisions of this intended legislation are such that they will diminish and compromise this important philosophical foundation to the detriment of present and future members of the ADF and also that of those whom these members leave behind when they pass on¹

This understanding is particularly important to veterans and their beneficiaries and has underpinned the fact that there have been distinct boards and schemes for the military and veterans for many years. As submitted by the Returned and Services League:

The Parliament has thrice legislated for separate military superannuation schemes, and has thrice decided to include in this legislation the need for a separate military board of governance for the schemes. No reasons have been advanced as to why this will of Parliament should be overturned.²

LACK OF CONSULTATION

The above issue is compounded by the distinct lack of consultation undertaken by the Government regarding this proposal.

1 Colonel David Jamison (Retd), Committee Hansard , 11.3.10, p. 2

2 Returned and Services League, *Submission 1* (att), p. 6

This claim was substantiated by the Returned and Services League as well as the Defence Force Welfare Association.

The Defence Force Welfare Association submitted:

Noting that the Government chose not to consult with DFWA or other Ex-Service Organisations on this issue...³

Representing the DFWA at the hearing into the bills, Col David Jamieson (retired) stated:

I will go to our specific concerns. Firstly, there was no consultation with the memberships of the schemes.⁴

The RSL submitted that:

The Government did not consult the RSL about these proposed changes to the governance of military superannuation schemes affecting many RSL members.⁵

Representing the RSL at the hearing into the bills, Rear Admiral Doolan (retired) stated that:

We have been left completely in the dark on this particular issue. We were not consulted, our members were not consulted and they are the people who are actually drawing these benefits every fortnight.⁶

Such a lack of consultation with veteran groups is of significant concern to Coalition Senators. Given the unique nature of military service, Coalition Senators believe that such consultation should have been a priority for Government in developing this proposal.

Membership of the Defence Forces is not comparable to a normal employee-employer relationship, and the extremely high degree of concern that exists regarding this proposal within in the military and veteran community, as expressed by groups that represent significant numbers of them, provides a strong argument to not proceed with these bills in their current form.

The amalgamation of military and civilian Commonwealth superannuation and benefit boards represents a significant shift from Australia's historical approach. Such a shift must, at a minimum, involve substantial and meaningful consultation with military and veterans and their representative organisations.

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

4 Colonel David Jamison (Retd), Committee Hansard , 11.3.10, p. 2

5 Returned and Services League, *Submission 1* (att), p. 1

6 Rear Admiral Kenneth Doolan (Retd). Committee Hansard, 11.3.10. p. 12

LACK OF DEMONSTRATED BENEFIT

The lack of consultation is compounded by the concern of veteran groups that the purported benefits of these bills have not been demonstrated.

Just as amalgamation of military and civilian Commonwealth superannuation and benefit boards should involve substantial consultation, it must also demonstrate a benefit to affected members.

The RSL submitted that:

"...assertions about prospective improvements resulting from the proposed merger are not substantiated;"⁷

And:

"A review of the four sources of information about the proposed merger of the superannuation boards made available to the RSL has failed to find any factually based reason why the merger must take place"⁸

And:

"There were lots of reassuring words...but no hard facts backing up the need for change."⁹

In its submission, the Defence Force Welfare Association stated:

Noting that the Government chose not to consult with DFWA or other Ex-Service Organisations on this issue, DFWA can find no evidence of any benefit, tangible or intangible, to serving or former members of the ADF. Nor can DFWA identify any material or financial benefit to the wider Australian community.¹⁰

Coalition Senators are of the view that the Government has failed to clear two hurdles in this regard:

- It has specifically failed to demonstrate the value of the amalgamation proposal to military and veteran superannuants and beneficiaries; and,
- That it has generally failed to demonstrate the need for this amalgamation to the wider community, many of whom share the concerns raised by veterans' groups.

Assertions about the proposed benefits are not sufficient to meet Coalition Senators' concerns about this proposal and these bills.

⁷ Returned and Services League, *Submission 1* (att), p. 4

⁸ Returned and Services League, *Submission 1* (att), p. 5

⁹ Returned and Services League, *Submission 1* (att), p. 5

¹⁰ Defence Force Welfare Association, *Submission 18*, p.3

Coalition Senators share the concerns of affected groups and remain to be convinced of the benefit of amalgamating the management boards of military and other forms of Commonwealth superannuation.

COMPOSITION OF PROPOSED BOARD

Coalition Senators do not consider that the interests of serving and former ADF members are well served by the proposed board composition of the Commonwealth Superannuation Corporation.

The committee was presented with evidence that the composition of the proposed new entity would undermine the understanding and reflection of the unique nature of military service.

The 2007 Military Superannuation Review states:

For military superannuation, as well as these skills and integrity standards, the board needs a blend of experience and knowledge to best serve the military environment, including understanding the unique nature of military service. Therefore, a central consideration of the Review Team is to ensure military superannuation trustees collectively have the legislated skills, knowledge and abilities, as well as an appropriate knowledge of members, ex-members and Defence interests.¹¹

The concern surrounding the relative reduction in the proportion of military and ex-military interests is echoed in evidence given to the committee by the Returned and Services League:

Rear Adm. Doolan—Prima facie, if you are increasing the number of board members and you are decreasing the percentage of military representatives on the board, then the military voice must be more muted.¹²

Similarly, at the hearing into the bills, the National President of the DFWA stated that:

"the representation on that board will not give adequate voice to the military superannuants, whether they are contributing members or recipient members."¹³

This flaw in the bills is exacerbated by the proposal for the Australian Council of Trade Unions to have the power to appoint three members of the new board, as opposed to only two coming from the military community. Coalition Senators do not support the provisions relating to the role of the ACTU in this bill.

11 Department of Defence, Report of the Review into Military Superannuation Arrangements, p.45

12 Rear Admiral Kenneth Doolan (Retd). Committee Hansard, 11.3.10. p. 13

13 Colonel David Jamison (Retd), Committee Hansard , 11.3.10, p. 3

This diminution in the voice of military members further undermines the historic commitment to understanding the unique nature of military service and potentially sees the reduction in serving board members who come from the defence forces.

Given the concerns within the veteran community, this further undermines the case for the bills proceeding in their current form.

POSITION OF EX-SERVICE ORGANISATIONS

Given the failure of the Government to undertake detailed consultation with affected military and veteran members, it is important to note the position of relevant representative groups in this regard.

The proposed amalgamation is opposed by the Returned and Services League, as illustrated at the hearings into the bills:

Senator RYAN—With the information you have at hand now, with the committee having to make a determination upon this legislation, what is your position as it stands now?

Rear Adm. Doolan—It follows from what I have said before that at this point in time the Returned and Services League would oppose the merger.¹⁴

The RAAF Association recommends that the bills:

...be deferred until the ESO community is afforded an opportunity to engage with the Government on the issues identified by the RAAF Association.¹⁵

The Defence Force Welfare Association recommends that:

The Government not proceed with its proposal to merge military and civilian superannuation boards¹⁶

Recommendation 1

Coalition Senators recommend that the bills not be supported in their present form.

Senator Scott Ryan (Deputy Chair)

Senator David Bushby

14 Rear Admiral Kenneth Doolan (Retd). Committee Hansard, 11.3.10. p. 12-13

15 Royal Australian Air Force Association, *Submission* 13, p. 5

16 Defence Force Welfare Association, *Submission* 18, p. 10

Family First Dissenting Report

The Rudd Government's plan to merge the boards of the two military superannuation schemes, the Military Superannuation and Benefits Scheme (MSBS) and the Defence Force Retirement and Death Benefits Scheme (DFRDB), with the board of the civilian superannuation scheme, Australian Reward Investment Alliance (ARIA), is a policy that clearly does not have the support of the members of the MSBS and DFRDB.

The enormous number of submissions received by the committee in such a short period of time demonstrates that this is an issue of great importance to the members of these military superannuation funds.

There is clearly widespread member dissatisfaction with the proposed changes by members of the MSBS and DFRDB, as highlighted by National President of the Defence Force Welfare Association, Colonel David Jamison (Retired) who stated:

"We are getting communication from our members and other elements within the veteran community strongly opposing this initiative."

Family First is also concerned about the lack of consultation with military representative groups in regards to merging the military superannuation schemes with a non-military superannuation scheme.

Rear Admiral Kenneth Doolan (Retired) National President, Returned and Services League of Australia stated:

"We were not consulted about this merger before the proposal was put forward. We do not have the details available to us and we would seek to have those details so that we can make a more considered decision about the very point that you raise".

The real concern is that this legislation as a policy undermines the well regarded and long standing principal that military service is unique and should not be blurred with civilian service.

For these reasons, Family First does not support the bill.

Recommendation 1

Family First recommends that the bill not be passed.

Senator Steve Fielding

APPENDIX 1

Submissions and Additional Information received by the Committee

- 1 Returned and Services League of Australia
2 Vietnam Veterans' Association of Australia, Redcliffe Sub-Branch Inc
3 Vietnam Logistical Support Veteran's Association
4 Superannuated Commonwealth Officers' Association (Federal Council) Inc.
5 Military Superannuation and Benefits Board of Trustees
6 Australian Veterans and Defence Services Council Incorporated
7 ComSuper (DFRDB)
8 The Australian Council of Trade Unions
9 Department of Defence and the Department of Finance and Deregulation
Additional Information
• Answers to Questions on Notice, 12 March 2010
10 Korea Veterans Association of Australia Inc
11 Community and Public Sector Union
12 Australian Institute of Superannuation Trustees
13 Royal Australian Air Force Association
14 The Australian Government Employees Superannuation Trust (AGEST)
15 Australian Reward Investment Alliance (ARIA)
Additional Information
Answers to Questions on Notice, 12 March 2010
16 Vietnam Veterans Federation
17 Jimboomba RSL Sub-Branch
18 Defence Force Welfare Association
19 Integrated Servicepeople's Association of Australia Inc
20 Turner, Mr Denis
21 Dillon, Mr Terry
22 Braby, Mr Allan
23 Ring, Mr Peter
24 Weyling, Mr Peter
25 Giampino, Mr Michael
26 Krause (Retd), Lieutenant Commander Bill
27 Belford, Mr Gary
28 Hogg, Mr Robert
29 Reading, Mr Warwick
30 Annett, Mr Geoffrey

- 31 Widermanski, Mr Echo
32 Cannard, Ms Patricia
33 Weston (Retd), Air Vice-Marshal Brian
34 Long, Mr John
35 Jobson, Mr Christopher
36 Chapman, Major Michael
37 Tate, Mr Donald
38 Borrett, Mr Mick
39 Ney, Mr Bob
40 Macnaughtan, Mr John
41 Warrener, Mr G A
42 Lewis, Mr Adrian
43 Dunlop, Mr Moose
44 Campbell, Mr Angus
45 Marsh, Mr Chris
46 Peterkin (WgCdr Retd), Mr Geoffrey
47 Cameron-Jackson (Major Retd), Dr Karl
48 Payne, Mr Cedric
49 Magner, Mr Michael
50 Neugebauer (Retd), Major Bernie
51 Weekes, Mr Gregory
52 Mumford, Mr A
53 McCrohan, Mr Paul
54 Lewis, LCDR Tom
55 Chambers, Mr Richard
56 Lunney, Mr Neil
57 Currie, Mr Michael
58 Forsyth, Mr Paul
59 Frazer, Mr Frank
60 Lange, Mr Bob
61 Brittain, Mr Richard
62 Davies (Retd) AM, Brig Phil
63 Ryan, Mr Rick
64 Harrison, Mr William
65 Bovill, Mr Kevin
66 Henry, Mr Graham
67 Larkins, Mr Steve
68 Pritchard, Mr John
69 Hayden, Mr Phillip
70 Clark, Mr John
71 Langridge, Mr Brian

- 72 Wilmot, Mr Paul
73 Krikke, Mr Augustinus
74 Perandis, Mr Kevin
75 Oakden, Mr Chris
76 Lawrence, Mr Ken
77 May, Mr Peter
78 Myors, Mr Glen
79 Burgess, Mr Mick
80 Foulds, Mr Wayne
81 Larard, Mr Peter
82 Robertson, Mr Dennis
83 Murray, Sqnldr (Retd) William
84 Denner, Mr Robert
85 Chesterfield, Air Commodore (Retd) John
86 Snowden, Colonel (Retd) Peter
87 Condon, Wing Commodore (Retd) Peter
88 Leach, Air Commodore (Retd) David
89 Petty, Mr Hugh
90 Neenan, Major John
91 McDougall (Retd), Colonel Peter
92 Confidential
93 Aldenhoven, Mr John
94 Rowe, Maurie
95 Caligari, Mr Barry
96 Scott, Colonel Peter
97 Hoebee, Mr Bert
98 Gunder, Mr Warren
99 Holliday, Mr Tony
100 Shakespeare, Ms Sandra
101 Powell, Mr Ray
102 Wright, Dr Mark
103 Stuart, Mr Ian
104 Hoffman, Mr Graham
105 Zajer, Ms Gay
106 Wallace (Retd), Major William
107 Gordon, Mr Lindsay
108 Farquhar, Mr Wal
109 Hislop (Retd), Lt Col John
110 Lenard, Mr Hilton
111 McDonagh, Mr John
112 Frazer, Mr Michael

- 113 de Haas (Retd), Lieutenant Colonel Robert
114 Walding (Retd), Major Trevor
115 Mularczyk, Mr Bruno
116 Simpson (Retd), Flight Lieutenant James
117 Golla, Mr Werner
118 Shakespeare, Mr William
119 Morris, Mr James
120 Wade, Mr Russell
121 Bell, Mr David
122 Hurditch, Mr Alan
123 Whinfield, Mr Brian
124 Shortridge, Mr Robert
125 Anderson, Mr Robert
126 Porter, Mr R M
127 Bartrop, Mr Owen
128 Freeman, Mr H R
129 Beckwith, Mr William
130 Tet, Mr John
131 Hetherington, Mr John
132 Smith, Mr Robert
133 O'Neill, Mr Brian
134 Holmes, Mr Martin
135 Wass (Retd), Major Tony
136 Linwood, Lt Col Russell
137 Black, Mr Adrian
138 Watson, Mr Kevin
139 Opray, Mr Geoff
140 Skene (Retd), Commander Arthur
141 Railton, Mr Kenneth
142 Proctor, Ms Brenda
143 Welford (Retd), Commander Michael
144 Graham, Mr Dennis
145 Clarke, Mr Charles
146 Chitham, Mr Edward
147 Whisker (Retd) AM, Air Cdre Ian
148 Sly, Mr Kenneth
149 Confidential
150 Collins, Mr Roger
151 Holmes (Retd), Major Jim
152 Wilson, Mr Terry
153 Ezzy, Mr Jack

- 154 Watts, Mr Victor
155 Mawson, Mr Ian
156 Tyson, Mr Paul
157 Schmidtchen, Mr John
158 Pendergast, Mr John
159 Lynch, Mr Peter
160 White, Major Stephen
161 Anderson, Mr Mark
162 Smith, Mr Ian
163 Lascelles, Mr D N
164 Benson, Mr Colin
165 Thorton, Mr Peter
166 Hearder (Retd), Lt Col Simon
167 Dollisson, Mr V F
168 Denny AM, Mr Bill
169 Confidential
170 Chignell, Mr Rodd
171 Howard, Mr Zane
172 Harvey, Mr Andrew
173 Warren, Ms Diance
174 O'Neill, Mr L
175 Hawkins, Major T C
176 Gibson AM, Mr Ray
177 Thomas, Mr Michael
178 Nixon, Mr Michael
179 Canham, Mr Ian
180 Cowley, Mr Martin
181 Matters, Mr Arthur
182 Lakey, Mr John
183 Butler, Reverend Trevor
184 Jacobsen, Mr John
185 Gibbons, Mr P D
186 English, Mr Barry
187 Martin. R
188 Thoms, Dr Gavin
189 Phillips (Retd), Brigadier Ken
190 Crose, Mr Barry
191 Plunkett-Cole, Mr Peter
192 Langler, Mr John
193 Wallace, Mr Len
194 Sappelli, Mr Con

- 195 Woolrych, CMDR R H
- 196 Macfarlane, Mr Bruce
- 197 Vietnam Veterans Association of Australia, Queensland Branch Inc.

APPENDIX 2

Public Hearing

Thursday, 11 March 2010
Parliament House, Canberra

Committee Members in attendance:

Senator Helen Polley (Chair)
Senator Scott Ryan (Deputy Chair)
Senator Doug Cameron
Senator Jacinta Collins
Senator David Bushby
Senator Steve Fielding

Witnesses

Defence Force Welfare Association
Colonel David Jamison (Retd), National President

**Australian Reward Investment Alliance Board and
Military Superannuation and Benefits Board**
Mr Tony Hyams, Chairman

Returned and Services League of Australia
Rear Admiral Kenneth Doolan (Retd), National President

Defence Force Retirement and Death Benefits Authority Board
Mr Leo Bator, Chairman
Ms Cindy Briscoe, Deputy Chief Executive Officer, ComSuper

Department of Finance and Deregulation
Dr Stein Helgeby, Deputy Secretary, Financial Management Group
Mr Alan Greenslade, First Assistant Secretary, Funds and Superannuation Division
Mr George Sotiropoulos, Assistant Secretary, Funds and Superannuation Division

Department of Defence
Mr Steve Grzeskowiak, Head, People Policy, People Strategies and Policy Group
Mr Brian Paule, Director, General Personnel Policy and Employment Conditions

