



Briefing Notes on Governance of Australian Government Superannuation Schemes Bill 2010

Purpose of the Bill

The *Governance of Australian Government Superannuation Schemes Bill 2010* seeks to give effect to the Government's announcement in October 2008 to merge the Australian Reward Investment Alliance (ARIA), the Military Superannuation and Benefits Board (MSB Board) and the Defence Force Retirement and Death Benefits Authority (DFRDB Authority) to form a single trustee body from 1 July 2010.

The Bill is part of a package of three purporting to modernise Australian Government superannuation and establish governance arrangements for the Commonwealth superannuation schemes that are effective and more consistent with the broader superannuation industry. The other two Bills in the package are:

- the *ComSuper Bill 2010*, which makes changes to the governance framework for superannuation administration arrangements for the main civilian and military superannuation schemes; and
- the *Superannuation Legislation (Consequential Amendments and Transitional Provisions) Bill 2010*, which contains the consequential and transitional provisions necessary to facilitate the merger, the changes to superannuation administration and the modernisation of specific aspects of Australian Government superannuation to better align with the broader superannuation industry.

Following the merger of ARIA, the MSB Board and the DFRDB Authority, the single trustee will be responsible for managing the main Commonwealth civilian and military superannuation schemes. These schemes are:

- the Commonwealth Superannuation Scheme;
- the Public Sector Superannuation Scheme;
- the Public Sector Superannuation Accumulation Plan;
- the Military Superannuation and Benefits Scheme;
- the Defence Force Retirement and Death Benefits Scheme; and
- the Defence Forces Retirement Benefits Scheme .

The single trustee will also be responsible for the superannuation scheme established by the 1922 scheme and the Papua New Guinea scheme. These schemes were previously the responsibility of the Commissioner for Superannuation. The position of Commissioner for Superannuation is being replaced with a Chief Executive Officer position, and ComSuper will be established as a Commonwealth agency, from 1 July 2010 by virtue of the *ComSuper Bill 2010*.

Consolidation of the trustee arrangements will bring more than 650,000 members and pensioners under a single trustee board with funds under management of nearly \$19 billion (based on figures as at 30 June 2009).

Comment on the Bill

When the Government announced its intention to amalgamate the Commonwealth military and civilian superannuation boards DFWA wrote to the Minister expressing its strong opposition.

DFWA had and still has three key objections:

Key Objection 1

The merger proposal ignores the unique nature of military service. All major political parties acknowledge that no other avenue of service to the Australian people places its participants at the same, or even distantly similar, levels of personal and collective risk nor requires the complete surrender of basic human rights to the State. Unique service requires unique solutions, not ones which further blur the distinction between the uniqueness of military service and civilian norms. That is why Australia has a separate Department of Veterans' Affairs and is a key reason why Australia needs to retain a separate board to administer the military superannuation schemes (one an unfunded defined benefit scheme and the other comprising an employee contributory fund and an unfunded employer defined benefit component). These differ markedly from other Commonwealth Government administered schemes particularly in respect to the specific to ADF disability and death provisions.

On the 19th December 2008 The Federal Court of Australia pointed out that “*the Minister is required by s 4 of the Military Superannuation and Benefits Act 1991 (Cth) to establish an occupational superannuation scheme for, in substance, members of the armed forces with a deed in the form set out in a schedule to the Act (the Deed).The Act also establishes the Military Superannuation and Benefits Board of Trustees No 1. The Board has such functions and powers as are set out in the Deed.*”

Rule 3 of the Deed provides:

3 Functions and powers of the Board

(1) The functions of the Board are to administer the Superannuation Scheme and to manage and invest the Fund in accordance with the provisions of the Act and this Deed including, without limiting the generality of the foregoing, the following functions:

- a. to pay benefits to or in respect of members, and to make payments to and receive payments from the Commonwealth, as provided for in the Act;*
- b. to provide advice to the Minister on proposed changes to the Act and the Deed; and*
- c. to determine interest rates for the purposes of the Superannuation Scheme;*

...

(2) The Board has power in Australia and elsewhere to do all things necessary or convenient to be done for, or in connection with, the performance of its functions and, in particular, may:

...

- g. establish an Incapacity Classification Committee to determine members' incapacity classifications under the Rules;*
- h. establish 1, or more than 1, Reconsideration Committee:*
 - i. to examine and report on decisions of the Board and its delegates under the Rules relating to members' entitlements to benefits; and*

- ii. *to reconsider decisions of the Board and its delegates under the Rules relating to members' entitlements and benefits;*"

As indicated in this judgement, the military superannuation schemes are specific to the requirements of members of the ADF. Notably the schemes disability and death benefits are unique to the responsibilities of the trustees of the current military schemes and require a different and additional skill set to that needed for the public service schemes.

Key Objection 2

The decision was made before the Four reviews¹ (two of which are still to be finalised) affecting military superannuation being conducted had reported and introducing such an unexpected change to the governance arrangements for disparate schemes serving distinctly different classes of members was at best premature and at worst unnecessarily provocative.

Key Objection 3

The proposed amalgamation was initiated without prior consultation and without regard for the views of key ex-service organisations, including DFWA. Subsequent correspondence from the Minister and the DFRDB Authority has not allayed our concerns. In addition, DFWA concerns that the amalgamation proposal would achieve its own momentum despite being contrary to the interests of past, present and future servicemen and women - and therefore to the wider Australian community have now been born out.

Other Comments

Governing Board (Board of CSC)

Clause 8 requires there to be a governing board of directors (Board) of CSC. The function, membership and operation of the Board are set out in Clause 10 – Membership.

This board needs a blend of experience and knowledge, including a comprehensive understanding of the unique nature of military service, in order to best serve the military and the wider Australian community. The way it is intended to be constituted gives us no confidence that it will have this and to the extent it may have, that this expertise will have sufficient influence in board considerations to ensure the uniqueness of ADF service is given appropriate weight.

The combined effect of subclauses 10(1) and 10(2) is that, in line with the equal representation requirements in the SIS legislation, the Board of CSC consists of an equal number of employer and employee directors (sometimes referred to as “employer representatives” and “member representatives”, respectively). There is also an independent director, being the Chair.

Under **subclause 10(2)**, the employee directors are nominated, in writing, by:

- the President of the ACTU who represents the interests of members of the civilian schemes and nominates 3 directors; and
- the Chief of the Defence Force who represents the interest of members of the military schemes and nominates 2 directors.

¹ The Review into Military Superannuation Arrangements
The Senate Inquiry into the cost of living pressures on older Australians
The Matthews Inquiry into Indexation, and
The Henry review into Australia's future taxation arrangements

The effective result of these provisions is that although the public service members will be well represented (but not necessarily those retired), the serving and retired men and women of the ADF are left without direct representation on this governing board. To suggest that the CDF provide for that representation is a bridge too far. His nominees will undoubtedly perform their roles with diligence but with the best will in the world they will inevitably represent the ADF as an entity rather than ADF individuals and it is highly unlikely based on experience up until now that they could effectively represent retired members of the military schemes. In any event the total of 2 members in the number of 10 constituting the board inevitably means that the specific nature of the service aspects in board considerations will be subordinated by the weight of numbers even taking into consideration the voting provisions in clauses 22 and 23.

This bill proposes the Finance Minister choose the remaining 5 employer directors and 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 but DFWA believes this arrangement would have little practical impact in ensuring a balanced “employer understanding” of the uniqueness of ADF service aspects in these appointments. For the present military schemes “employer” members appointments are the responsibility of the Minister for Defence Personnel, Materiel and Science.

Review into Military Superannuation Arrangements has acknowledged the military schemes disability and death benefits are unique to the responsibilities of the trustees of the current military schemes and require a different and additional skill set to that needed for the public service schemes in its recommendation to establish a single board to manage all military superannuation schemes. DFWA has already advised its agreement with this and has recommended a possible board composition designed to met the governance requirements as well as protect the interests of both the members of these schemes and the Commonwealth. We have suggested a 7-member board constituted as follows:

- Independent Chairman
- Independent member with superannuation industry expertise
- Independent member with investment/financial services industry expertise
- 2 employer members (with at least 1 from Department of Defence)
- Employee member nominated from within the ADF.
- Ex-employee member nominated by the military superannuants’ community.

Clauses 31 & 32 - Exemption from taxation

Both of these clauses have sub clauses enabling regulations to be made which reduce the scope of the tax exemption. It is not clear how it would be intended to use these but they provide an avenue to siphon off funds to Government revenue that would otherwise benefit fund members with a minimum level of scrutiny.

Clause 33 - Source of funds for paying remuneration and allowances

Clause 33 sets out the source from which the Chair and other directors of CSC are paid remuneration and allowances. The bill proposes that the Chair and other directors of CSC are paid out of the superannuation fund in respect of which they are performing functions. However, when performing functions in relation to the 1922 scheme, DFRB, DFRDB or PNG scheme, they are paid from the Consolidated Revenue Fund because these schemes do not have a superannuation fund. DFWA presumes that Commonwealth employees nominated to be members will not receive remuneration or allowances under clause 13 in addition to their existing remuneration but would simply be reimbursed expenses in line with existing Commonwealth Government provisions.

Financial Impact of Change

The assumption that these revised arrangements will result in cost savings and an increase in efficiency is unlikely to be realised. The disparate nature of the military schemes and the governance expertise required inevitably means there would need to be specialist “policy committees” formed to provide advice to the governing board and would limit the opportunity for staff rationalisation. It is not hard to envisage the headline savings being quickly absorbed in higher administration costs to the funds. In addition there is a direct cost of \$1.1 million to ARIA, the MSB Board and the DFRDB Authority associated with implementing the merger of these boards. The cost relates to tasks such as undertaking due diligence and conducting a communication campaign for scheme members. It would be inappropriate for these costs to be a charge against the funds as this is a government not superannuation fund project.