



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

16 April 2013

***Submission to the Senate Foreign Affairs, Defence and Trade
Legislation Committee***

***Veterans' Affairs Legislation Amendment
(Military Compensation Review and Other Measures) Bill 2013***

Introduction

1. DFWA has taken a strong and continuous interest in Veterans' Affairs legislation since the decision was made to re-design the veterans' and Defence Force member's rehabilitation and compensation regime in 2002. The Association took part in the Working Party process which played its part in the development of what became the *Military Rehabilitation and Compensation Act 2004*. When the Review of Military Compensation Arrangements did its work in 2009 – 2011, as part of its consultation with the defence and veteran community, the Association made representations to the Review.
2. From the outset DFWA has taken the MRCA to be a substantial improvement on the arrangements that were in place before it came into effect in July 2004. This is not to say that we thought it was free of all defect. As far back as the Working Party sessions we put forward suggestions for changes to the Bill, some of which were taken up, and many were not. In our view, the Act's failure to recognise any element of "reasonable expectation" in setting Incapacity Payment rates, the absence of any provision for access to Defence Housing for incapacitated veterans and its treatment of superannuation in relation to incapacity payments – especially the SRDP - remain significant defects. On the other hand, we are gratified to see policy under the Act in relation to vocational training and education develop in the direction we have always advocated.

3. Similarly, we find the Government Response to the Review, with one major reservation, very encouraging. The changes made by the Department, together with the legislative changes in the current Bill we find generally acceptable. To us, a striking feature of the way in which the Review's recommendations were considered by the Government, through the Department, and were implemented, including the introduction of this Bill to the Parliament, is the spirit in which the exercise has been conducted. An extraordinarily high (for veterans' measures) proportion of the review's recommendations were accepted, and several that were not were replaced by more beneficial changes. Yet others were accepted with enhancements. We wish to place on record our appreciation of the Department's efforts.

Major Reservation

4. DFWA has consistently held that offsetting of the Commonwealth contribution (CC) to military superannuation against payments for incapacity, especially the SRDP, is both illogical and unjust.
5. The Association does not accept the characterisation of the CC component of superannuation, whether DFRDB or MSBS as "income maintenance" (Government Response 12.1 p.20). Traditionally military superannuation has been called "retirement pay". We believe that this term is an accurate description of its character and purpose.
6. The unique nature of military service is a principle espoused and promoted by DFWA. It is also acknowledged in the Report of the Review of Military Compensation Arrangements (Voll ch4). It is also recognised by a number of Australian Government arrangements that are specific to the ADF. In our view it reflects the reality of military service and underpins the relationship between the ADF and its members, the Australian nation and its Government. It provides the lens through which rights and obligations inherent in this relationship should be viewed.
7. Retirement Pay (RP) is an arrangement specific to the ADF. It is part and parcel of the collective arrangements that are entered into when an individual becomes a member of the Defence Force, and which are known as Conditions of Service. These Conditions of Service are not simply about remuneration and benefits to which the member becomes entitled, but also embrace obligations and liabilities assumed both by the member and by the Commonwealth.
8. The two major Retirement Pay schemes, DFRDB and MSBS establish the framework within which the obligations of both parties to the arrangement are assumed, and the conditions under which those obligations are met. Two in particular stand out:

- The member is to render honourable service for the prescribed period to become eligible for the benefits of the scheme, and
 - Both the member and the Commonwealth are to contribute a proportion of the funds required to assure the entitled benefits.
9. Those currently in receipt of Retirement Pay and those currently serving who are entitled to it when their service ends had no choice but to accept the Retirement Pay scheme in place at the time they became members, and the obligations it entailed. It was unmistakably a Condition of Service. It is no part of that Condition of Service that RP is subject to restriction or forfeit if an individual in receipt of it chooses to engage in remunerative employment after having served the required time and met the other obligations in the ADF. Post – service employment can be in the private sector or government service, and is completely subject to the choice of the Retirement Payee. Retirement Pay, in other words, is not “income maintenance”. It arises out of ADF service and is dependent on service. In this respect it is no different from any other pay received by an ADF member while actually rendering service.
 10. MRCA is, like DFRDB or MSBS, an arrangement specific to the ADF. It is likewise a Condition of Service, and it involves obligations and benefits to both the Commonwealth and the ADF member. It provides for rehabilitation and/or payment of compensation to a member who, among other things, might be disabled due to wounding, injury or disease while on service. Despite all that might be done by way of rehabilitation, some disabilities might be permanent, and might affect the individual's capacity for work, and that might in turn entitle him or her to Incapacity Payments up to, in severe cases the Special Rate Disability Pension (SRDP). Such payments might be more accurately be described as “income maintenance” but they do not lose their compensatory character for that.
 11. An individual in receipt of RP who is disabled in a way that restricts or eliminates his capacity for remunerative work has had the freedom of choice to engage in such work – untrammelled in an able-bodied RP recipient – denied to him by service. He suffers a significant disadvantage against his able-bodied colleague. Though Incapacity Payments can be seen as “income maintenance” in that they support the income of an individual who can no longer earn an income, they also compensate for denial of the choice available to others who have rendered the same service for their RP. Thus RP and SRDP can, and should, be seen as separate benefits, paid as entitlements for separate purposes and dependent on separate circumstances.
 12. Whatever the technical treatment of Incapacity Payments, we are strongly of the view that:

- they incorporate a strongly compensatory character, and
- must be seen in an entirely different light from Retirement Pay, which is a mutually accepted payment for service rendered, and does not carry any concept of “income maintenance”, or unearned benefit

Conclusions

13. The DFVA:

- supports the amendments proposed in the Bill;
- does not regard MRCA, as amended by the Bill as free of defect, and contends that there are improvements still to be made;
- disputes the Government's characterisation of Military Superannuation as “income maintenance” and does not support the Government's acceptance of Recommendation 12.1 of the Review;
- urges the Committee to accept Military Superannuation as having the character of Retirement Pay, and to propose amendments to the Bill that would have the effect of insulating Retirement Pay from its current offsetting provisions; and
- wishes to record its appreciation of the work of the Review, and of the Department of Veterans' Affairs in implementing its recommendations, including preparation of the current Bill.

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

Yours sincerely,
Colonel David K Jamison AM (Retd)
National President