



DEFENCE FORCE WELFARE ASSOCIATION

MONTHLY UPDATE #243 – 3 September 2009

UPDATE is a monthly newsheet produced by the Defence Force Welfare Association containing current items of interest to the Service and ex-Service community. It is widely distributed to politicians, media outlets, senior Service and Public Service officers and DFWA Branches.

THE MILITARY JUSTICE DILEMMA

The Association supports the concerns offered by both the Australian Defence Association (ADA) and the Australian National University (ANU) regarding the recent High Court's ruling that the new military justice arrangements are unconstitutional.

There is no doubt that the ADF must have a disciplinary code that complies with Australia's international humanitarian law obligations (such as the Laws of Armed Conflict). It must also be governed by legislation that integrates a disciplinary code specific to military personnel with the civil and criminal offences applying to all Australians as well as with our national and individual obligations under international law.

ADA's four tenets are worth repeating:

- Any court trying ADF personnel needs to be readily deployable overseas when required, particularly to operational theatres as numerous courts martial have had to sit in war zones – including having to share the dangers involved.
- For both ADF operational efficiency and for fairness and equity reasons, all or most of the presiding members of a court trying ADF personnel must include judges with sound military experience in order to make fair and adequate judgments (especially about disciplinary rather than civil criminal offences).
- Due to the unique nature of war and military service in particular, a court trying military personnel must have credibility among those subject to it exclusively.
- Judges of a court trying ADF personnel need to be themselves military personnel so they to are subject to the Defence Force Disciplinary Act in other than the performance of their judicial function and duties – and are fully subject to the Laws of Armed Conflict (LOAC).

The ANU's call to quickly revive the previous courts martial system to give it some breathing space until a new military justice system can be found is supported. The ANU notes that Defence Force Discipline Act which creates Commonwealth military law offences remains intact and that ADF members can still be charged with offences under the existing law, however, they cannot immediately be tried before a properly constituted military court.

PHASE 2 OF THE LIVING-IN ACCOMMODATION PROJECT

SINGLE LEAP (Living Environment and Accommodation Precinct) is a Defence project to bring living-in accommodation for single members of the Australian Defence Force, into line with community standards. The Association notes with concern reports that Defence is some two years behind commencement to Phase 2 of the Project. Accommodation for both Living-In members and others is part of the employment package of Wages and Conditions and if expected conditions are not to be delivered either in promised timeframes or not at all, then perhaps ADF members ought to seek recompense through increased wages ?

Currently ADF members are being asked to endorse a Workplace Remuneration Agreement for the next two years involving increases of about 3% in each year. Might that now be inadequate? Similarly, the Government's decision not to amend the indexation method for ADF Superannuation Pensions might well cause serving members (and their families) to reconsider the adequacy of the WRA package being offered !

MILITARY SUPERANNUATION INDEXATION – LETS GET TO THE SIMPLE FACTS !

Readers may by now be overwhelmed by the plethora of Government announcements, reports, press releases, media announcements, platitudes from politicians; or are just confused by the different indexation arrangements applying to different sectors of the Australian community. So just what are the basic facts ? Put simply:

- Some Australians receive generously indexed superannuation benefits from the public purse: pre 2004 Federal Parliamentarians for example.
- Some needy Australians rightly receive welfare benefits, but these are generously indexed so that some relativities can be maintained over time. The Government has acknowledged that CPI indexation for their payments is inappropriate. Many recipients contributed nothing (or little) to the payments they receive.
- Some Australians, as part of their employment conditions of service when they started their careers, contributed to their retirement by paying into superannuation throughout their working lives. In retirement they are punished by receiving an inadequate CPI based indexation and thus are forced into a continual reduction in their standards of living. **These second class citizens are Australia's 63,000 military superannuation recipients** as well as some 300,000 retired Commonwealth public servants.
- During the lead up to the last election Kevin Rudd acknowledged that three Senate inquiries since 2001 recommended that a wage-based index for former ADF families was appropriate, and criticised the then Government for not acting on the recommendations. Now he has chosen to accept a one-man inquiry (the Matthews Report) that conveniently says the CPI is adequate for military superannuants, even though no other inquiry over the last 37 years recommended sticking with CPI !
- The Government says the cost for improving indexation for military superannuants would be prohibitive. This is simply not true, especially given the Government can find billions for a one off stimulus package! Independent actuarial studies support a Department of Finance estimate that an indexation change for some 300,000 public servant superannuants would be in the order of \$30m a year the cost for military superannuants would therefore be less than that, and in any case the vast majority would be ploughed back into the economy on a regular basis ... how that's for an effective stimulus package Mr Rudd ?

The Association will continue working with others to right this wrong. All we want is to be treated fairly, and not be discriminated against. Is that really asking too much ?

THE UNIQUE NATURE OF MILITARY SERVICE

As part of the Association's 50th anniversary the Association will hold a Forum on 22 October 2009 at the Royal Military College – Duntroon. The theme of the Forum is **The Role of the Australian Defence Force within the Australian Community and the Unique Nature of Military Service**. A number of prominent speakers will deliver papers to the Forum.

Further advice can be found on the Association's website. Should you require further information or wish to attend, please contact the National Secretary.

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