



Australian Defence Force Retirees Association Inc.

No. A0108026R

We represent the interests of Defence Force Retirees regarding their Superannuation

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The Hon Darren Chester MP
Minister for Defence Personnel
Minister for Veteran's Affairs

Senator the Hon Mathias Cormann
Minister for Finance

The Hon Christian Porter MP
Attorney-General
Minister for Industrial Relations

Dear Ministers,

We, the members of Australian Defence Force Retirees Association Inc. submit that Sections of Defence Force Retirement and Death Benefits Act 1973 (DFRDB Act) have been inappropriately drafted, resulting in unreasonable outcomes that are not consistent with the object underlying the Act which, in the absence of any definition to the contrary, is established by the recommendations of the Joint Select Committee on Defence Forces Retirement Benefits Legislation (Jess Committee) in its May 1972 Report.

The Jess Committee recommendations entitle:

1. A member who has served a minimum of 20 years to retired pay or invalid pay, expressed as a percentage of final salary determined by the total years of service and adjusted annually so that relativity with average weekly earnings is maintained;
2. A recipient member to commute, that is, receive a part pre-payment of four times that retired pay and invalid pay entitlement to assist with re-establishment in civilian life, for a proportionate reduction of retired pay and invalid pay;
3. The spouse of a deceased recipient member to a pension equal to five-eighths of a deceased recipient member's retired pay or invalid pay entitlement; and
4. The eligible children and orphans of a deceased recipient member to pension equal to, one-sixth and one-eighth respectively, of the spouse's pension.

Those entitlements are granted in Sections 23, 24, 32, 39, 42 and 43 of the DFRDB Act.

Other than the choice of the Consumer Price Index as the basis for adjusting benefits to maintain their relativity, there is no evidence of intent by any Government to alter those entitlements.

Treasury, which had long controlled Defence Force superannuation benefits, and Defence, the sponsoring Department, considered the Commonwealth Public Service (CPS) superannuation scheme to be the benchmark for Defence Force superannuation schemes. They had opposed the Jess Committee recommendations because they included entitlements which did not exist in the CPS superannuation scheme. Foremost among which was the right to early retirement and commutation, a recognition of the disadvantage resulting from long term military service.

When they drafted the DFRDB Act and its subsequent amendments, the Department of Defence, Treasury, the Commonwealth Actuary and the Parliamentary Counsel systematically transformed these entitlements in Section 24(3)(b), Section 98A and Section 98B, under the guise of maintaining consistency with the updating arrangements in the CPS superannuation scheme.

The wording of these Sections, the incorporation of outdated Life Expectancy tables, and the use of the Consumer Price Index as the basis for maintaining relativity transform the right of DFRDB members to receive an unindexed part pre-payment of their retired pay or invalid pay entitlement into an indexed lifetime penalty. Not just for the members who avail themselves to that entitlement, but for all recipient members and their surviving dependents. This lifetime penalty amounts to the acquisition of property by the Commonwealth, on other than just terms, which is illegal under Section 51 (xxxi) of the Constitution.

There is no evidence which supports a presumption that the outcomes of the ordinary meaning conveyed by the text of Sections 24(3)(b), 98A and 98B were the intent of the Governments or the Parliaments of the day. But there is much evidence which shows that the Members of those Parliaments had no understanding of the legislation they enacted.

Evidence attesting to the systematic transformation of the Jess Committee recommendations, the effect, and how the Parliament was deceived into enacting that legislation is presented in:

[Defence Force Retirement and Death Benefits Act 1973 – A Blatant Deception of the Australian Parliament and Gross Denial of the Superannuation Entitlements of Ex-servicemen and Women](#)

More than 30,000 ex-servicemen and women, subject to the provisions of the DFRDB Act are already deceased. However, on behalf of those whose benefits will continue to be diminished by the DFRDB Act, for up to forty or more years, we seek:

1. The amendment of:
 - a. Section 24(3)(b) to;
 - (i) terminate retirement pay and invalidity pay reduction, resulting from commutation, on the date on which the total retirement pay and invalidity pay reduction equates to the amount commuted; and

- (ii) replace "Schedule 3" with "latest Life Expectancy Factors published by the Australian Bureau of Statistics".
- b. Section 98B to;
- (i) remove Section 98B(5) in its entirety; and
 - (ii) apply the indexation increases, determined under Section 98A, to the retirement pay and invalidity pay that would be payable had the member not commuted.
2. The recalculation of the retirement pay reduction for those recipients yet to reach Schedule 3 life expectancy, according to the appropriate expectation of life factor for each individual;
 3. The refund of all retirement pay and invalidity pay reductions which exceed the amount commuted; and
 4. The restoration of the relativity of DFRDB benefits to the rates of those benefits at the time of retirement.

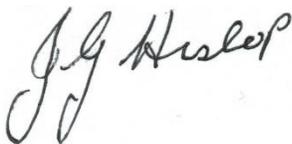
The Simplified outline under *Schedule 2 – Debits of amounts from the Future Fund of Future Fund Act 2006* states:

- *Amounts may be debited from the Fund Account in accordance with the purposes of the Fund Account.*
- *The main purpose of the Fund Account is to discharge unfunded superannuation liabilities from whichever is the earlier of:*
 - (a) *the time when the balance of the Fund is greater than or equal to the target asset level;*
 - (b) *1 July 2020.*

In the Future Fund 2018-19 Annual Report, the balance of the Fund was \$162.6 billion as of 30 June 2018, with earnings of \$16.8 billion for FY 2018-19.

A small fraction of this Fund will remedy this long-standing grievance with no impact on the Budget.

Yours sincerely,



J G Hislop OAM

President, Australian Defence Force Retirees Association Inc.