

From: LtCol David .R. Lewis (Retd)

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NC 166 /04

27th November 04

**The Hon De-Anne Kelly, MP
Minister for Veterans' Affairs
Minister Assisting the Minister for Defence
Parliament House
CANBERRA. ACT 2600**

Dear Minister ,

**DEFENCE FORCE RETIREMENT & DEATH BENEFIT SCHEME
INJUSTICE**

I am seeking your assistance on a matter that is causing me and thousands of other retired Servicemen and women, to be “ripped off” by the Government as a result of flawed legislation in the Defence Force Retirement and Death Benefit (DFRDB) Scheme, a statutory scheme operating under the DFRDB Act (1973). Specifically, that the 1963 Actuarial Tables (Life Expectancy data) used in the Act cannot be updated to use current data.

I write to you in my capacity as an Ex Serviceman, a recipient of the DFRDB Pension and as National Chairman of the *Australian Special Air Service Association*. In writing to you, I am conscious that the Department of Defence is responsible for the formulation of the policy underlying the DFRDB Scheme and that the DFRDB Authority is legally responsible for the administration of the DFRDB Scheme and the Commissioner for Superannuation is the Chairman of the Authority. I am also aware that ComSuper administers the DFRDB Scheme on behalf of the Authority.

The issue was publicly raised in the Daily Telegraph on 8th June 2004 however it is not a new issue. The issues relating to the Life Expectancy Tables has been raised with Opposition and Governments since the 1980's and I am aware that several organizations including my own, have raised this in recent times with the two previous Ministers Assisting the Minister for Defence, the Minister by appointment responsible for the DFRDB Scheme in total. It is obviously unjust but our representations have been consistently ignored.

My generation of Ex-Servicemen has been remarkably patient on this issue considering the financial losses we are incurring as a result of this flawed legislation and inept Government response. The shortfall to us is around \$3,000pa. We have generally left the matter to our representing Ex Service Organisations to resolve with Government in a dignified manner, consistent with the manner in which we served this Country in War and Peace. After several years of prodigious effort to resolve this with the Coalition, it is clear we need to ramp up our actions to compensate for the Governments inactions.

The difficulty for us is the simple ask; “*What is so hard about legislating to amend a Superannuation Act to reflect what is in every other Commonwealth Superannuation Scheme in Australia, including that of course for Parliamentarians?*”

The fact that the DFRDB Life Expectancy Factors **are not** updated to use current data, when all other Superannuation Schemes do so, is clearly discriminatory. The fact that it has and is causing DFRDB Members to suffer financial loss is unfair, unjust and dare I suggest, obscene. It is not the Australian way to treat anyone in this manner, particularly as they have spent their working lives in the Australian Defence Force and in many cases have risked their lives in the Service of their Country at Government direction.

I can assure you, the Government is under-estimating the disquiet that is within the Veteran Community as the impact is not only on the former Servicemen, but their widows also, particularly as this message is further disseminated to our members. It is especially disconcerting to note that the matter has been raised directly with the PM and he has apparently chosen not to act! Is it because the funding implications of amending this scheme the problem, or rather, the belief that it is a “*dead scheme*”, with now less than 7,000 Uniformed Defence Personnel still contribution? For us, it is far from a “dead scheme”, it is our future.

Another aspect of the Scheme appears doubtful and that is, whether the Act is discriminatory. Changes to the Superannuation exemptions in the Sex Discrimination Act (SDA) 1984 came into effect on 25 June 1993. Existing funds (such as DFRDB) had until 01 July 1994 to comply with the provisions of section 41B of the SDA. Whilst understandably ComSuper took no action on this, as the Administrator of the DFRDB Scheme, surely Defence should have responded as the delegate responsible for the formulation of Policy. There is no evidence to suggest Defence took any action in the interest of those men and women still in Uniform at the time and now leaves itself open to assumptions of unlawful discrimination (or negligence).

The final major flaw in the DFRDB Scheme relates to those who have chosen to Commute their Pension entitlements. Pursuant to Section 23(2) of the DFRDB Act, in the simplest form, retirement pay is calculate as follows:

Annual rate of pay at discharge X relevant percentage set out in Schedule I to the Act (derived from completed years of service) equal amount of retirement pay per annum before commutation.

A Uniformed person may elect to commute their retirement pay to a lump sum, pursuant to Section 24 of the DFRDB Act. There is a simple commutation formula in section 24 that operates by reference to a person's completed years of service, after 30th June 1982. The application of this formula produces a commutation factor and the commuted lump sum, is derived by multiplying the retirement pay by the commutation factor.

The post-commutation retirement pay is derived by reducing the pre-commutation retirement pay by an amount calculated by dividing the Service Persons commutation lump sum by the person's life expectancy factor set out in Schedule 3 to the DFRDB Act. (I believe as stated, to be discriminatory). And herein lies the final problem. When the pension is reduced, based on the individuals' life expectancy, the calculation allows for the “Pay-back” of the commuted amount by way of a reduced Pension. However, once the Ex Serviceperson has reached his life expectancy and technically discharged his/her debt, there is NO mechanism in place to restore the Pension to the pre-commuted entitlement.

Should the serviceman live, as some have up to 30years past their life expectancy, as the recent State Funerals reveal, then this effectively **steals** from them by deceit, anything upwards of \$150,000. What is equally sad, the same intolerable rules will apply to widows under the new MRC Act, should they wish to commute the portion of the Pension on the death of their husband.

Minister, many of us *cop it on the chin* the disgraceful situation that prevailed for years whereby long- term allowances, such as Special Action Forces Allowances, Flying Allowance etc were not Superannuated, particularly when the Superannuation Guarantee (Admin) Act and Superannuation Guarantee Ruling (SGR 94/4) required **all regular** paid allowances to be Superannuated. We were being taxed as though the allowances were superannuated, but they were **not**. The effect of this was that we accrued a debt that was paid at the point of Superannuation and this should have been corrected in the early 1990s. Whilst this aspect was adjusted on 12 August 04 with zero retrospectivity, you could perhaps appreciate why so many more of us under the DFRDB Scheme have felt cheated by mismanagement of a Condition of Service. In my own case, over life expectancy, I estimate this to be in excess of \$85,000 lost!!

You may understand our concerns about the Government's apparent apathy towards members of the DFRDB Scheme and the lack of fairness, justice and consistency. We believe the Government must demonstrate its good faith and commitment to DFRDB members and amend this Act and bring it into line with all other schemes. Furthermore, we who have been "ripped off" since retirement and our widows, must be compensated and receive our full entitlements into the future.

Minister, I have taken the very rare liberty to make this an open letter to my memberships so that they, should they so wish, may approach their local members. I also intend to forward a copy to the other National Executives from the Ex Service Community.

Sincerely in Service,