

2 February 2020

The Hon. Scott Morrison MP  
Prime Minister  
Australian Parliament House  
PO Box 6022  
House of Representatives  
Canberra ACT 2600

Dear Prime Minister,

### **DEFENCE FORCE REPATRIATION AND DEATH BENEFITS SCHEME**

For some forty-six years, ongoing, over 50,000 long-serving veterans have appealed to successive Governments of the Commonwealth over the injustices of the Defence Force Repatriation and Death Benefits Scheme.

#### **Independent Inquiry**

Your Government has been the first in that protracted period to respond to Veteran-calls for justice. This was under the Action of Minister Chester and Senator Seselja, who initiated an Independent Inquiry into the Administration of the DFRDB Scheme; as placed in the hands of the Commonwealth Ombudsman

Our Veteran cohort earnestly conveyed to the Ministers' Ex-Service Organisation (ESO) advisors, to no avail, the need for the enquiry to be conducted by a truly independent arbiter, and, under the *Letters Patent of the Royal Commission into the Financial Services Industry*.

#### **Exclusion from the Financial Services Royal Commission**

Although the charter of that Royal Commission determined, "*all Australians have the right to be treated honestly and fairly in their dealings with banking, superannuation and financial services providers*", DFRDB veterans were specifically excluded from that collective, of '*All Australians*'. This was on the basis that the Commonwealth was precluded from the Royal Commission

because its financial institutions, such as the Commonwealth Superannuation Corporation (CSC) that now administers the DFRDB Scheme, were subject to more stringent controls than the public industry. The Royal Commission's charter noted that: *"The highest standards of conduct are critical to the good governance and corporate culture of those (financial) providers."*

**The foregoing has now been proven to be false by the Ombudsman's Inquiry and ultimately, by the admissions of Defence.**

### **Commonwealth Ombudsman**

DFRDB veterans accept that the Commonwealth Ombudsman is an adept authority in conducting Commonwealth enquiries. However, as an institution of the Commonwealth (and the resources it employed in its Independent Inquiry) from the outset, the Commonwealth Ombudsman's selection was of grave concern to our veteran cohort. We contend that such an enquiry by a Commonwealth instrumentality, could **'never'** be truly independent of the Commonwealth.

### **Ombudsman's Report**

The Ombudsman released his report in December 2019. We understand the Ombudsman received a record, 3,436 submissions, that included 739 Statutory Declarations regarding Exclusionary Detailing. Of these submissions 97% originated from Veterans that had accepted a commutation and just **3%, from those that hadn't commuted.**

Although our contention is that the Ombudsman should never have conducted the DFRDB Independent Inquiry, his report findings confirmed mal-administration of the DFRDB Scheme, but his blame was solely sheeted to the Department of Defence. We continue to believe that the DFRDB Authority (and its latter identities) were similarly involved in mal-administration of the scheme and duplicitous, misleading advice, to clients.

The Ombudsman recommended that a public apology be made to DFRDB Veterans for DOD's failure to meet the 'high standards' previously referred to

above. This recommended apology then eventuated being signed by the Secretary, Department of Defence, and, the Chief of the Defence Force.

We believe that this apology constitutes not only positive proof that the Administration of the Defence Force Retirement and Death Benefits Scheme was *gravely flawed*, but also, was *an admission of culpability* by this Commonwealth Department. Based on the Ombudsman's findings '*that those that Commuted suffered no financial disbenefit over those that did not Commute*', the Ombudsman recommended no reparations were due to the Veterans.

These recommendations arose, however, from a fallacious premise in the Report. The report also contained duplicitous content, just as serious as that of the communications of the conditions of the superannuation Scheme itself, by the DFRDB Authority et al.

The original deceit by that agency, misguided long-serving veterans into financial decisions inconsistent with their understandings of the Scheme, to their distinct and real financial disadvantage. They were then fed misinformation for decades by Single-service ADF bodies within Official communications, that confirmed that **their beliefs were the correct interpretation of how their Commutation would be administered.**

The Ombudsman also rejected the manipulation of the scheme such as by substantial tax legislation that varied the taxation of the Lump Sum from 5% to 32% as applied to long-serving Veterans that were arbitrarily required to finalise their military service, before age 55-years – the point that a 50% tax exemption applied. The outcomes of this were further exacerbated by imposed 'Roll Over' protection, and a series of subsequent Stock Market crashes, within the term of the DFRDB Scheme.

### **DFRDB Veteran Contentions**

Our assertions were never as described as the criterion, founded within the Ombudsman's brief, to those he deferred to for expert analysis, (the Australian Government Actuary and their agent, the accounting company, KPMG).

In complete contradiction of the Ombudsman's contention, DFRDB-Veterans have '**never**' claimed that:

***‘those that Commuted, suffered any financial disbenefit, over those that did not Commute’.***

Our position has never changed and remains with our principal contention, that underpinned all of our submissions to the OMBUDSMAN, as confirmed by his report.

We actually called for:

- ***the immediate cancellation of the ‘whole-of-life reduction in Superannuation Pay’ after Commutation was accepted and once Notional Life Expectancy was reached.***

Furthermore, we called for just reparations for being deceived into accepting, the supposed benefit, of a Lump Sum Commutation:

- ***at such time as the reductions in Superannuation Pay, as aggregated over time, reached or reaches the amount initially received as a lump sum, as a consequence of Commutation, that the reductions be ceased from that point on; and,***
- ***that all monies in excess of the amount received at time of Commutation be repaid to the individual, so affected, or to their heirs and estates as appropriate, with such repayment not burdened by tax or other drawdown.***

Although the latter claim represents a substantial impost on the Commonwealth, we understand that the ‘Future Fund’ (and indeed the Australian budget) is fully capable of returning to Veterans their foregone Superannuation Pay benefits and entitlements in full. Surely this is so, with the ‘Future Fund’ originally conceived to brace the Commonwealth against unforeseen Superannuation omissions and shortfalls.

## **Remediation**

In bringing this issue to your attention, Prime Minister, I have no intention of presenting a post-mortem analysis of the Ombudsman’s

Report and its complete failure to address the matters of Veteran Superannuant concern.

I suggest furthermore, the duplicitous content of the Ombudsman's Report, (so consistent with the past treatment by the DFRDB Authority, of its Veteran Clients) has delivered **completely unsatisfactory, incorrect, and inappropriate conclusions and recommendations.**

My opinion, as an independent advocate for Veterans, is that the Ombudsman's Report requires a thorough analysis by high-level experts in the English language and in Logic, or, total rejection.

The suggested assignment of such independent expertise, is to fully interpret the Report against any failure in logic; deferral to irrational measures of argument; and, other devices that counterbalance a truthful conclusion by the Report's Target Audience – its originators, within your Cabinet.

These red herrings, give rise to my contention that in resorting to such non-deductive argument, the author of the Ombudsman's Report has introduced standards of evaluation that rest on fallacious criteria, as opposed to the truth. The retroductive reasoning of the report cannot be accepted, given the inaccuracies of its premises'. Similarly, its conclusions cannot stand as a being plausible, or, even *probable*. This particularly given the proven inaccuracies made within the premises', upon which the report was founded, as outlined above.

I cite, false claims; inappropriate Opportunity Costs and Benefits; deferral to higher authority; the use of unbalanced comparisons; the acceptance of legal interpretations; (used without prior disclosure, against the common understanding of such terms and their affect on outcomes) as examples

Prime Minister, we laud your Government for *The Australian Veterans' Recognition (Putting Veterans and their Families First) Act 2019) which received Royal Assent on 30 October 2019 and commenced on 31 October 2019.* Clearly though, we believe this

Covenant to be as much about remedying the inequities and omissions of the past, as about its future application and endorsement by the Nation.

On behalf of the 50,000 long-Serving Veterans and their families, affected by this protracted matter, I prevail upon you to intervene and to reject the Ombudsman's Report of his Independent Inquiry - that is apart from his finding that the Administration of the Defence Force Retirement and Death Benefits Scheme, was not properly administered by the Commonwealth entities charged with ensuring its veracity

Accordingly, I seek your review of the DFRDB Scheme, particularly matters relating to Lump Sum Commutation and its unreasonable detriment to ageing, long-term Veterans, and your action to remedy the ongoing detrimental impacts of the DFRDB Scheme.

Yours sincerely

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