



Australian Defence Force Retirees Association Inc.

No. A0108026R

We represent the interests of Defence Force Retirees regarding their Superannuation

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DFRDB UPDATE - JANUARY 2021

Introduction

Our apologies for the lack of Updates since our last, but we have not been idle and have been working intently on bringing our concerns with the DFRDB scheme before the Courts.

CDDA Application

As expected, Herb's CDDA application has now been formally rejected by the Directorate of Special Financial Claims (DSFC). The application was submitted in March and it took DSFC until December to finalise it. And even though it was largely irrelevant to the claim, DSFC still used the Ombudsman's Report as the primary justification for rejection.

Legal Action

After further consultation with our barrister, we have determined that the only challenge open against the legality of the DFRDB Act is on constitutional grounds, so Herb has now prepared a case, the basis of which is:

*The construction of the DFRDB Act is unconstitutional, in that the ordinary meaning of the text of the provisions in the Act results in **acquisition of property on other than just terms, within the meaning of section 51(xxxi) of the Constitution.***

Our advice from the barrister is that there are two primary avenues of appeal:

1. An Administrative Review by the AAT.
2. A Judicial Review by the Federal Court.

The AAT can engage in interpreting the disputed provisions of the DFRDB Act as it stands, and it can hear an argument that the Act as it stands is unconstitutional. If the latter argument is advanced then the Commonwealth can, and probably will remove the matter to the High Court. The AAT cannot deal with arguments that the legislation is simply 'unfair' or that there was any failure of consultation etc. by Parliament in the enacting the Act.

If ADFRA was to take the case to the Federal Court, the Court must first grant standing to the Association (ADFRA) to bring the action. If it does so then, it will want a security for the Commonwealth's costs of the order of \$50K. If standing is not granted, then any individual member who has suffered adversely can bring the action in their own name, provided a decision has been made by DFRDB in their case on the issue.

Court proceedings may provide some political leverage for Ministerial intervention, but there is no guarantee.

Since it does not require a substantial security, we have opted for the AAT avenue of appeal. However, as the deadline for the appeal of all previous decisions relating to DFRDB has been surpassed, Herb, who will bring the case to the AAT, has submitted this [Complaint](#) to the Commonwealth Superannuation Corporation (CSC) to trigger a new decision.

Our thanks for the erudite efforts of Bill Arden (WgCdr retired), whose research identified the perceived breach of section 51(xxxi) and located legal determinations which we can cite during our legal challenge.

Meeting with the Shadow Minister

So far, our approach to Shayne Neumann, the Shadow Minister for Defence Personnel and Veterans' Affairs has not resulted in any real action.

Defence Instructions

We have been trying to locate Defence Instructions which relate to the DFRDB scheme, particularly any which may have been promulgated after the DFRDB Act was enacted in June 1973 and after Defence Force (Retirement and Death Benefits Amendments) Act 1977 was enacted in February 1977. If anyone has any copies they can forward, or knows where they may be sourced, it would be greatly appreciated.

Stay COVID Safe

As COVID continues to impact our lives, I trust that you will do your utmost to keep yourselves and your families safe.

Jim Hislop OAM

President