

Introduction by Jim Hislop.

Thank you for this opportunity to make a presentation on behalf of the members of the Australian Defence Force Retirees Association and the remainder of the 50,000 plus DFRDB recipient population.

THE DEFENCE FORCE RETIREMENT AND DEATH BENEFITS SCHEME

Presentation to:

**Commonwealth Ombudsman investigation
into the accuracy of information provided,
by scheme administrators and relevant
departments, to DFRDB scheme members in
relation to Commutation.**

Jim introduced the presentation team.

OUR TEAM

- **Jim Hislop** – Served in the Army for 33 years. Retired as a Lieutenant Colonel in 1987.
- **Christian Bennett** – Served in the RAAF for 27 years and another 15 years in the Reserve. Retired as a Wing Commander in 2013.
- **Herb Ellerbock** – Served in the Army for 20 years. Retired as a Warrant Officer Class 1 in 1983.
- **Roz Ellerbock** – Our driver.

OUR ASSOCIATION

We formed the **Australian Defence Force Retirees Association** (ADFRA) last year because DFRDB **Members** felt they **were not being represented** by the major Ex-Service Organizations.

At last count we had **3,363** registered **Members**.

Many of those have conveyed their views to us and **submitted their** personal DFRDB **circumstances** as evidence.

I'll now hand over to Herb Ellerbock.

Herb is a systems analyst and database application developer with 35 years' experience, on top of his Army electronic systems maintenance engineering background.

Herb has been researching and writing about the denial of benefits under the DFRDB Scheme for the past four years.

Herb Ellerbock continued

Thanks Jim.

I will provide you with a copy of this presentation complete with the presentation notes.

However, if you have any questions during the remainder of this presentation please don't hesitate to ask.

OUR PURPOSE

Our purpose today will be to:

- Establish a **definition of the Commutation** provision;
- Establish what **information** was **disseminated** to DFRDB Members and
- Establish the **understanding** of the Communication provision which was **conveyed** in that information.

OUR PURPOSE

We will also:

- Identify **essential information** which was **withheld** from DFRDB Members;
- Illustrate the **actual outcomes** of the Commutation provision and
- Examine **the advent and amendment of the governing legislation, DFRDB Act 1973.**

BACKGROUND

Members' understanding of the DFRDB Scheme must be viewed in light of the demographic of this cohort:

- There were **few**, if any, qualified **Actuaries** among serving Defence Force personnel.
- Many would not have completed High School.
- They were **conditioned to follow orders** without question and **trusted** that the **“System” would look after them.**

The following illustrations provide a snapshot of the surviving recipient Member population.

660 individual Member details were analysed.

This is approximately 1.3% of the total surviving DFRDB Member Population and is considered to be a reasonable representation of that total population.

An analysis of those, shows that 84% of the Sample Population served between 20 and 25 years.

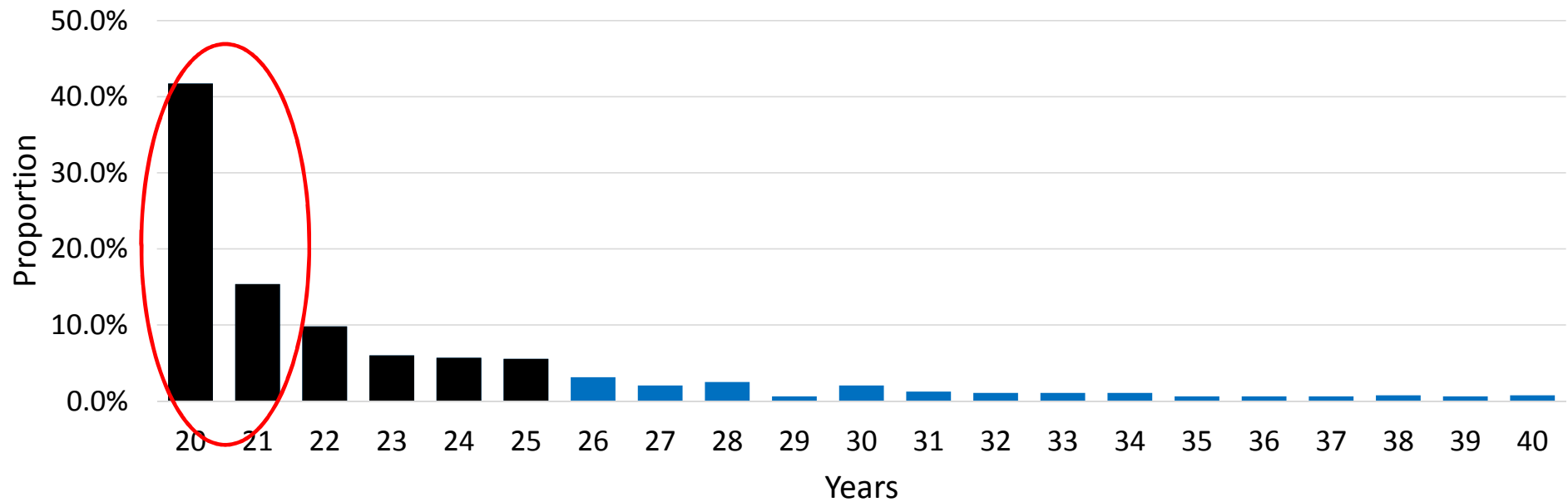
More than half served only 20-21 years and the majority of those were non-commissioned ranks.

Which is precisely what the scheme was designed to do.

TOTAL YEARS OF SERVICE

Based on a 660 Member Sample Population of DFRDB Retirees

■ 84% of Sample Population



86% of the Sample Population retired between the Ages of 35 and 46.

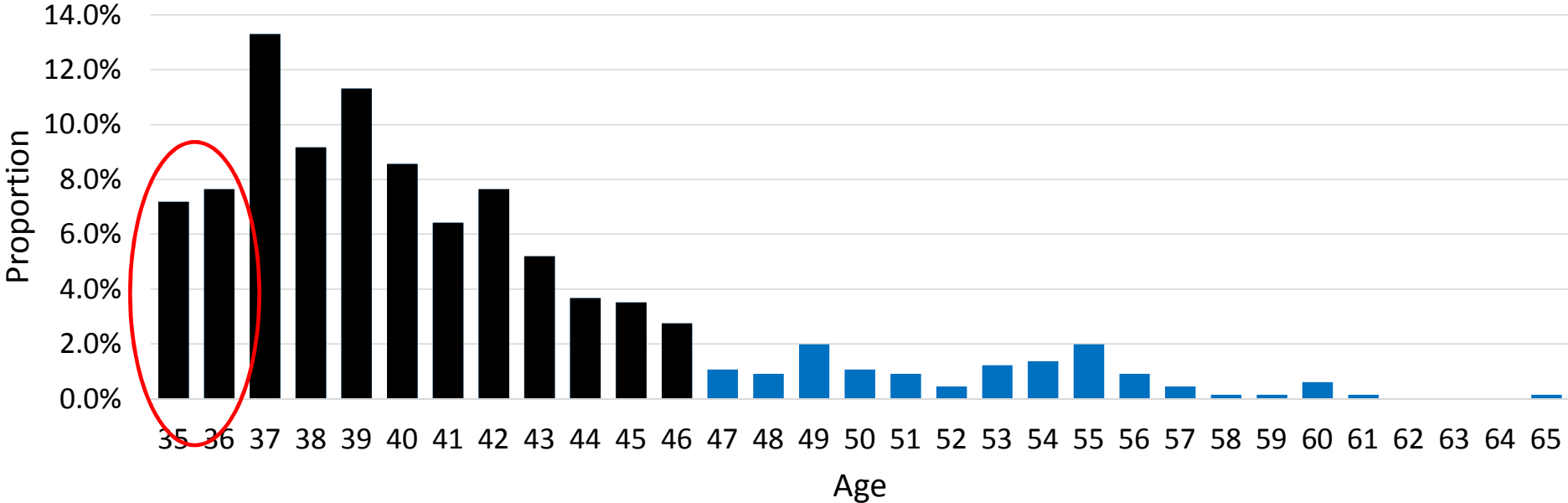
The majority of those aged under 37 would have passed through the Navy, Army and RAAF Apprentice Schemes.

Both Jim and I are products of the Army Apprentice Scheme.

AGE ON RETIREMENT

Based on a 660 Member Sample Population of DFRDB Retirees

■ 86% of Sample Population



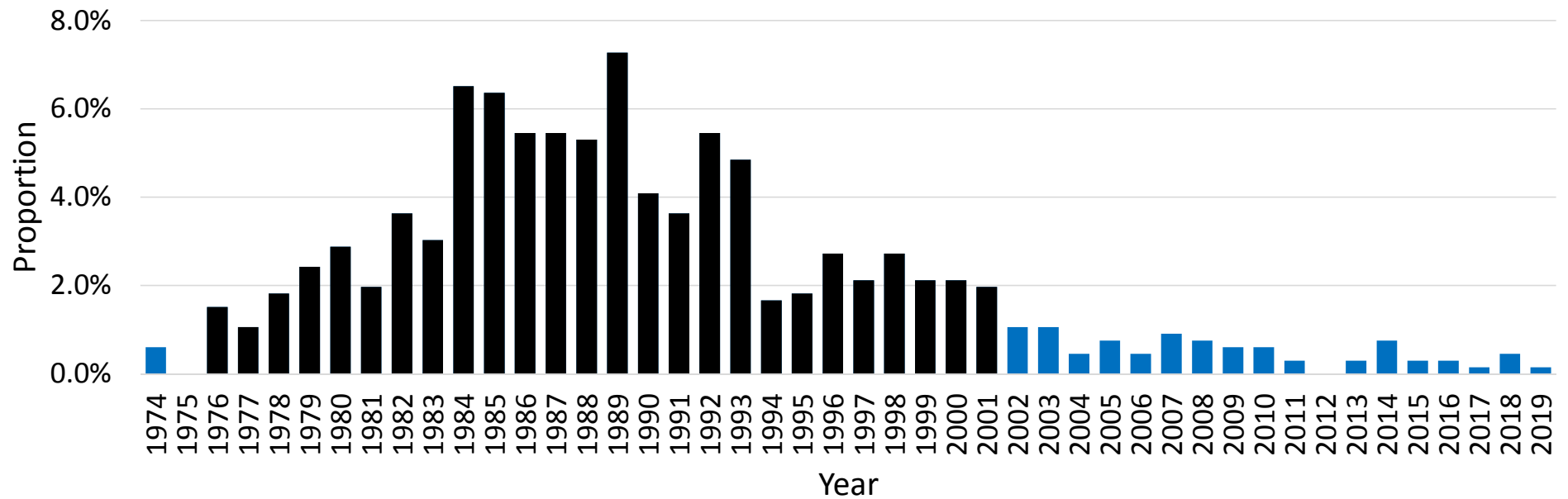
90% of the Sample Population retired from 1976 to 2001.

The significance of this will become apparent later in this presentation.

YEAR OF RETIREMENT

Based on a 660 Member Sample Population of DFRDB Retirees

■ 90% of Total Population



THE MEANING OF COMMUTATION

Any deliberation, on the accuracy of information provided to DFRDB Members about the Commutation provision, **must first establish the meaning of Commutation.**

- Because there is **no definition** of Commutation **in the DFRDB Act.**
- And **no reference to the purpose or object** underlying the Act.

THE MEANING OF COMMUTATION

But there are **rules for establishing the meaning** of a provision in an Act of Parliament when that provision is not defined in the Act.

According to sub-section [15AB of Acts Interpretation Act 1901](#).

We will demonstrate that both those conditions exist.

THE MEANING OF COMMUTATION

According to Acts Interpretation Act 1901, s.15AB, **consideration may be given to material not forming part of an Act**, if it is capable of helping to determine the meaning of a provision in an Act:

- **When the meaning** of a provision **is obscure**, or
- **When the ordinary meaning** conveyed by the text of a provision **leads to a result that is unreasonable**.

According to sub-section (2)(c) of [15AB of Acts Interpretation Act 1901](#).

THE MEANING OF COMMUTATION

Material which may be considered in the interpretation of a provision of an Act includes;

“any relevant report of a committee of the Parliament or of either House of the Parliament that was made to the Parliament or that House of the Parliament before the time when the provision was enacted”

This takes precedence over any other material produced after the provision was enacted.

According to sub-section (2)(f) of [15AB of Acts Interpretation Act 1901](#).

THE MEANING OF COMMUTATION

And;

*“the speech made to a House of the Parliament by a Minister on the occasion of the **moving** by that Minister of a motion **that the Bill** containing the provision **be read a second time** in that House”*

When the Minister, the Honourable Lance Barnard moved that Defence Force Retirement and Death Benefits Bill 1973 be read a second time in the House of Representatives.

House of Representatives Hansard, 25 May 1973

THE MEANING OF COMMUTATION

When the Minister moved that DFRDB Bill 1973 be read a second time, on 25 May 1973, he **did not define** the **Commutation** provision. But he did say:

*“The Bills give effect to the **Government's decision** announced last year **to implement the recommendations** of the Joint Select Committee on Defence Forces Retirement Benefits Legislation.”*

That Committee is commonly referred to as the **Jess Committee**.

These sub-paragraphs provide guidance to the meaning of Commutation

THE MEANING OF COMMUTATION

The object underlying the Commutation provision in the Act is Jess Committee *Recommendation (14)*:

- b. *“That retired pay **proportionately** reduced in relation to **commutation** remain payable after commutation.”*
- c. *“That for the purpose of determining a widow’s entitlement **commutation should be disregarded.**”*

A search for the meaning of Commutation, in a business/financial context, returned these definitions:

These definitions indicate an exchange of a single payment for a series of payments.

THE MEANING OF COMMUTATION

Commutation - *noun*

- *a one-time lump-sum advance payment of a portion of accrued future superannuation entitlements [Macquarie Concise Dictionary]*
- *the replacement of an annuity or series of payments by a single payment [Oxford Dictionary]*
- *a substitution of one form of payment or charge for another [Merriam Webster Dictionary]*

And a search for the meaning of *proportionate* returns these definitions:

These definitions indicate that a *proportionate* relationship is an *equitable* relationship.

THE MEANING OF COMMUTATION

proportionate - *adjective*

- *a comparative relation between magnitudes as to size, quantity, number, etc. [Macquarie Dictionary]*
- *corresponding in size or amount to something else [Oxford Dictionary]*
- *keeping the same relationship of size or amount to something else [Macmillan Dictionary]*

THE MEANING OF COMMUTATION

From Jess Committee *Recommendation (14)* and the dictionary definitions of *commutation* and *proportionate*, a reasonable description of the commutation provision is:

A lump sum payment of a portion of future benefits in exchange for an equivalent total reduction in the payment of those future benefits.

Where the reduction in payments ceases on the death of the recipient Member.

However, exactly what information serving Members received depended on when and where they served.

For example, from 1971 to 1974, I was seconded to the US Air Force.

I knew nothing of my transfer to the DFRDB scheme in 1973.

From 1976 to 1978, I was an advisor at a Military Technical Training School in Thailand.

I knew nothing of the indexation arrangements which were introduced in 1977.

HOW INFORMATION WAS CONVEYED

Typically, information about the DFRDB scheme was conveyed to Members;

- In **DFRDB Authority and Commonwealth Superannuation Corporation** publications,
- In **Service** bulletins and publications,
- By **Unit Resettlement Officers** and
- At **Retirement Seminars**.

This is an overview of the information which was conveyed to DFRDB Members.

INFORMATION WHICH WAS PROVIDED

- That the DFRDB scheme is **based on the recommendations of** a Joint Select Committee, appointed by the Parliament, **(the Jess Committee)**.
- That the provisions of the scheme are governed by **Defence Force Retirement and Death Benefits Act 1973 (DFRDB Act)**.
- That membership and **5.5%** of salary **contributions** to the scheme **were mandatory**.

INFORMATION WHICH WAS PROVIDED

- That Members could elect to commute, i.e. to receive a **lump sum pre-payment**, of a portion **of their future retirement pay**.
- That where a Member commutes, the annual rate of **retirement pay is reduced** by an amount which is calculated **by dividing the lump sum amount** received **by the retired Member's life expectancy**, on the date of commutation.

INFORMATION WHICH WAS PROVIDED

- That if a retired Member commuted a portion of annual pension to a lump sum, the residual pensions payable to eligible dependents are based on the pension the Member would have been receiving **had he/she not commuted.**
- **After 1977:** That **pensions payable** under the DFRDB Scheme **are increased** each year **based on** the movement of the **Consumer Price Index.**

THE MEANING WHICH WAS CONVEYED

DFRDB Members do not dispute the information which was provided about the Commutation provision;

But rather, the meaning which is deemed, by the Department of Defence, the DFRDB Authority and the Commonwealth Superannuation Corporation, to have been conveyed.

From:

DFRDB Scheme Brochure – Retirement Benefits – December 1981

DFRDB Scheme Brochure – Retirement Benefits – January 1985

DFRDB Scheme Brochure – Retirement Benefits – January 1987

THE MEANING WHICH WAS CONVEYED

Consistent statements in various DFRDB Authority publications are:

*“If you are eligible to receive retirement pay you may elect to commute, that is, **receive a lump sum pre-payment of part of your future retirement pay.**”*

*“Your reduced retirement pay following commutation is determined in accordance with your **life expectancy.**”*

THE MEANING WHICH WAS CONVEYED

We contend that **the meaning** of Commutation **is conveyed** in every Example, which shows how DFRDB entitlements are calculated, **by this formula:**

$$\begin{array}{l} \text{Annual} \\ \text{Retirement Pay} \\ \text{Reduction} \end{array} = \frac{\begin{array}{l} \text{Lump Sum} \\ \text{Pre-payment} \\ \text{Amount} \end{array}}{\text{Life Expectancy}}$$

The **Annual Retirement Pay Reduction** determined from this formula **is a specific amount.**

Recall that DFRDB Members were not Actuaries.

THE MEANING WHICH WAS CONVEYED

When it is transposed, the formula becomes:

$$\begin{array}{l} \text{Lump Sum} \\ \text{Pre-payment} \\ \text{Amount} \end{array} = \begin{array}{l} \text{Annual} \\ \text{Retirement Pay} \\ \text{Reduction} \end{array} \times \text{Life Expectancy}$$

Just as *Lump Sum Pre-payment Amount* and *Annual Retirement Pay Reduction* are *specific amounts*, *Life Expectancy* in this formula is a *specific period of time*.

This is the meaning which was conveyed:

THE MEANING WHICH WAS CONVEYED

Commutation is

**A Lump Sum
Pre-payment
of a *Member's*
Future Benefits**

**in
exchange
for**

***An Equal
Reduction
of a Member's
Retirement Pay***

INFORMATION WHICH WAS NOT DISCLOSED

Essential information about Commutation *not disclosed* to DFRDB Members was:

- That the **reduction of retirement pay**, after commutation, ***is not*** based on the Member's **Life Expectancy**, ***at the time of retirement.***
- Rather, the **reduction** of retirement pay after commutation **is based on** what the Member's **Life Expectancy** was ***in 1962.***

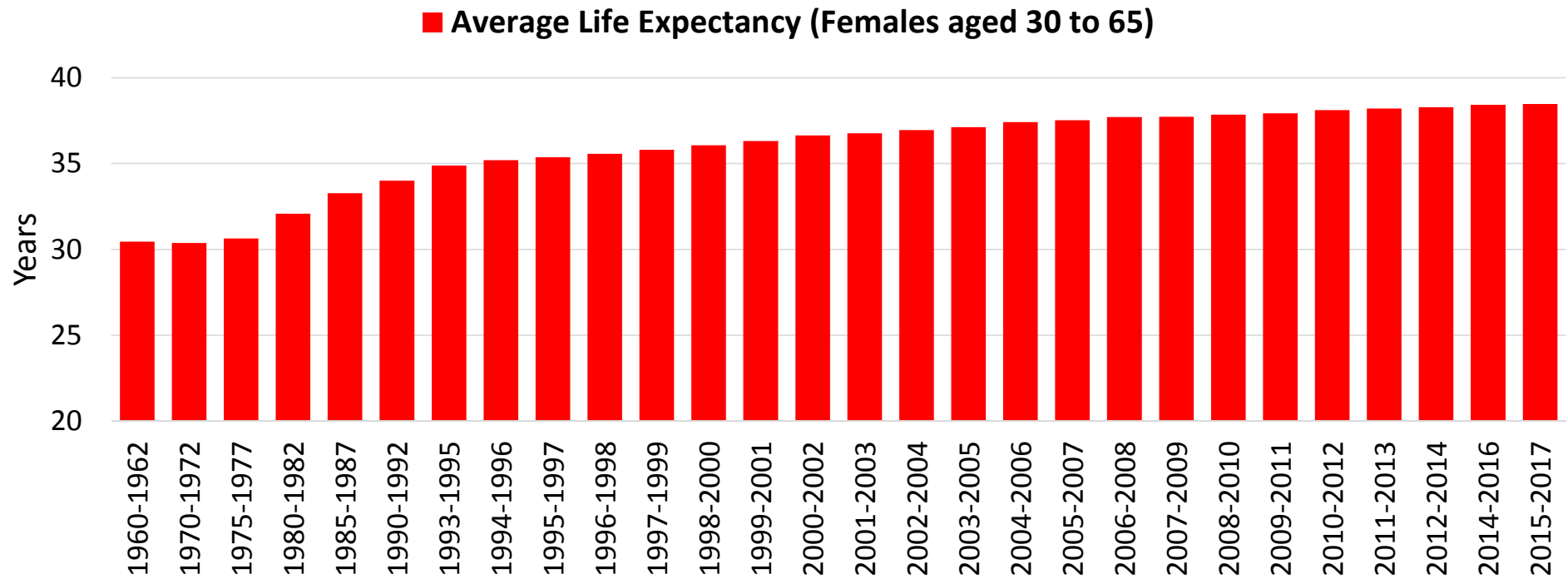
Note however, that many of the Members who retired after the year 2000 would not have been born in 1962.

INFORMATION WHICH WAS NOT DISCLOSED

- That **in 1973**, when the DFRDB scheme commenced, the **Expectation of Life Factors** in the DFRDB Act **were already 11 years out of date.**
- That **from 1976 to 2001**, when the majority of DFRDB members retired, they were **between 14 and 39 years out of date.**
- That **in 2019**, those **Expectation of Life Factors** are now **57 years out of date.**

According to the Australian Bureau of Statistics Life Expectancy has been increasing since the commencement of the DFRDB Scheme. This is the Average Life Expectancy of Females aged from 30 to 65, derived from the Life Tables published by the Australian Bureau of Statistics.

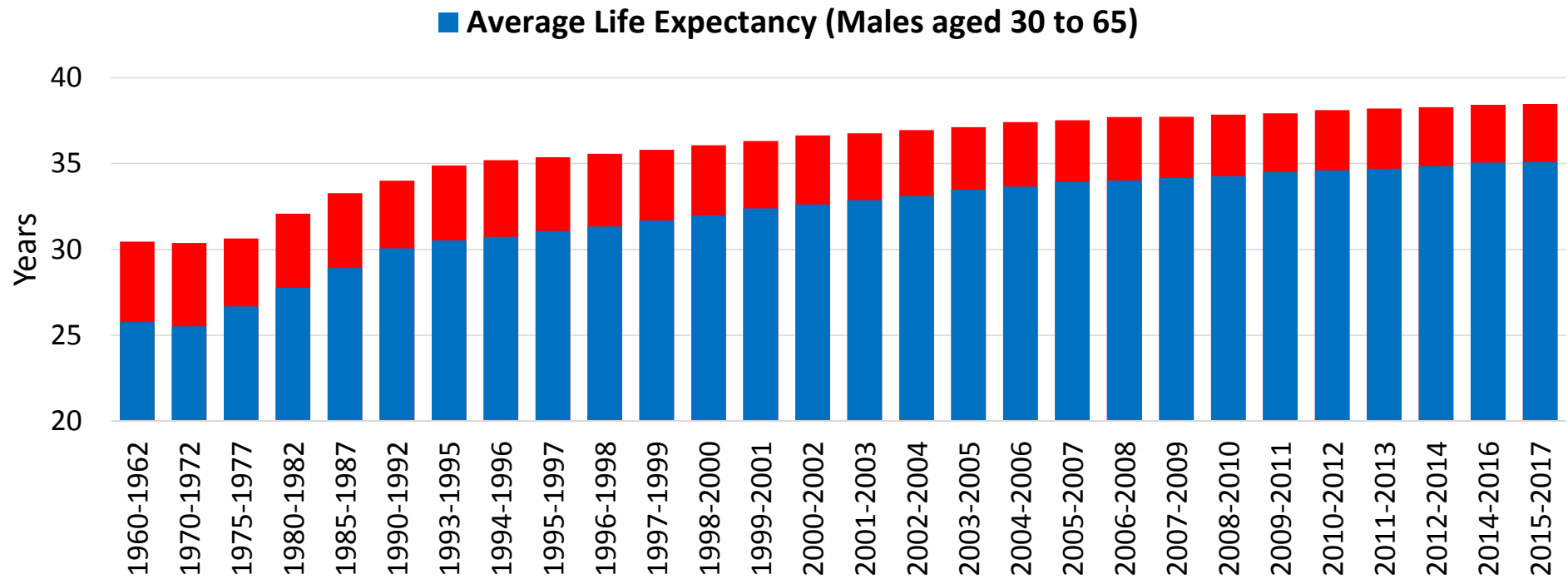
LIFE EXPECTANCY HAS BEEN INCREASING



Source: Australian Bureau of Statistics Life Tables 2012, 2013, 2014, 2016 and 2017

This is the increase in Average Life Expectancy of Males aged from 30 to 65.

LIFE EXPECTANCY HAS BEEN INCREASING



Source: Australian Bureau of Statistics Life Tables 2012, 2013, 2014, 2016 and 2017

THE USE OF STATIC LIFE TABLES IS NOT VALID

The **use of static Expectancy of Life Factors** to determine Life Expectancy, when Life Expectancy is constantly increasing, **is not valid.**

If the Departments of Defence and Finance consulted the Government Actuary, when they drafted the legislation, **the Government Actuary would have made this fact known.**

My situation is a classic example.

THE USE OF STATIC LIFE TABLES IS NOT VALID

Age on Retirement in 1983

36

THE USE OF STATIC LIFE TABLES IS NOT VALID

Age on Retirement in 1983	36
DFRDB Life Expectancy	35.51

THE USE OF STATIC LIFE TABLES IS NOT VALID

Age on Retirement in 1983	36
DFRDB Life Expectancy	35.51
Age at DFRDB Life Expectancy	71.51

THE USE OF STATIC LIFE TABLES IS NOT VALID

Age on Retirement in 1983	36
DFRDB Life Expectancy	35.51
Age at DFRDB Life Expectancy	71.51
Life Expectancy from 2015-2017 Life Tables	14.23

THE USE OF STATIC LIFE TABLES IS NOT VALID

Age on Retirement in 1983	36
DFRDB Life Expectancy	35.51
Age at DFRDB Life Expectancy	71.51
Life Expectancy from 2015-2017 Life Tables	14.23
Age at 2015-2017 Life Expectancy	85.74

THE USE OF STATIC LIFE TABLES IS NOT VALID

Age on Retirement in 1983	36
DFRDB Life Expectancy	35.51
Age at DFRDB Life Expectancy	71.51
Life Expectancy from 2015-2017 Life Tables	14.23
Age at 2015-2017 Life Expectancy	85.74

Note the comparison to my DFRDB Life expectancy.

OTHER INFORMATION NOT DISCLOSED

Other essential information about Commutation **not disclosed** to DFRDB Members was:

- That **regardless** of *whether or not* a Member elects to commute, **the commutation entitlement is not indexed.**
- That **this imposes a penalty on every** DFRDB **Member** who is *entitled* to Commutation.

OTHER INFORMATION NOT DISCLOSED

- That **this penalty remains in effect**, after the death of the recipient Member, **for the determination of the widow's or widower's reversionary pension.**
- And that **this effect flows on to eligible children and orphans**, whose reversionary pension entitlements are a proportion of the widow's or widower's pension entitlement.

THE COMMUTATION PROVISION OUTCOMES

A **determination** about the accuracy of information conveyed to DFRDB Members about the Commutation provision;

Can *only* be made in light of the provision outcomes.

THE COMMUTATION PROVISION OUTCOMES

Many DFRDB Members **do not** fully **understand the outcomes** of the Commutation provision.

That is why **some** DFRDB Members **will express a different** but not necessarily dissimilar **view**.

The following will illustrate the outcomes and leave no doubt about the effect.

We are aware of the Ken Stone's submission and applaud his efforts.

But he has focused on only one outcome.

This is my situation.

I retired in 1983, at the Age of 36 with a Retirement Pay Entitlement was \$9,310 per annum.

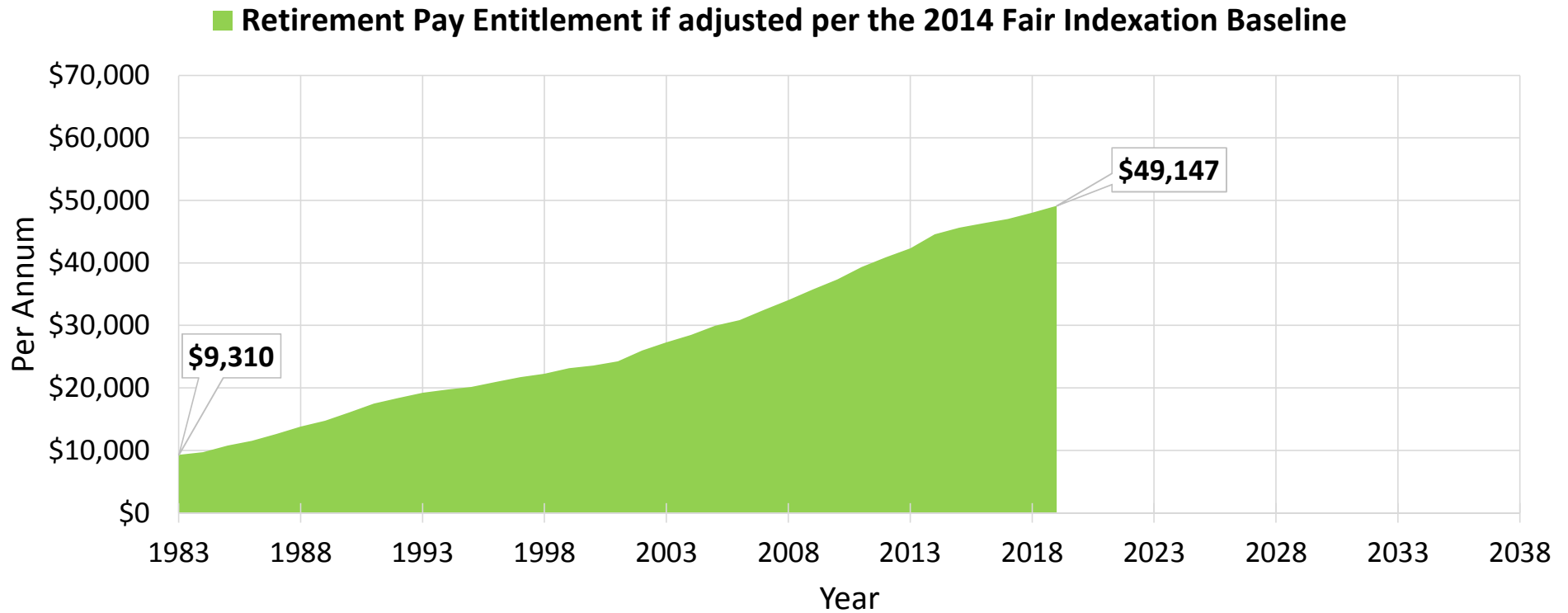
This is how it would look now if it was adjusted per the Fair Indexation Baseline, which was established in 2014 by the DFRDB (Fair Indexation) Act.

We understand that *unfair* indexation is outside the scope of this investigation.

But if the outcomes of the Commutation provision are to be illustrated in their proper context, the effects of indexation cannot be ignored.

COMMUTATION PROVISION OUTCOMES

WO1 – Served for 20 Years – Retired in 1983 at Age 36 – With a Retirement Pay Entitlement of \$9,310



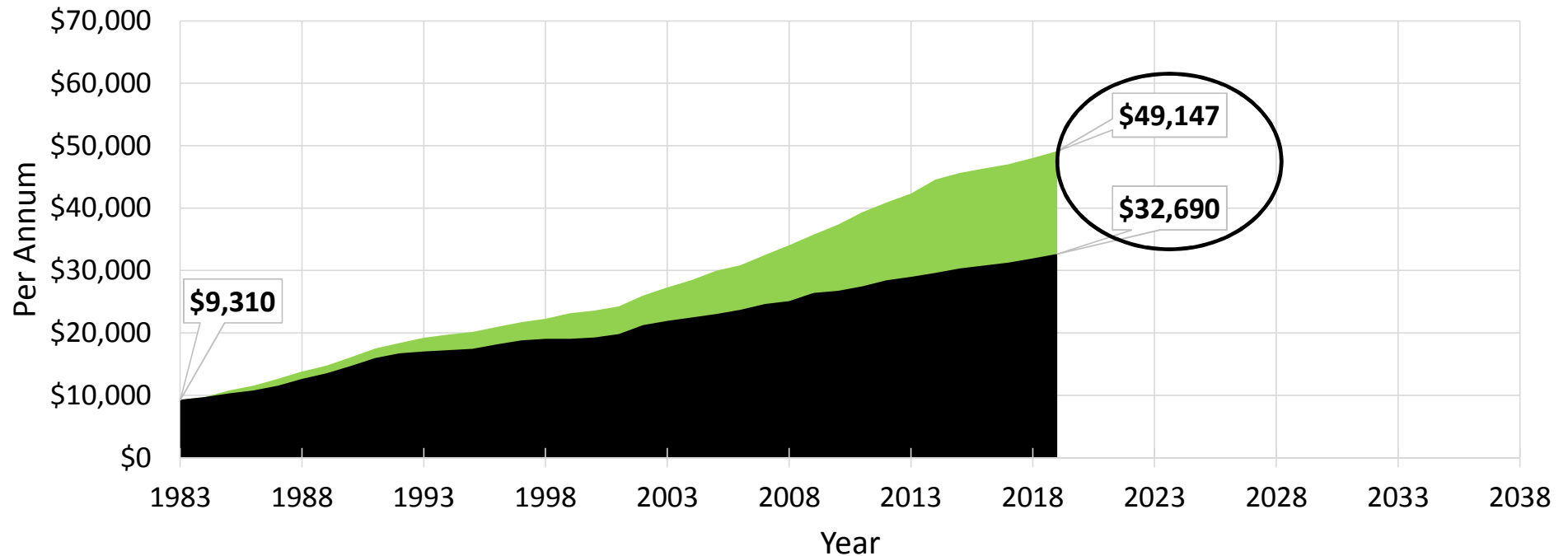
This is my Retirement Pay Entitlement adjusted in accordance with the actual DFRDB Indexation increases since I retired.

Note the difference per annum.

COMMUTATION PROVISION OUTCOMES

WO1 – Served for 20 Years – Retired in 1983 at Age 36 – With a Retirement Pay Entitlement of \$9,310

■ Retirement Pay Entitlement adjusted per DFRDB Indexation Rates



This is the Retirement Pay I would be getting now if I had elected *not* to commute.

That is because indexation increases are not applied to my commutation entitlement.

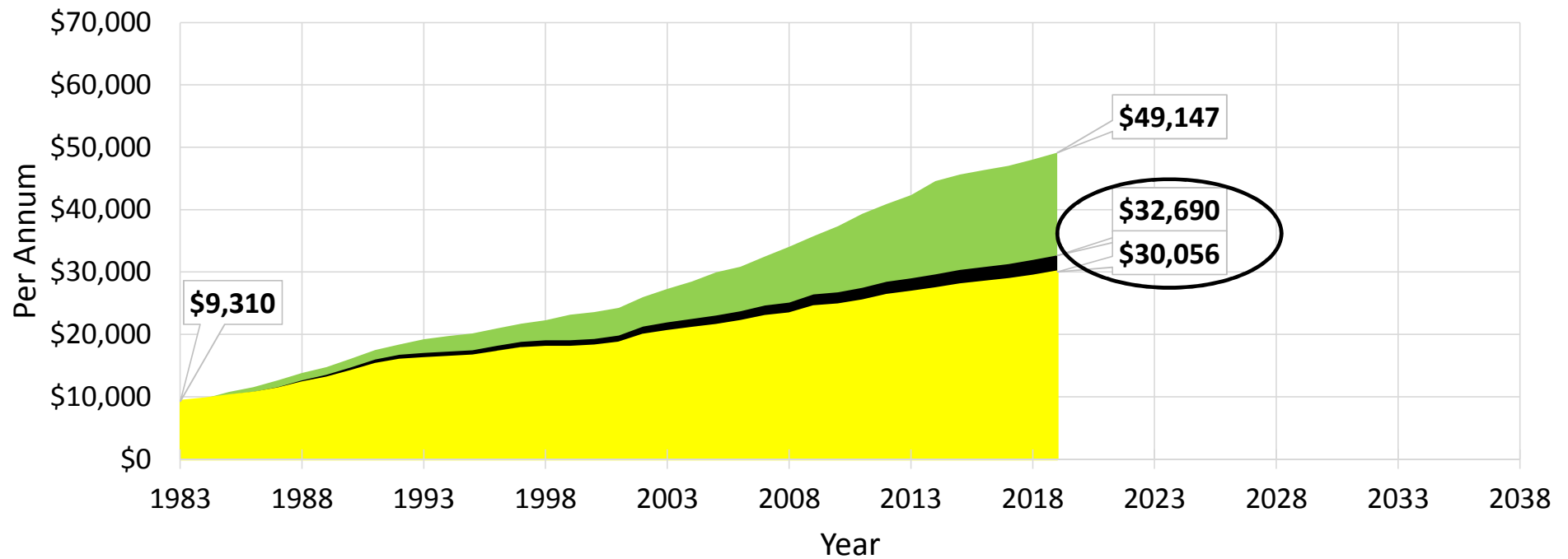
Note the difference per annum.

This is the penalty imposed in respect of my maximum Commutation *entitlement*.

COMMUTATION PROVISION OUTCOMES

WO1 – Served for 20 Years – Retired in 1983 at Age 36 – With a Retirement Pay Entitlement of \$9,310

■ Retirement Pay if the Member does not Commute



This is my actual Retirement Pay because I did elect to commute my full entitlement of \$37,240.

Based on my Life expectancy of 35.51, my Retirement Pay was reduced by \$1,049 per annum.

Note that the yellow area remains constant throughout.

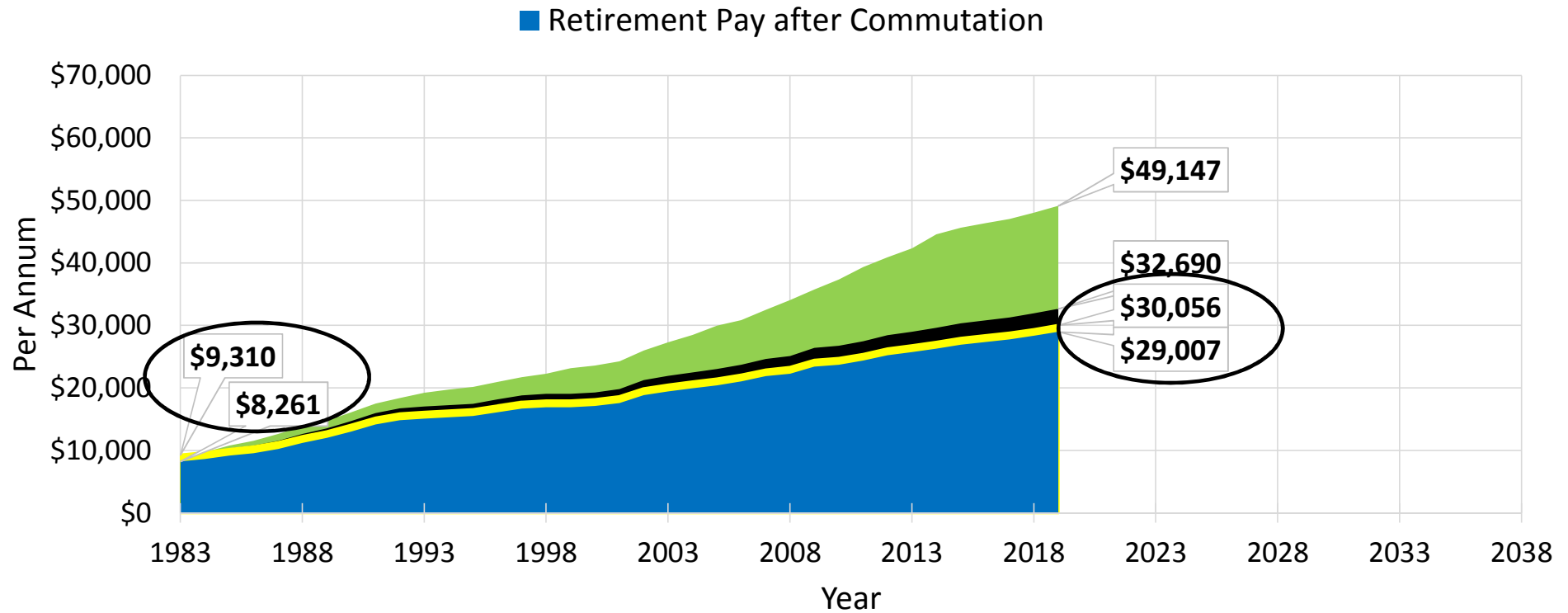
It represents the annual reduction of my Retirement Pay after Commutation.

Note that the amount in 2019 is exactly the same as it was in 1983.

Also note that the black area, which is the penalty imposed in respect of the commutation entitlement, is the same as it was, had I not commuted.

COMMUTATION PROVISION OUTCOMES

WO1 – Served for 20 Years – Retired in 1983 at Age 36 – With a Retirement Pay Entitlement of \$9,310

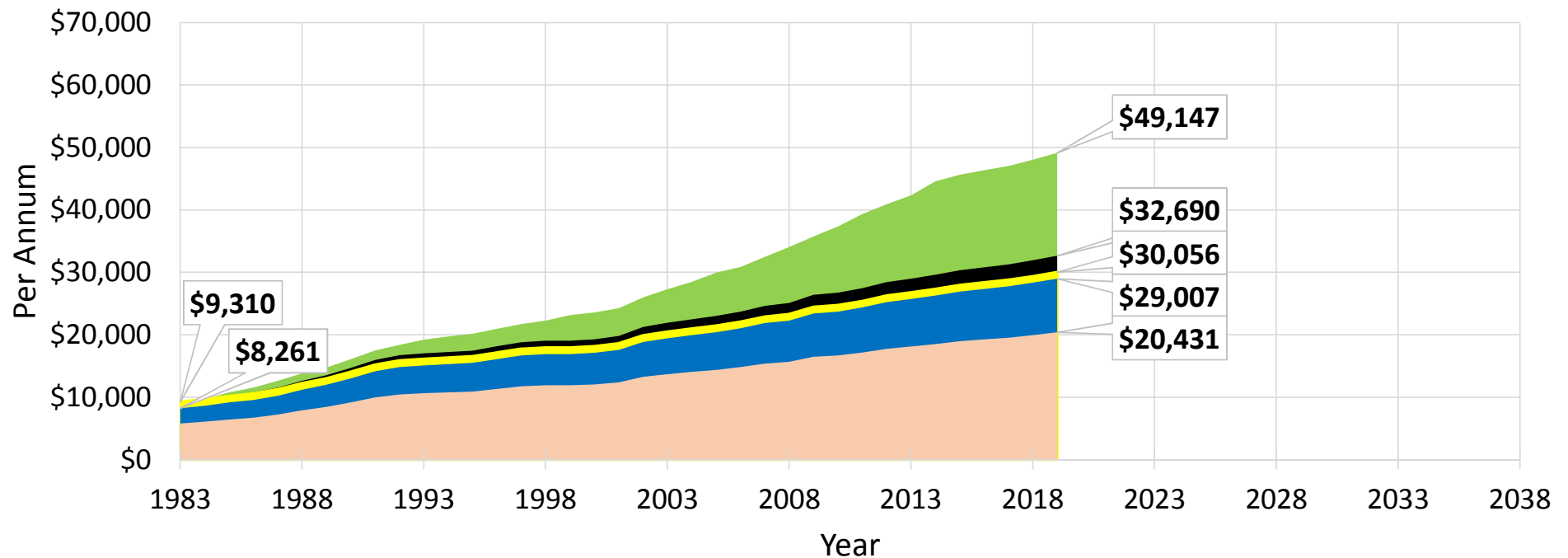


If I died tomorrow, this would be my widow's Pension Entitlement, if it was adjusted in line with the DFRDB Indexation increases.

COMMUTATION PROVISION OUTCOMES

WO1 – Served for 20 Years – Retired in 1983 at Age 36 – With a Retirement Pay Entitlement of \$9,310

■ Spouse's Pension - 62.5% of Retirement Pay if it was Fully Indexed



But her Pension Entitlement is not adjusted per the DFRDB Indexation increases.

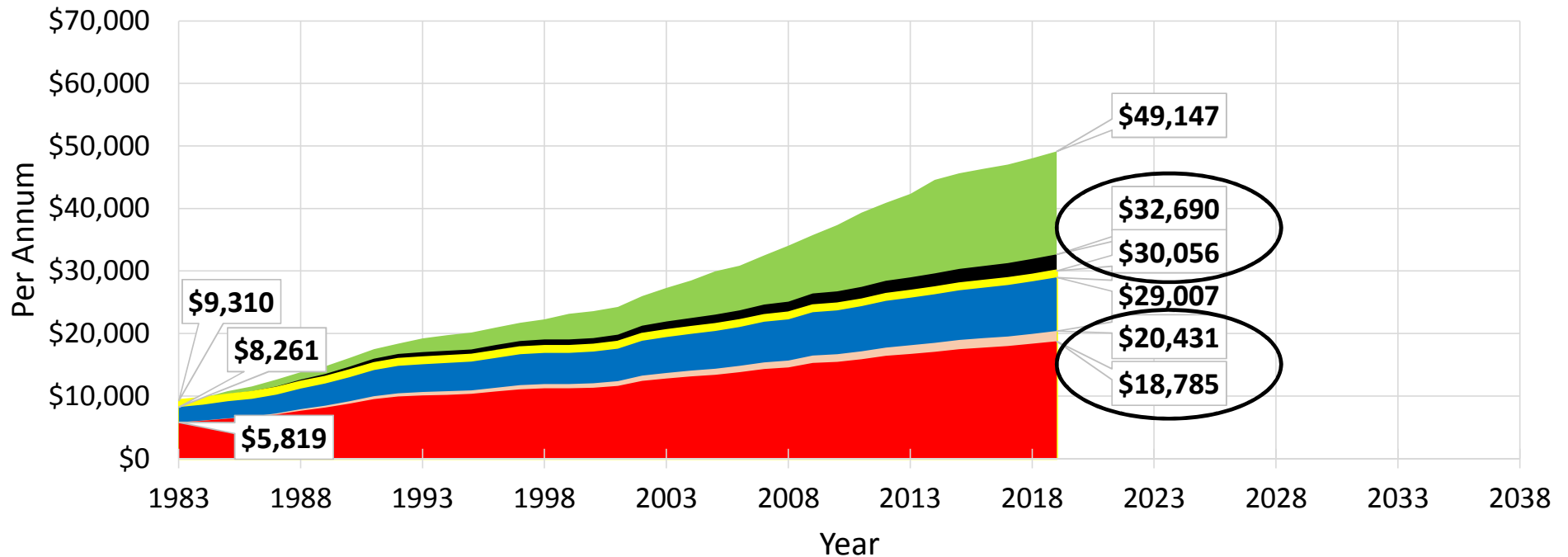
It is based on 62.5% of the Retirement Pay I would be getting if I had elected not to commute.

Note that 62.5% of the penalty, imposed in respect of the commutation entitlement, flows on to the spouse's pension entitlement.

COMMUTATION PROVISION OUTCOMES

WO1 – Served for 20 Years – Retired in 1983 at Age 36 – With a Retirement Pay Entitlement of \$9,310

■ Spouse's Pension - 62.5% of Notional Retirement Pay



This was my understanding of my entitlement.

UNDERSTANDING OF ENTITLEMENT

WO1 – Served for 20 Years – Retired in 1983 at Age 36 – With a Retirement Pay Entitlement of \$9,310

Annual Retirement Pay Entitlement	\$9,310
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Indexed annually to maintain its Real Value

UNDERSTANDING OF ENTITLEMENT

WO1 – Served for 20 Years – Retired in 1983 at Age 36 – With a Retirement Pay Entitlement of \$9,310

Annual Retirement Pay Entitlement	\$9,310
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Indexed annually to maintain its Real Value

Commutation Entitlement	\$37,240
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UNDERSTANDING OF ENTITLEMENT

WO1 – Served for 20 Years – Retired in 1983 at Age 36 – With a Retirement Pay Entitlement of \$9,310

Annual Retirement Pay Entitlement	\$9,310
Indexed annually to maintain its Real Value	
Commutation Entitlement	\$37,240
Retirement Pay reduced for 35.51 years by	\$1,049

UNDERSTANDING OF ENTITLEMENT

WO1 – Served for 20 Years – Retired in 1983 at Age 36 – With a Retirement Pay Entitlement of \$9,310

Annual Retirement Pay Entitlement	\$9,310
Indexed annually to maintain its Real Value	
Commutation Entitlement	\$37,240
Retirement Pay Reduced for 35.51 years by	\$1,049
Spouse's Rate of Pension	62.50%
Based on Retirement Pay <i>before</i> Commutation	

But this is the reality.

UNDERSTANDING VERSUS THE REALITY

WO1 – Served for 20 Years – Retired in 1983 at Age 36 – With a Retirement Pay Entitlement of \$9,310

	In 1983	In 2019
Real Value of Retirement Pay	100.00%	66.51%

UNDERSTANDING VERSUS THE REALITY

WO1 – Served for 20 Years – Retired in 1983 at Age 36 – With a Retirement Pay Entitlement of \$9,310

	In 1983	In 2019
Real Value of Retirement Pay	100.00%	66.51%
Annual Reduction	\$1,049	\$3,682

UNDERSTANDING VERSUS THE REALITY

WO1 – Served for 20 Years – Retired in 1983 at Age 36 – With a Retirement Pay Entitlement of \$9,310

	In 1983	In 2019
Real Value of Retirement Pay	100.00%	66.51%
Annual Reduction	\$1,049	\$3,682
Spouse's Rate of Pension	62.50%	57.46%

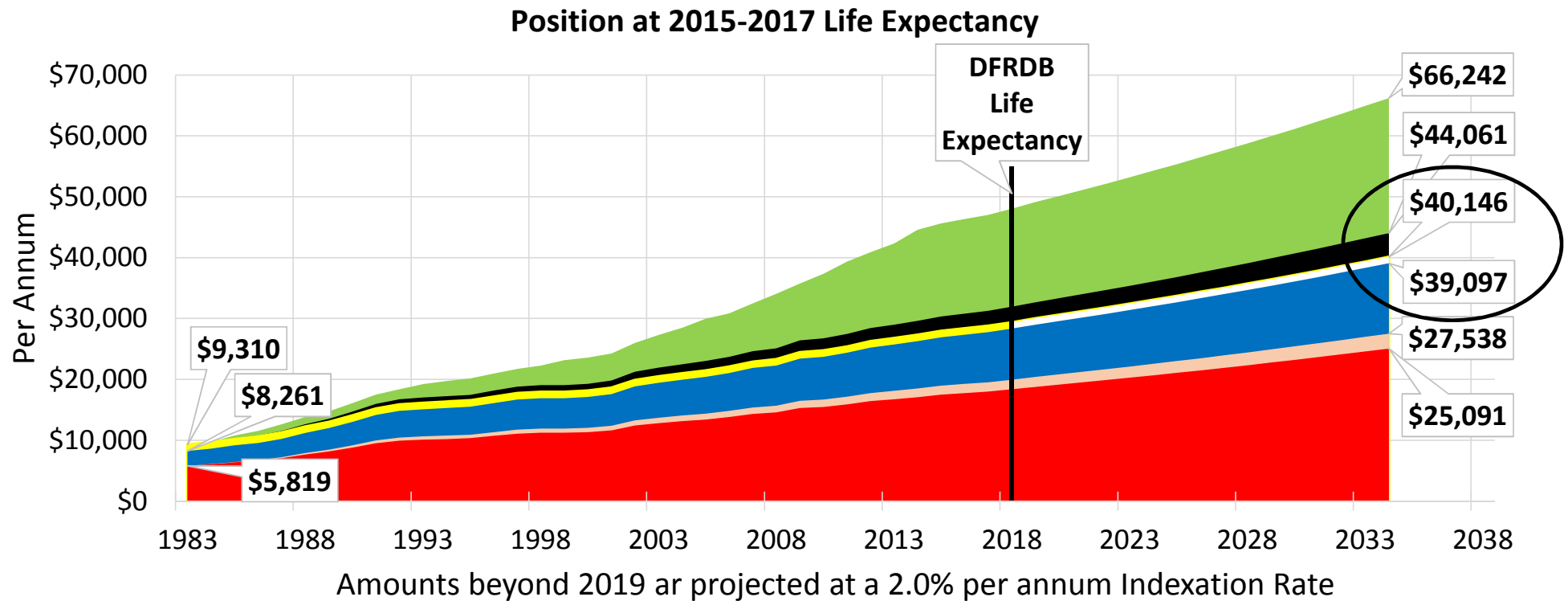
This will be my situation in 2034 when I reach my 2017 Life Expectancy.

The white area represents what many DFRDB Members believe to be our greatest concern.

Note that the Reduction of my Retirement Pay will still be \$1,049 per annum.

COMMUTATION PROVISION OUTCOMES

WO1 – Served for 20 Years – Retired in 1983 at Age 36 – With a Retirement Pay Entitlement of \$9,310

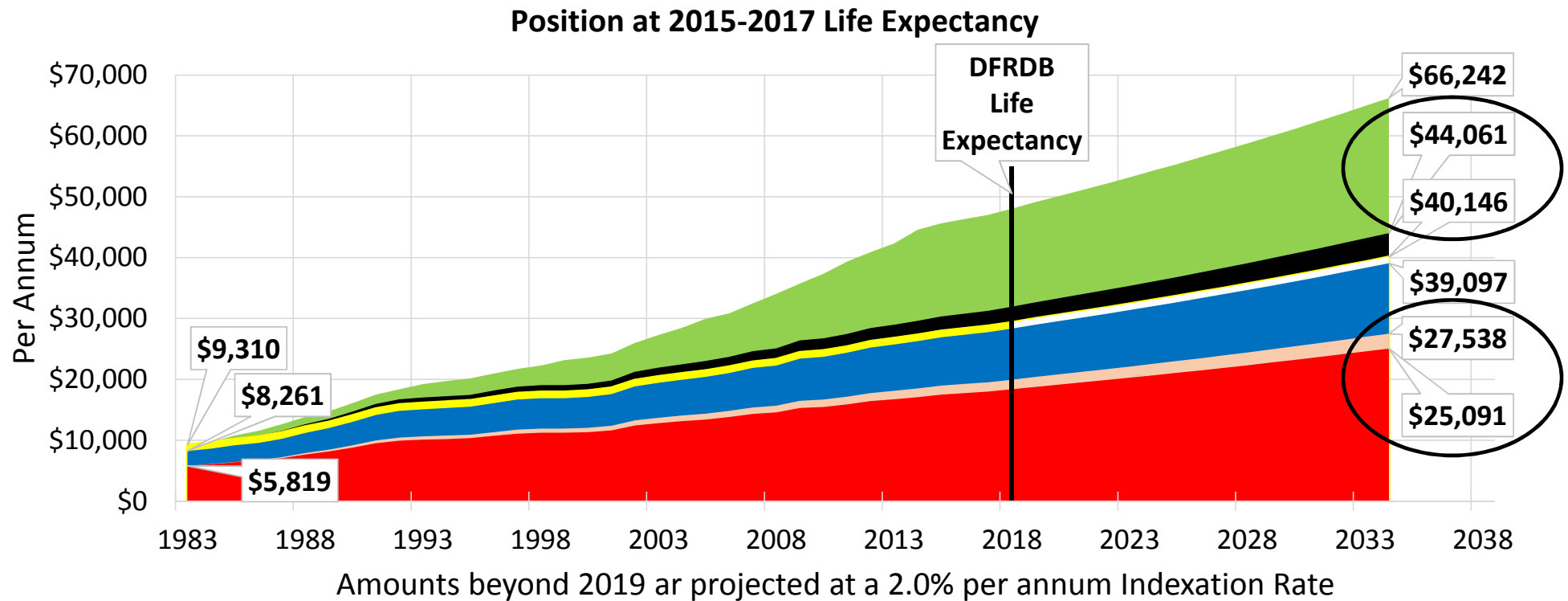


But the Penalty imposed in respect of my Commutation Entitlement continues to increase.

And 62.5% of it flows on to my spouse after my death.

COMMUTATION PROVISION OUTCOMES

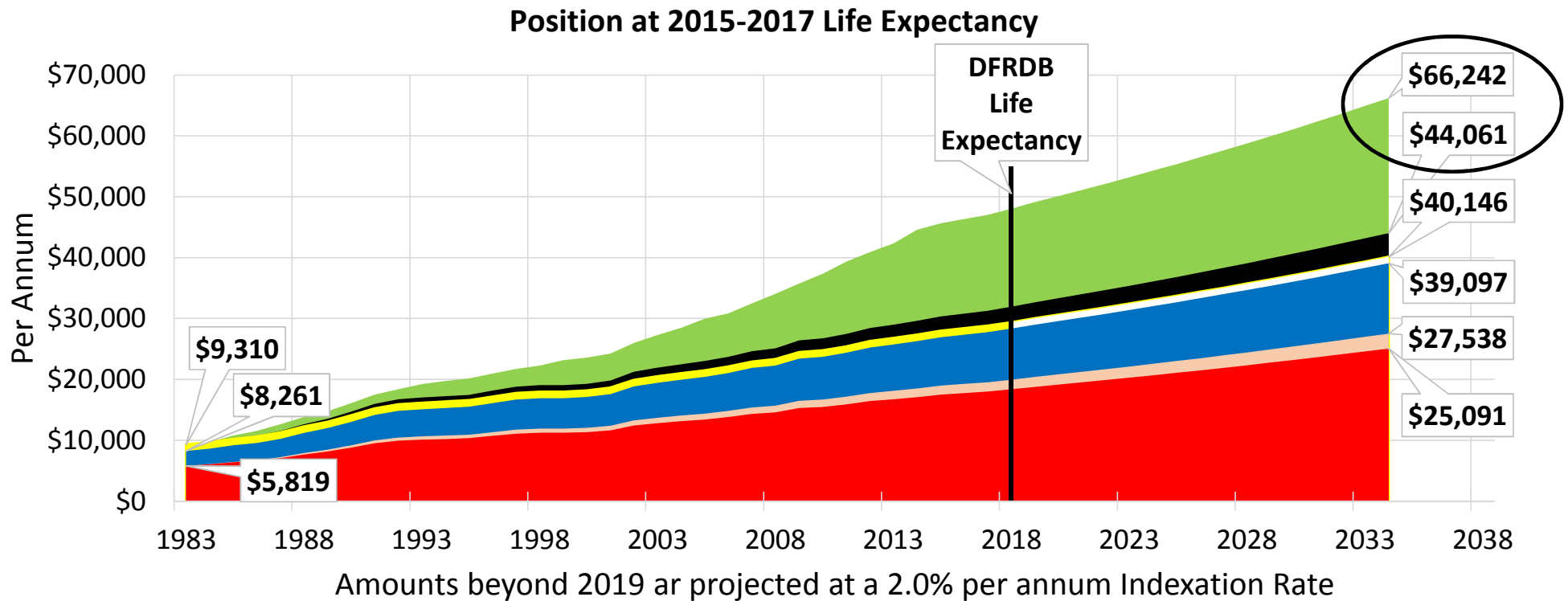
WO1 – Served for 20 Years – Retired in 1983 at Age 36 – With a Retirement Pay Entitlement of \$9,310



But that pales when compared to my loss due to Unfair Indexation.

COMMUTATION PROVISION OUTCOMES

WO1 – Served for 20 Years – Retired in 1983 at Age 36 – With a Retirement Pay Entitlement of \$9,310



This is a Summary of Effect. It places Retirement Pay Reduction after DFRDB Life Expectancy into its proper context.

SUMMARY OF EFFECT

WO1 – Served for 20 Years – Retired in 1983 at Age 36 – With a Retirement Pay Entitlement of \$9,310

Loss	Per Annum	
Reduction after Life Expectancy	\$1,049	2.61%

SUMMARY OF EFFECT

WO1 – Served for 20 Years – Retired in 1983 at Age 36 – With a Retirement Pay Entitlement of \$9,310

Loss	Per Annum	
Reduction after Life Expectancy	\$1,049	2.61%
Commutation Entitlement Penalty	\$3,915	8.89%

SUMMARY OF EFFECT

WO1 – Served for 20 Years – Retired in 1983 at Age 36 – With a Retirement Pay Entitlement of \$9,310

Loss	Per Annum	
Reduction after Life Expectancy	\$1,049	2.61%
Commutation Entitlement Penalty	\$3,915	8.89%
Penalty Flow-on to Spouse	\$2,447	8.89%

SUMMARY OF EFFECT

WO1 – Served for 20 Years – Retired in 1983 at Age 36 – With a Retirement Pay Entitlement of \$9,310

Loss	Per Annum	
Reduction after Life Expectancy	\$1,049	2.61%
Commutation Entitlement Penalty	\$3,915	8.89%
Penalty Flow-on to Spouse	\$2,447	8.89%
Effect of Unfair Indexation	\$22,131	33.41%

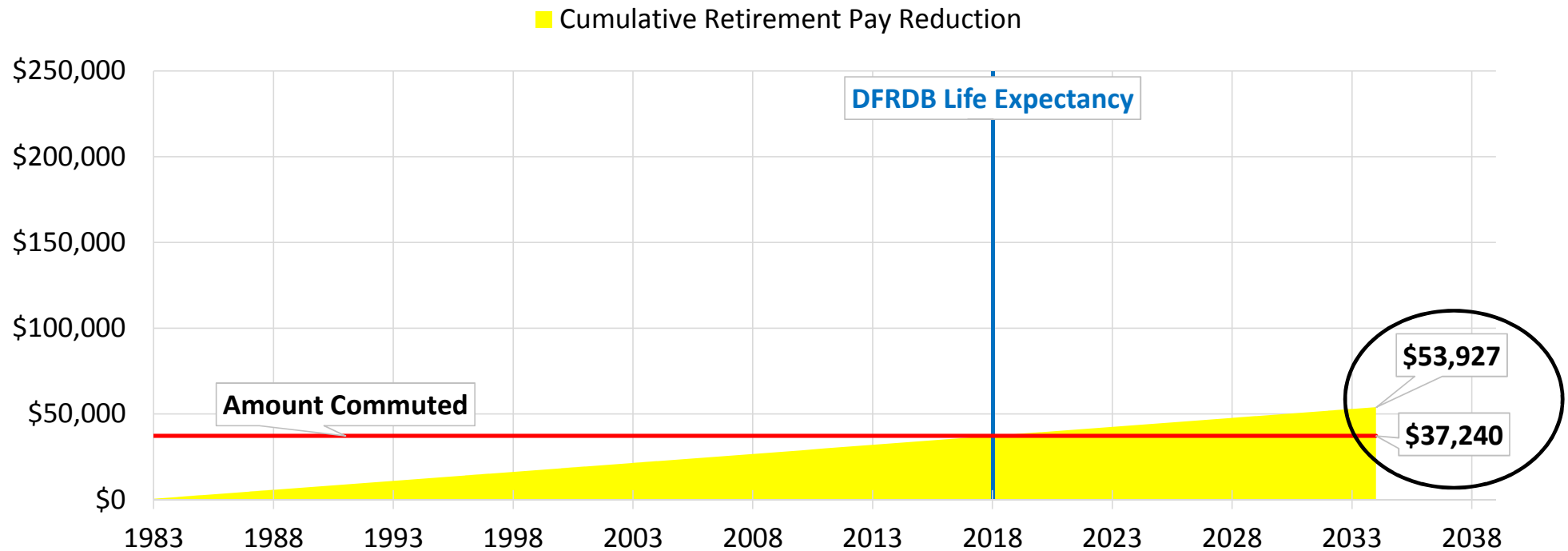
This illustrates the Cumulative Reduction of my Retirement Pay projected forward to my 2017 Life Expectancy.

Note that the break-even point is my DFRDB life Expectancy

And the difference between the Cumulative Retirement Pay Reduction and the Amount Commuted.

CUMULATIVE EFFECT

WO1 – Served for 20 Years – Retired in 1983 at Age 36 – With a Retirement Pay Entitlement of \$9,310



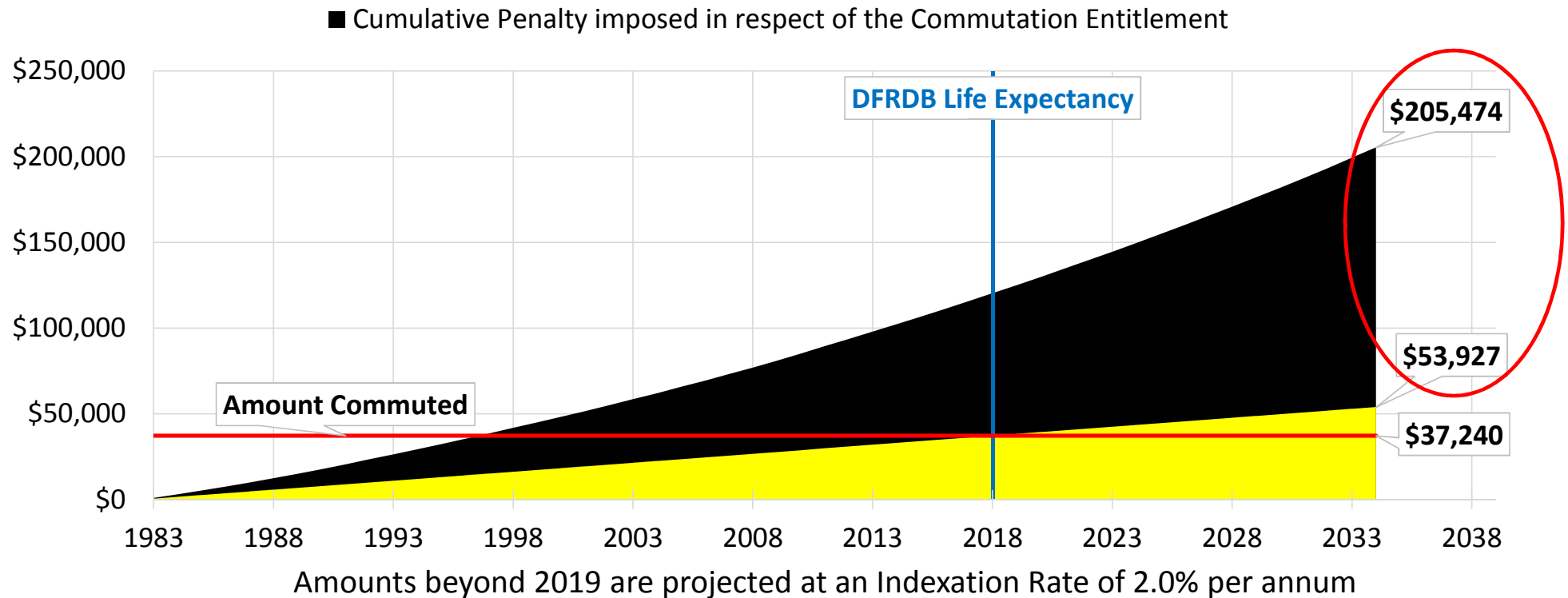
Amounts beyond 2019 are projected at an Indexation Rate of 2.0% per annum

And this is the Cumulative Penalty which will have been imposed in respect of my Commutation *Entitlement*.

Note the difference between these amounts in relation to the Amount Commuted.

CUMULATIVE EFFECT

WO1 – Served for 20 Years – Retired in 1983 at Age 36 – With a Retirement Pay Entitlement of \$9,310



This is the Cumulative Effect of the Commutation provision, in my case.

CUMULATIVE EFFECT

WO1 – Served for 20 Years – Retired in 1983 at Age 36 – With a Retirement Pay Entitlement of \$9,310

Commuted

in 1983

\$37,240

CUMULATIVE EFFECT

WO1 – Served for 20 Years – Retired in 1983 at Age 36 – With a Retirement Pay Entitlement of \$9,310

Commuted	in 1983	\$37,240	
Reduction	by 2034	\$53,927	144.81%

CUMULATIVE EFFECT

WO1 – Served for 20 Years – Retired in 1983 at Age 36 – With a Retirement Pay Entitlement of \$9,310

Committed	in 1983	\$37,240	
Reduction	by 2034	\$53,927	144.81%
Penalty	by 2034	\$151,547	406.95%

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Note: *This is on top of Unfair Indexation*

These numbers are eye watering.

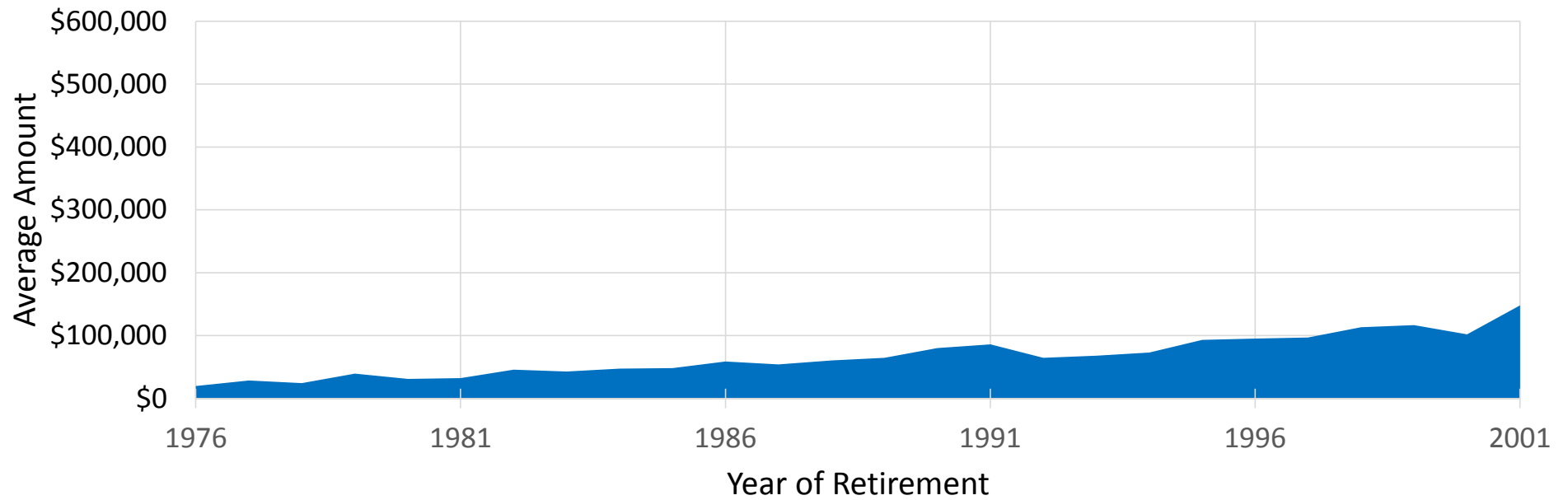
This is the overall effect, on the 90% majority of DFRDB Members who retired from 1976 to 2001, in the sample population I described earlier.

This illustrates the distribution of the Average Amount Commuted by Members, by Year of Retirement.

OVERALL EFFECT

Based on 594 DFRDB Member Retirements from 1976 to 2001 inclusive

■ Amount Commuted

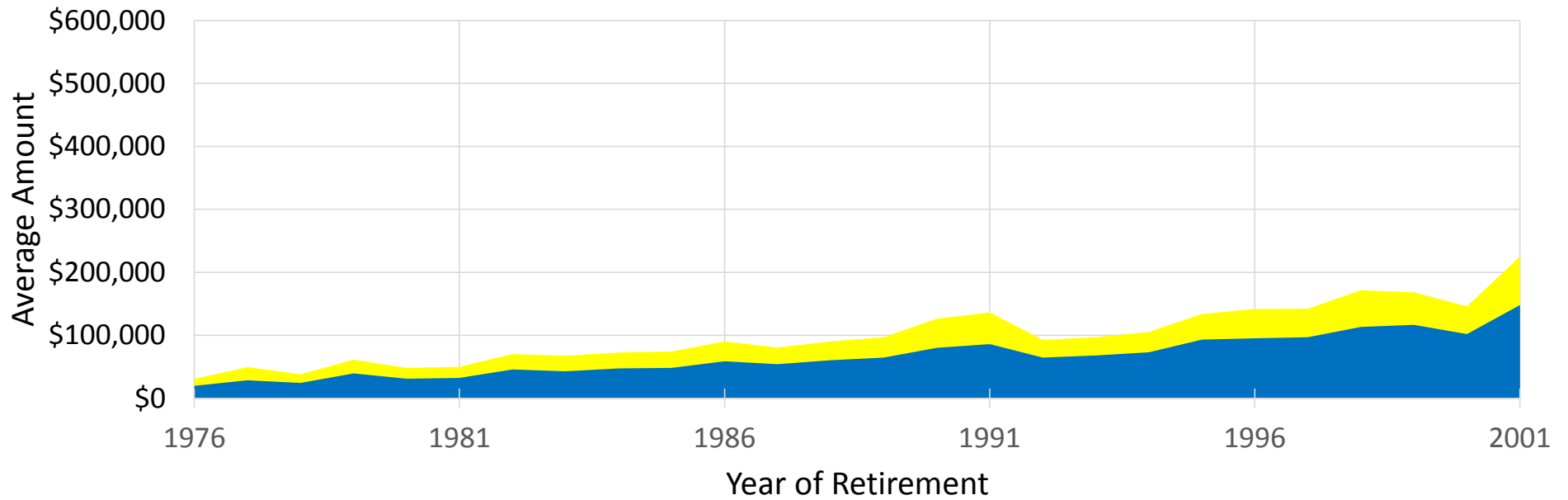


This illustrates amount of their Retirement Pay Reduction, which in excess of the amounts they commuted.

OVERALL EFFECT

Based on 594 DFRDB Member Retirements from 1976 to 2001 inclusive

■ Cumulative Retirement Pay Reduction in excess of the Amount Commuted

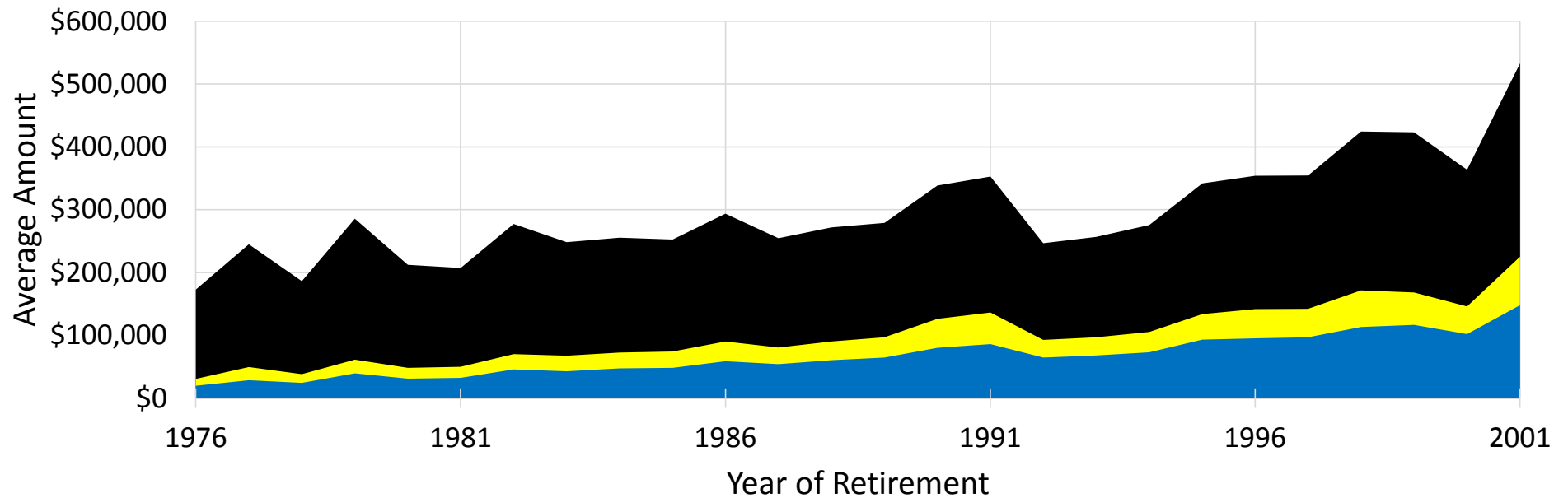


And this illustrates the cumulative penalty imposed in respect of their Commutation *Entitlement*.

OVERALL EFFECT

Based on 594 DFRDB Member Retirements from 1976 to 2001 inclusive

■ Cumulative Penalty imposed in respect of Members' Commutation Entitlement



This illustrates the Proportion of Retirement Pay Reduction to the Amount Commuted, projected to Members' 2017 Life Expectancy.

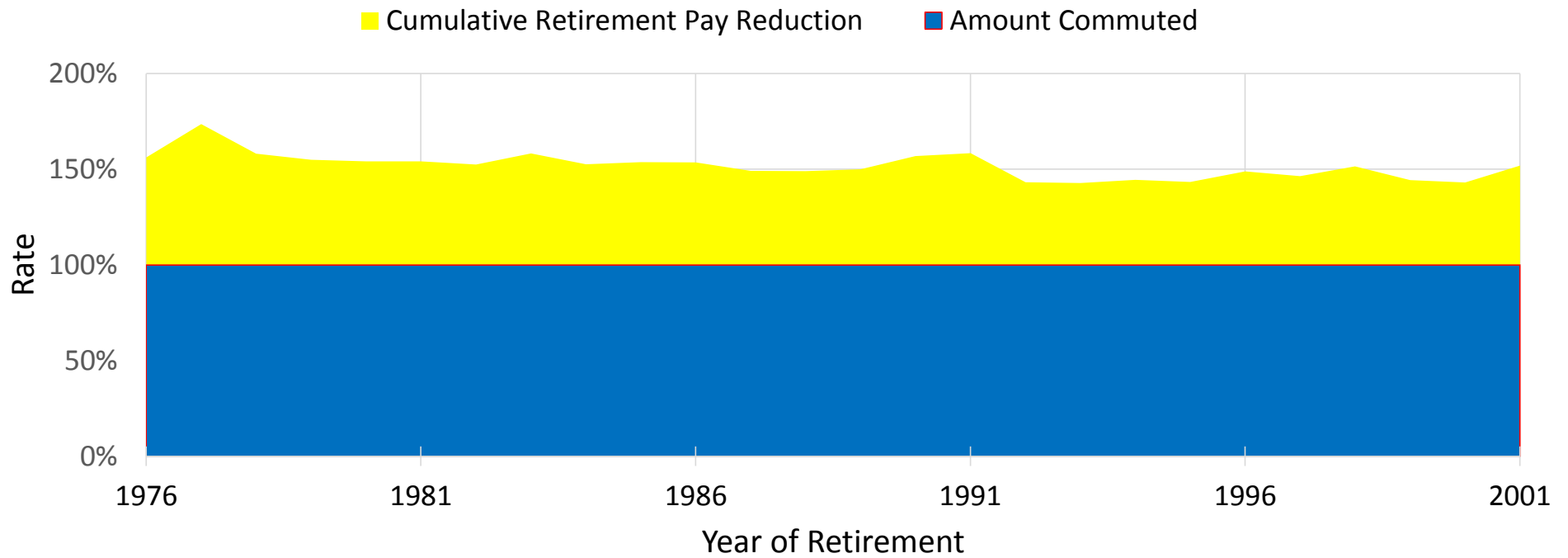
Note that the proportion remains fairly consistent, regardless of the Year of Retirement.

That is, because the proportion is largely driven by the ratio of 2017 Life Expectancy to 1962 Life Expectancy.

The variations are accounted for by differences in Average Age on Retirement.

OVERALL EFFECT

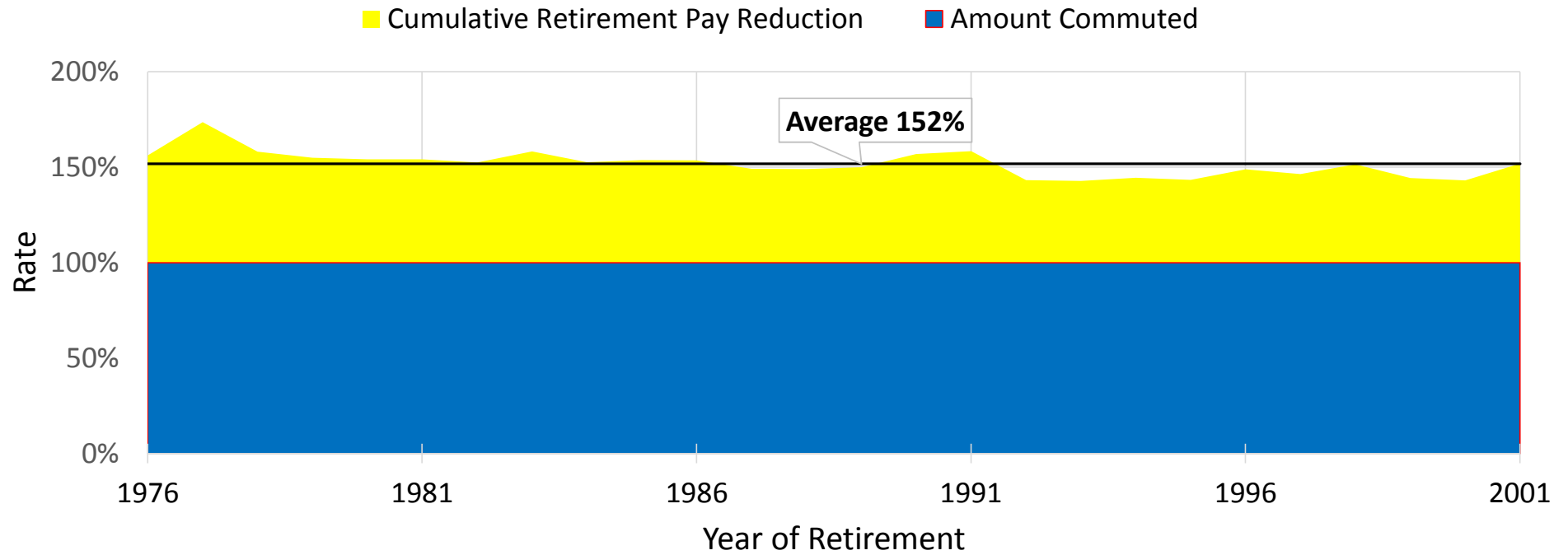
Based on 594 DFRDB Member Retirements from 1976 to 2001 inclusive



On average, by the time Members reach their 2017 Life expectancy, their Retirement Pay Reduction will be more than one and a half times the Amount they Commuted.

OVERALL EFFECT

Based on 594 DFRDB Member Retirements from 1976 to 2001 inclusive



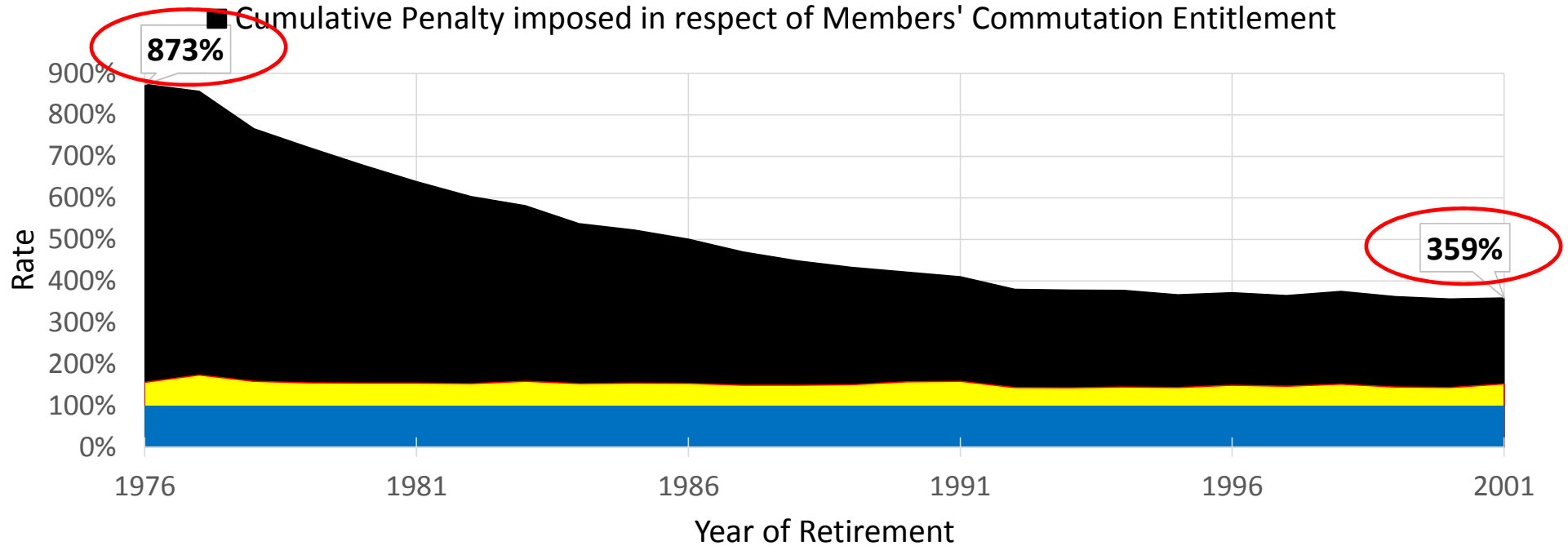
But the Cumulative Penalty imposed in respect of their Commutation Entitlement will be substantially higher.

Note the inequity of effect.

For the Members who retired in 1976 it is almost It is almost two and a half times that, for the Members who retired in 2001.

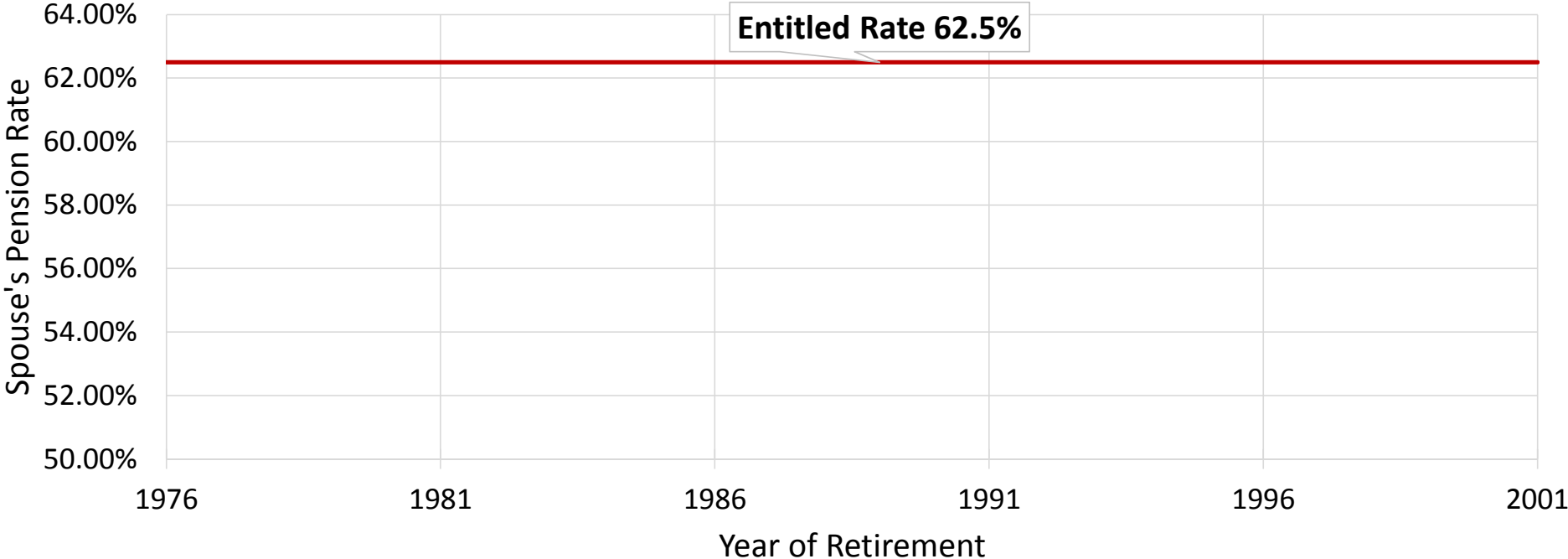
OVERALL EFFECT

Based on 594 DFRDB Member Retirements from 1976 to 2001 inclusive



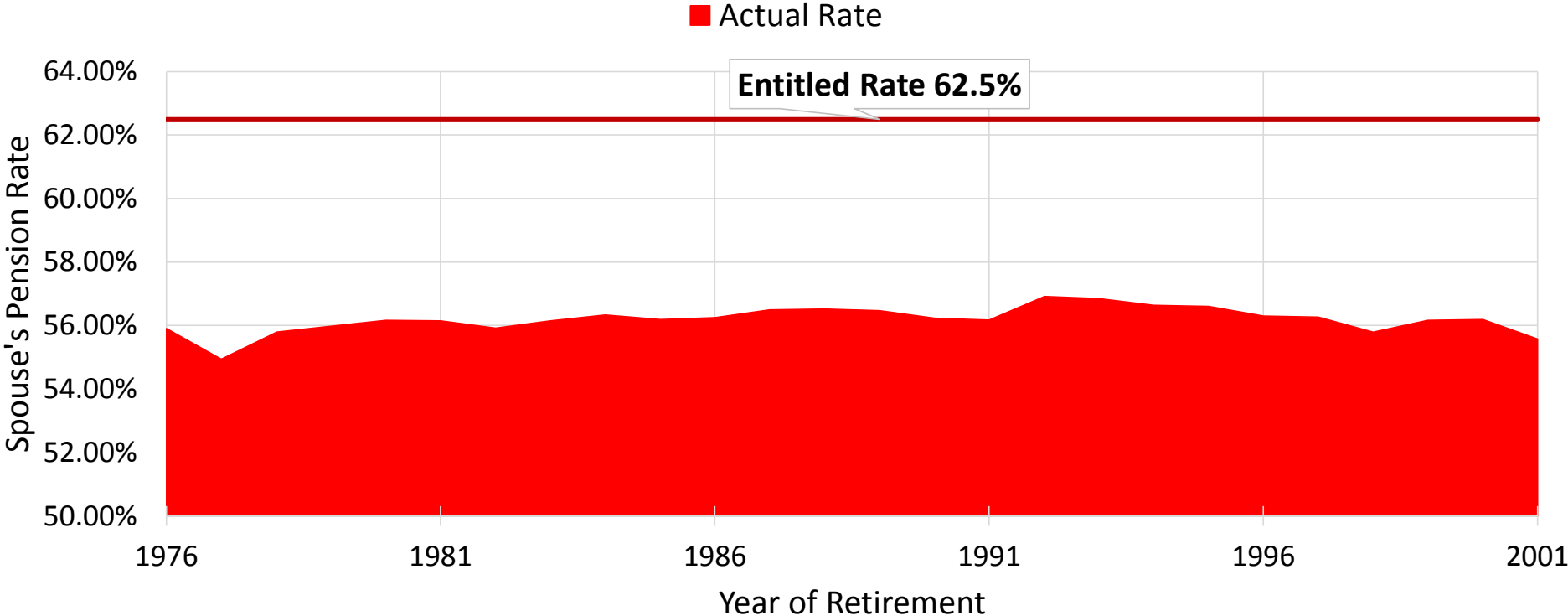
The Spouse should be entitled to a pension at a rate of 62.5% of the Members Retirement Pay, not taking into account Commutation.

OVERALL EFFECT ON SPOUSES



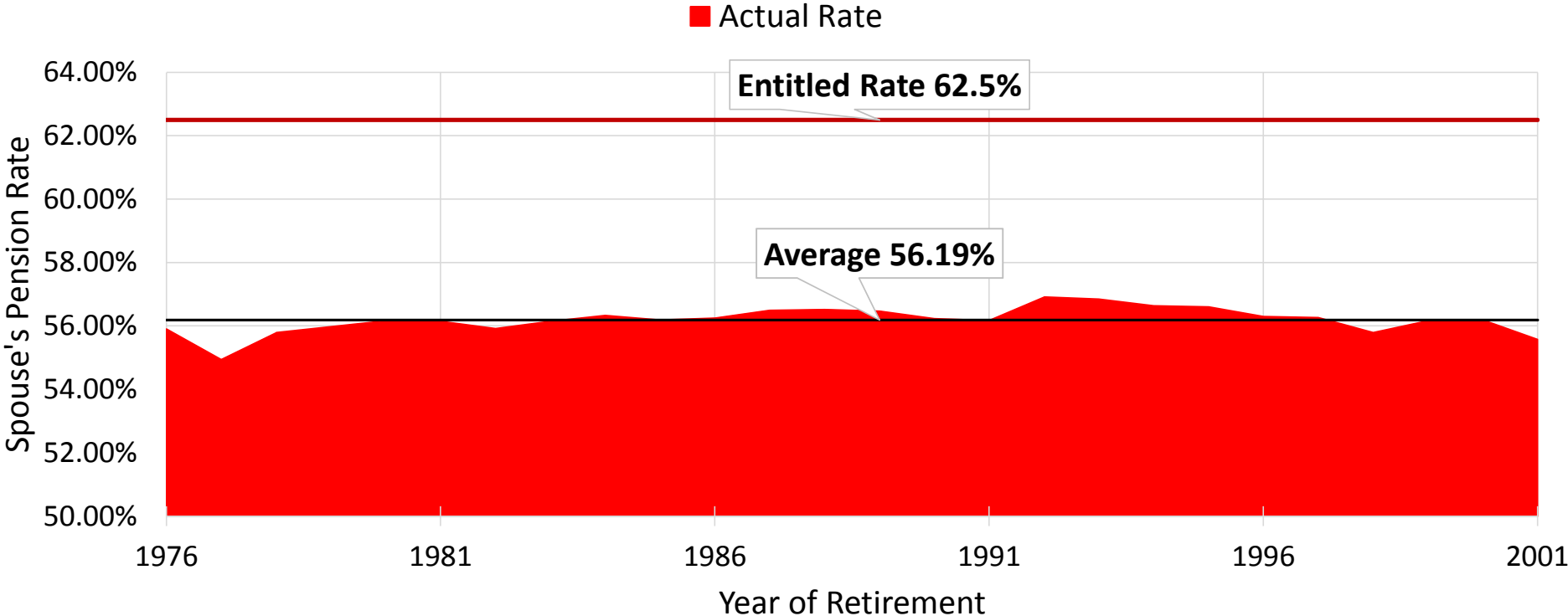
But this will be the actual rate of their Spouses' pensions when these Members reach their 2017 Life Expectancy

OVERALL EFFECT ON SPOUSES



On average, their Spouses' will be entitled to Pensions at a rate of just over 56% of their Retirement Pay Entitlement.

OVERALL EFFECT ON SPOUSES



THE ADVENT OF THE LEGISLATION

The Hansard **record of Parliamentary debate**, relating to the advent and amendment of the DFRDB Act, **reveals:**

That some **Members** of the Parliament **were not satisfied** with the translation of the Jess Committee's recommendations into legislation.

Some notable quotes are:

This is from a speech in response to a Statement by then Prime Minister, The Honourable William McMahon, in which he commended the Jess Committee Report to the House.

House of Representatives Hansard, 26 October 1972

As is apparent, John Jess was the Chairman of the Jess Committee and he was clearly not happy with the Department of Defence.

THE ADVENT OF THE LEGISLATION

John Jess, House of Representatives, 26 October 1972:

*“As Chairman of the (Jess) Committee and as a Government supporter I am **not impressed** one iota **with the support** that this scheme has been **given by** the **Department of Defence** whose job it is to stand and speak on behalf of the defence forces.”*

He was also not happy with the Department of Finance.

THE ADVENT OF THE LEGISLATION

And this:

*“In regard to the **Treasury**, all I can say is that when we introduced our interim report last December we stated that we could and wished to introduce our full report but that we had not been able to obtain the figures or the facts that were necessary for that report.”*

This is from Robert Bonnett's Second Reading Speech during the debate of the Defence Force Retirement and Death Benefits Bill 1973.

House of Representatives Hansard, 30 May 1973

Robert Bonnett was a Member of the Jess Committee.

THE ADVENT OF THE LEGISLATION

Robert Bonnett, House of Representatives, 30 May 1973:

*“... how could simplicity of understanding be achieved, when the Minister permitted the **exclusion of Service representation** from the drafting committee?”*

THE ADVENT OF THE LEGISLATION

And this:

*“The Jess Committee ... set out to devise **a simple scheme** which servicemen could understand, and I believe it succeeded. But when translated into the present legislation its recommendations are on the way to becoming **incomprehensible.**”*

This is from David Hamer's Second Reading Speech during the debate of the Defence Force Retirement and Death Benefits Bill 1973.

House of Representatives Hansard, 30 May 1973

David Hamer was also a Member of the Jess Committee.

THE ADVENT OF THE LEGISLATION

David Hamer, House of Representatives, 30 May 1973:

*“... what **we are considering** today are **3 Bills of great complexity**. The main one ... was introduced into this House last Friday and **5 days** later we are debating it. For a Bill of such complexity, in my opinion, that is a **grossly inadequate time for proper consideration**.”*

THE ADVENT OF THE LEGISLATION

And this:

*“It is a matter for great regret therefore that **we have not had more time to go into the Bills in detail and consult those most concerned.**”*

The Hon Jim Killen was then the Minister for Defence.

This is from this Second Reading Reply Speech during the debate of DFRDB (Pension Increases) Bill 1976.

House of Representatives Hansard, 4 May 1976

The Hon Jim Killen moved that this Bill be read a second time on 27 April 1976.

House of Representatives Hansard, 27 April 1976

THE ADVENT OF THE LEGISLATION

The Hon **Jim Killen**, House of Representatives, 4 May 1976:

*“I venture the view that one would need to go to a **lawyer** with a considerable degree of brashness, to those who are involved in the discipline of administering the legislation constantly or indeed to **actuaries** to gain a perceptive understanding of the full implications of the Bill.”*

The Hon **Jim Killen** introduced this **Bill** in the House.

This is from Robert Bonnett's Second Reading Speech during the debate of the Defence Force Retirement and Death Benefits (Amendments) Bill 1977.

House of Representatives Hansard, 23 February 1977

Robert Bonnett was, at that time, the last remaining Member of the Jess Committee in the Parliament.

THE ADVENT OF THE LEGISLATION

Robert Bonnett, House of Representatives, 23
February 1977:

*“During his second reading speech the Minister Assisting the Minister for Defence said 'the adjustment **provisions** incorporated in the Bill **are detailed and complex**'. That would be the **understatement of the year so far**”*

THE ADVENT OF THE LEGISLATION

And this:

“but as long as the provisions correct the injustice that ex-service pensioners have suffered for so long I am satisfied.”

Mr Bonnett had **no understanding of the effects** these amendments would have **on DFRDB Members.**

What hope that the rest of the Parliament did?

This was Submission 862 in which The Hon Jim Killen sought approval from Cabinet for the provisions which were then incorporated in The Defence Force Retirement and Death Benefits (Amendments) Bill of 1977.

[Cabinet Minute - Canberra, 8 December 1976 – Amended Decision No. 1991](#)

It is improbable that that Jim Killen had any better understanding of these provisions than he did of those in the 1976 DFRDB (Pension Increases) Bill.

THE ADVENT OF THE LEGISLATION

Also of note, is this by the Hon **Jim Killen** in a submission to Cabinet, 8 December 1976:

*“There has been a **degree of contention** on this matter (Commutation) since the introduction of the DFRDB scheme”*

This contention came from the Australian Public Service because their Commonwealth Superannuation Scheme did not include a Commutation provision.

CONCLUSION

The **meaning of** the Commutation provision is expressed in **Recommendation (14)** of the Jess Committee's Report and the Government clearly expressed its intent to implement that provision.

It **is also the meaning** which was **conveyed** to DFRDB Members.

All **other interpretations** of that provision **are subordinate to Recommendation (14)** and any inconsistent interpretations are not valid.

CONCLUSION

There was **no intent** expressed in either the Jess Committee recommendations or the Second Reading Speeches by the responsible Ministers that:

- **Penalties should be imposed on DFRDB Members in respect of their entitlement to commutation.**

But **that is exactly the outcome** which was **achieved by** the architects of the DFRDB legislation, **the Departments of Defence and Finance.**

CONCLUSION

It was **achieved through** the incorporation of:

- **Static and outdated Expectancy of Life Factors** in the original DFRDB Act and
- **An insidious formula**, in the 1977 benefit adjustment amendments, **which excludes the commutation entitlement from indexation.**

CONCLUSION

Members of the Jess Committee made it clear in the House of Representatives that:

- **The Departments of Defence and Finance did not support the DFRDB Scheme.**
- **Draft legislation they produced was worded in a manner that bordered on being incomprehensible.**
- **The legislation was rushed through the Parliament without undergoing proper scrutiny.**

CONCLUSION

- The **exclusion of Service representation** from the legislation drafting process;
- The **obscure wording of the governing Legislation;**
- And the **non-disclosure of essential information pertaining to the Expectation of Life Factors used and the indexation of the Commutation entitlement.**

CONCLUSION

Ensured that:

- There would be **no awareness of the penalties embedded** in the legislation, **until the effects were eventually felt** by Members, *many years later*.
- By that time, **many** of those Members **would no longer be capable of mounting a challenge**.

The majority of DFRDB Members **are still unaware** of these penalties.

I only became aware that something was not right in 2015, after I had sought confirmation of the amount of my wife's pension, in the event of my demise and discovered that it was much less than I had anticipated.

CONCLUSION

We contend that the **outcomes** of the DFRDB Act are ***not* the result of Government policy.**

Rather, **they were masterminded by** the Departments of **Defence and Finance** who **exploited:**

- **The Parliamentary process;**
- **And the vulnerability of service personnel.**

CONCLUSION

We further contend, that the **outcomes** of the DFRDB Act are **a breach of:**

- The understanding and intent underpinning the **Conditions of Service** of Defence Force personnel;
- And their **reasonable expectations of conscionable conduct** by scheme administrators and relevant departments.

CONCLUSION

We appreciate that a determination on the **concerns raised** in the evidence we have presented today **may be beyond the expressed scope of this investigation.**

If that is the case, **an outcome** of this Investigation ***must be*** a recommendation for **a more extensive Inquiry**, to be conducted **by an entity with appropriate powers.**

Otherwise, DFRDB Members will rightly consider this investigation to be nothing but a sham.

Thank you for your attention.