



Australian Government
Department of Defence

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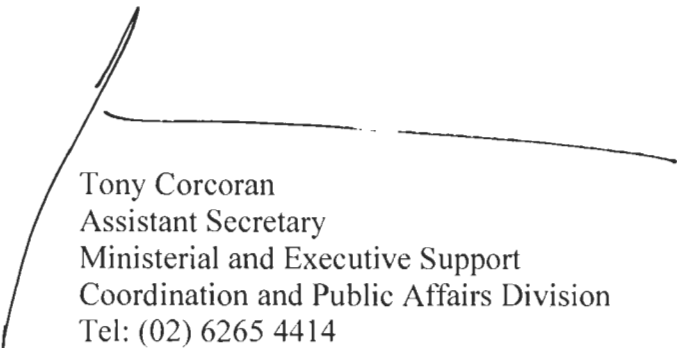
Mr Stephen Palethorpe
Secretary
Senate Standing Committee on
Finance and Public Administration
Parliament House
CANBERRA ACT 2600

Dear Mr Palethorpe

I am pleased to enclose responses to questions taken on notice at the 5 July 2007 hearing into the *Superannuation Amendment Bill 2007*. These responses have been cleared by the Minister Assisting the Minister for Defence.

Should you have any questions or concerns, please contact Mr Alex Tewes, Director Statutory Reporting and Accountability, on 6265 6277.

Yours sincerely



Tony Corcoran
Assistant Secretary
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Question 1

Is there no legal restraint on applying retrospectivity to the legislative amendment?

Senator Sherry, Hansard 5 July 2007, p 28

RESPONSE

There is no legislative reason why the provision could not be made retrospective to the time of the announcement (9 May 2006). However, as a matter of policy, consideration is always given to whether there are alternative mechanisms for achieving the same result.

Question 2

Could Defence provide further information on why the drafters of the legislation would not recommend retrospectivity to the time of the budget announcement?

Senator Sherry, Hansard 5 July 2007, p 29

RESPONSE

If there is no retrospective legislation, it would be possible to consider that a benefit may be granted through the Act of Grace process for the period between 9 May 2006 and the date on which this amendment to the legislation is either proclaimed or given Royal Assent.

The Act of Grace process is a separate process requiring a consideration of the merits of each individual case in accordance with the Commonwealth's policy governing this process.

In relation to this policy initiative, if a case was successful under the Act of Grace process, I am advised that the amount would be determined with reference to what the person would be paid under military superannuation legislation had the person been entitled.

It would be possible to consider a case in the act of grace context from 9 May 2006 to the date of proclamation or Royal Assent of the legislation, and if approved, this could result in a lump sum act of grace back payment and fortnightly payments. The amount paid as act of grace is not necessarily more expensive compared with the pension outlay that may have been payable over the person's life if they had been entitled under the legislation.

If the legislation was retrospective there would still likely be a need for a lump sum payment to cover the period from 9 May 2006 until the pension payments started. This approach would also generate an up front cash cost.