

Betrayal and Deception over Retirement Benefits for Defence Force Personnel

How Parliamentarians, Australian Governments and Bureaucrats treat men and women who devoted their youth and much of their adult lives to the service of their country in the Australian Defence Force.

Introduction

In the early 1970s, a new retirement and death benefits scheme was introduced for the Australian Defence Force (ADF) because the pre-existing scheme did not provide sufficient incentive for young people to enlist and then re-engage, placing Australia's defence capability at risk.

The new scheme induced young men and women to join the ADF and re-enlist. However, in retirement and old age, they have discovered that the scheme does not deliver what they were given to expect.

This article will show that:

- A Joint Parliamentary Committee recommended the introduction of a new retirement benefit scheme to attract more young men and women and retain experienced personnel;
- Public servants decided that ex-service members did not warrant more generous retirement benefits than public servants did;
- Public servants drafted obfuscated legislation which statutorily defined the recommended benefits, but incorporated depreciation factors which diminish those benefits over a recipient's lifetime;
- Responsible Ministers, by omission and misdirection, misled the Parliament about the provisions in the draft legislation;
- The Parliament, with inadequate time for proper scrutiny, unwittingly passed the draft legislation into Law; and
- The Department of Defence misled defence force members over the provisions of that Law until the effects became apparent.

Background

In 1970, a Joint Parliamentary Committee, commonly referred to as the *Jess Committee*, was appointed to conduct a wide-ranging inquiry into the existing Defence Forces Retirement Benefits (DFRB) legislation.

In its May 1972 Report, the *Jess Committee* concluded that the existing legislation did not make adequate provision for retirement benefits, given the special circumstances of service in the ADF.

The *Jess Committee* recommended the replacement of the DFRB scheme with an 'unfunded' contributory retirement benefit scheme, in which:

- Members are entitled to *retired pay* and *invalidity pay*, expressed as a percentage of their final salary and adjusted annually to maintain relativity with average weekly earnings;

- Spouses and dependent children receive a proportion of a deceased member's *retired pay* or *invalidity pay* after the member's death.
- Members are entitled commute, that is, to receive an interest-free lump sum advance payment of a portion of their *retired pay* entitlement to help them resettle into civilian life. The advance being repayable by a proportionate reduction of their *retired pay* over the period of their life expectancy;
- The Commonwealth guarantees those benefits and meets all costs not covered by members' contributions; and
- Members' contributions do not represent a fixed proportion of the benefits paid. Those contributions are paid into the Consolidated Revenue Fund, where they are not invested and earn no financial return for the members or the Commonwealth. Instead, they are used to meet the Government's budget liabilities.

The *Jess Committee* also recommended that the Department of Defence administer the new scheme instead of Treasury which had administered the DFRB scheme.

Treasury's Opposition to the Jess Recommendations

Treasury opposed many of the *Jess Committee's* recommendations, the primary argument being:

*"Once retired from the Services on superannuation, the former serviceman is in a civilian situation and there is little difference between him and other superannuated former employees of the Commonwealth (public servants). While the circumstances in and times at which servicemen should become entitled to pension are different from those of their civilian counterparts ... **the nature and level of benefits need to be similar** (emphasis added)."*

In its reply to the *Jess Committee's* recommendation on *Commutation*, Treasury further stated:

"There are sound grounds for providing for commutation ... but not for adopting the method suggested which is incorrect; the amount of the commuted lump sum would need to be determined on an appropriate annuity basis."

In October 1972, based on Treasury's advice, the McMahon Cabinet decided not to proceed with the new scheme recommended by the *Jess Committee*.

However, immediately after Labor's election in December 1972, Deputy Prime Minister **Lance Barnard** announced that Labor would implement the *Jess Committee* recommendations.

On 25 May 1973, the **Hon. Lance Barnard** introduced *Defence Force Retirement and Death Benefits Bill 1973* concurrently with three other Bills.

When he moved that these Bills be read a second time, **Mr Barnard** said:

"These Bills represent the culmination of steps I initiated in this House some 3 years ago to have developed a retirement benefits scheme for members of the defence force that is both capable of understanding and alive to the special features inherent in a military career." and

"The new scheme is a simple one. It will apply to all serving members of the defence forces as at 1 October 1972 and to all members retiring after that date. Contributions will be at the rate of 5.5 per cent of the member's annual rate of pay and retirement pay will be expressed as a percentage of final pay according to the number of years served." and

*"Commutation of retirement pay will be a right for members who retired after 1 October 1972, subject **only** (emphasis added) to applications for commutation being made within one year of retirement." and*

"Taken together with the series of other measures we have introduced in the area of financial conditions of service generally, there is clearly substantial inducement to become and remain a member of the armed forces."

On 30 May 1973, during the Second Reading debate in the House of Representatives, notable comments were made by:

- **Mr Robert Bonnett:**

"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." and

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

- **Mr David Hamer:**

*"It gives me also great pleasure to see this Bill introduced, a Bill which effectively codifies the report put forward by the Jess Committee. But what we are considering today are 3 Bills of great complexity. The main one contains 79 pages. ... It 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** (emphasis added)."*

- **The Hon. Lance Barnard:**

"I am prepared to accept the criticism in relation to the time that is available to honourable members to study this legislation. But ... the Bill does incorporate the recommendations of the Jess Committee. The Government has not in any way at all dishonoured those recommendations."

However, the wording of the legislation did not reflect the *Jess Committee's* recommendation on *Commutation*.

Transformation of the Jess Recommendations

When the *Jess Committee* recommendations were translated into legislation, they did not just become incomprehensible. Their meaning was substantially altered.

Rather than providing an interest-free advance of a member's future benefit, repayable over the period of the member's life expectancy, the Bill provided for a lump sum payment and a reduction in the rate of *retired pay* determined by 1960-1962 Expectation of Life Factors. The reduction is not for the period of that life expectancy but until the member's death.

The effect is to substantially reduce the statutory benefits of members who commuted and live beyond their 1960-1962 life expectancy.

Both **Mr Bonnett** and **Mr Hamer** were former members of the *Jess Committee*. Yet, nothing in their Second Reading speeches indicated any awareness of the departure of the *Commutation* provision in the legislation from the *Jess Committee's* recommendation. Not surprising, given the complexity of the draft legislation and the time available for its scrutiny.

If the **Hon. Mr Barnard**, also a former member of the *Jess Committee*, was aware of it, then he intentionally misled the Parliament.

A record of precisely what the Whitlam Cabinet approved, regarding the DFRDB legislation, is yet to be located. But it is not unusual for the Cabinet to allow responsible Ministers and their departments to resolve the fine details.

Labor's ambitious legislative program in its first six months of Government provided an ideal opportunity for the Minister's department to present legislation, such as the DFRDB *Commutation* provision, which, may otherwise, not have passed Parliamentary scrutiny. Particularly, when Service representatives were excluded from the legislation's drafting committee.

The DFRDB scheme would affect servicemen and women for the remainder of their post-service lives, in many cases for more than 60 years and, after their death, for the rest of their surviving spouses' lives. The scant scrutiny of *Defence Force Retirement and Death Benefits Bill 1973* by the Parliament is reprehensible and speaks volumes about the Parliament's regard for ex-servicemen and women.

Automatic Benefit Adjustments

In December 1976, after the permanent method of pension adjustment for Commonwealth Public Service Superannuation schemes had been determined. Minister for Defence, the **Hon. James Killen**, sought approval from Cabinet for the automatic adjustment of DFRDB benefits.

In his submission to Cabinet, **Mr Killen** stated:

"For DFRB pensions ... [the permanent methods for pension updating] provide for the amount of the annual increase to be determined by multiplying the total pension payable by the percentage that represents the percentage increase in the Consumer Price Index (CPI).

Regarding DFRDB pensions the new principle embodied in the revised Superannuation scheme adjustment provisions is that only the portion of the pension payable from the Consolidated Revenue Fund is to be adjusted.

*In other words, where a retired member exercises an option to **take additional pension** (emphasis added) attributable or notionally attributable to his own contributions in lieu of a lump sum, that additional pension is not updated.*

I consider it appropriate to apply the same general principle to the DFRDB pension adjustments and I recommend:

That DFRDB age retirement pensions be adjusted by applying the relevant CPI factor to the total residual pension after Commutation, or to the notional residual pension, as though the pensioner had commuted in full; and that the DFRDB invalidity pensions be adjusted by the same CPI factor.

In practical terms the percentage of age retirement pensions to be adjusted would range from about 88% where a pensioner retired at age 38 years, to 74% for retirement at age 60. Widow's and children's pensions payable under both schemes would be adjusted on a similar basis to that adopted in the past."

On 17 February 1977, when he moved that *Defence Force (Retirement and Death Benefits Amendments) Bill 1977* be read a second time, the **Hon John McLeay**, said:

"The adjustment provisions incorporated in the Bill are detailed and complex. I propose therefore to explain in broad terms only how they are to operate." and

"[T]he pension updating arrangements encompassed by this Bill achieve the earlier stated aim of consistency with those currently applying to comparable classes of pensioners under the Commonwealth Public Service superannuation schemes".

However, DFRDB is an 'unfunded' *Defined Benefit* scheme in which member contributions bear no relation to the benefits provided, and **all** benefits are paid from the Consolidated Revenue Fund (CRF). There are no comparable Commonwealth Public Service superannuation schemes or comparable classes of pensioners in the Public Service.

There is no option in the DFRDB scheme where a retired member can **"take additional pension attributable or notionally attributable to his own contributions in lieu of a lump sum."**

While 100% of DFRDB benefits are paid from the CRF, just 68% to 91% of *those benefits*, determined by the members' gender and age on retirement, are adjusted under *Defence Force (Retirement and Death Benefits Amendments) Bill 1977*.

If the Minister was aware of that, then he misled the Parliament.

The effect of this partial adjustment, which is exacerbated by the indexation rate and the failure of the CPI to maintain parity with average weekly earnings, diminishes those benefits from the date of retirement until the member's death, and thereafter, until the death of the surviving spouse.

Parliament's Attitude to Ex-servicemen and Women

During the Second Reading debate in the House of Representatives on 23 February 1977, the **Hon. Bill Hayden** said:

"This Bill provides an initiative on the part of the Minister for Defence (Mr Killen), which is welcomed. Its proposal is to index in accordance with the consumer price index and a simple formula outlined by the Minister in this House last week, the payments under the DFRB and DFRDB pension system. The Opposition endorses the proposals and I see little point in debating the subject further and unnecessarily taking up the time of this House and its officers."

Mr Hayden's dismissive attitude reflected his and the Parliament's understanding of the Bill's effect and epitomized the Parliament's lack of concern for ex-servicemen and women.

An ongoing Legacy

The public servants who so cunningly designed the DFRDB *Commutation and Benefit Adjustment* provisions and the Ministers who ensured the passage of the legislation through the Parliament are long gone. But their legacy is perpetuated by the Department of Defence and a succession of responsible Ministers who have signed off on misleading information to ensure the real DFRDB issues are not addressed.

Herb Ellerbock

Secretary, Australian Defence Force Retirees Association Inc.

The Author is an ex-Warrant Officer Class 1 who receives DFRDB *retired pay* after serving in the ADF (Army) from 1963 to 1983.