



THE HON MATT KEOGH MP
MINISTER FOR VETERANS' AFFAIRS
MINISTER FOR DEFENCE PERSONNEL

Ref No: MC23-002877

Dr Helen Haines MP
Member for Indi
79 High Street
WODONGA VIC 3689

Dear Dr Haines, *Helen,*

THE DEFENCE FORCE RETIREMENT AND DEATH BENEFITS SCHEME

Thank you for your representation on behalf of *Mr Jim Hislop OAM* and Mr Jim Hislop OAM on 25 July 2023 regarding the Defence Force Retirement and Death Benefits (DFRDB) scheme.

The DFRDB scheme, like all Commonwealth defined benefit schemes, was developed as a structured benefits scheme. The scheme, and commuted pensions available under it, have been reviewed multiple times, most recently by the Commonwealth Ombudsman in 2019 and by the Senate Foreign Affairs, Defence and Trade Reference Committee (Senate Committee) in 2021.

As a structured benefits scheme, all aspects of the scheme need to be considered together in order to recognise the overall benefits provided. It is important to note amendments in isolation to one component of the scheme would have secondary effects on the calculation and operation of other benefits provided, and would not necessarily increase the beneficial nature of the scheme overall.

One of the concerns raised by your constituents, the expectation of life factor, is an actuarially based element of the commutation calculation undertaken to determine a DFRDB scheme member's lump sum and resultant pension benefit. Commutation is the early payment of part of a member's retirement pay in the form of a lump sum.

As mentioned in the correspondence your office has received, the Commonwealth Ombudsman concluded some DFRDB scheme members were led to believe incorrectly their commuted pension would increase once they reached their life expectancy factor age. This was not correct and amounted to defective administration by Defence. As a consequence, the Secretary of Defence and Chief of the Defence Force issued an apology on 3 December 2019, which was published in the Ombudsman's report on 11 December 2019.

The Senate Committee recommended the Australian Government consider providing more assistance to those members who wish to lodge a claim under the Compensation for Detriment caused by Defective Administration (CDDA) scheme in respect of the commuted pension under the DFRDB, or to those wishing to appeal an adverse decision in relation to the scheme.

Members of the DFRDB scheme, who believe they have suffered a financial detriment through the provision of erroneous information, are encouraged to lodge a claim under the CDDA scheme. Defence has tailored the claims process to help focus on the issues critical to the determination of the claim and provides members access to a case manager to assist with the process. A claim can be lodged by completing the DFRDB CDDA Application Form found at www.defence.gov.au/legal/Directorates/dsfc.asp and submitting it to dl.deldc@defence.gov.au.

Please note the Commonwealth Ombudsman's report sets out criteria (Appendix F of the report) which should be considered prior to lodging a claim for CDDA. The report can be found at www.ombudsman.gov.au/complaints/defence-force-complaints/defence-force-retirement-and-death-benefits-dfrdb.

The purpose of commutation is to allow members the flexibility to receive a lump sum if required, depending on their financial situation at the time, and to assist the member in resettling into civilian life. Permanently reducing the pension recognises members who elect to commute will obtain a long-term advantage from the immediate use of their lump sum, depending on what they choose to do with the amount. It is important to note a decision to commute part of the pension is voluntary.

The commutation provisions in the legislation reflect the recommendations of the 1972 Joint Selection Committee on Defence Force Retirement Benefits Legislation, and include the retention of a proportionate reduction to the pension to account for the commutation.

The Australian Government Actuary (the Actuary) has provided advice regarding commutation values for DFRDB members. The Actuary noted when the DFRDB scheme was introduced in 1973, the use of the 1960-62 Australian Life Tables as a commutation factor was favourable to members' relative to the alternative pension.

Some DFRDB retirees have proposed replacing the existing life expectancy tables with current tables to improve their residual pension post-commutation. While doing so would have that effect, the life expectancy tables should not be amended in isolation as they are a foundation principle of the DFRDB scheme upon which all other benefits flow. Updating the tables will require updates to the overall scheme to effectively contemporise how the DFRDB scheme would operate.

Contemporising the overall scheme will leave most members worse off as commutation factors would also need to be updated, which would likely affect the pension amount an individual receives. The Commonwealth Ombudsman made note of the life expectancy tables in his investigation into the administration of the DFRDB scheme.

The Ombudsman noted if the commutation divisor increased, it would have a beneficial flow on to members. However the Ombudsman concluded as the scheme drafters did not include a provision to update the tables from time to time, it would suggest the tables were meant to be used as a static commutation factor. This is consistent with the static commutation factors used in the civilian Commonwealth Superannuation Scheme.

More recently, the question of whether an election of commutation within the DFRDB fund has the effect of permanently reducing a member's entitlement or if the reduction is only until the member has reached their life expectancy factor age was addressed in the Federal Court of Australia in *McKenzie v Commonwealth Superannuation Corporation*.

The applicant, Mr McKenzie, a member of the DFRDB fund, sought to challenge the permanent reduction of his retirement pay following his election to commute. On 2 May 2023, the Hon Justice Perry delivered her judgment and dismissed the case, stating in her view an election to commute does result in a permanent reduction in the annual amount of retirement pay to which that member is owed. Full details of the judgment are available at www.judgments.fedcourt.gov.au/judgments/Judgments/fca/single/2023/2023fca0396

Some DFRDB retirees have also raised concerns about the indexation of DFRDB pensions. As noted above, there has been a range of reviews to consider the most appropriate method of indexation for DFRDB pensions. While some reviews differ in the exact methods recommended, they broadly agree a fair method of indexation allows pension recipients to maintain the purchasing power of the pension over time.

There are two methods for measuring purchase power set out in the DFRDB legislation: Consumer Price Index (CPI) and Pensioner and Beneficiary Living Cost Index (PBLCI). Information about how these are calculated is available at: www.abs.gov.au

DFRDB pensioners under the age of 55 receive twice yearly adjustments in line with CPI. Since 2014 DFRDB pensioners over the age of 55 receive twice yearly adjustments using the higher of the CPI or the PBLCI. This is the same way that the Age pension is paid by Services Australia and the Service pension paid by the Department of Veterans' Affairs are indexed.

The DFRDB legislation provides: if a person did not commute (or commuted a sum which was less than four times their annual retirement pay entitlement), the amount by which their retirement pay is increased is determined by applying the relevant indexation rate to the retirement pay they would be receiving if they had commuted four times their annual retirement pay entitlement.

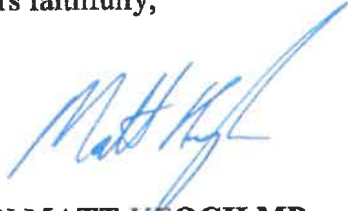
The Commonwealth Ombudsman noted in his report he was satisfied indexation has been properly applied to DFRDB pensions by the administrators and did not recommend any changes to indexation methodology.

I acknowledge some DFRDB scheme members are frustrated and disappointed with the outcome of the reviews and recent court case. However, the DFRDB scheme has been reviewed multiple times, and these reviews have recognised the beneficial nature of the scheme.

While I note the concerns which have been raised, the Government has no plans to make further changes or conduct further reviews of the scheme at this time.

I trust this information is of assistance.

Yours faithfully,

A handwritten signature in blue ink, appearing to read 'Matt Keogh', with a long, sweeping flourish extending upwards and to the right.

HON MATT KEOGH MP

10 September 2023