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Dr Helen Haines MP
Member for Indi

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15 October 2023

Dear Dr Haines,

I refer to your letter [Ref: HH416330/CT, dated 12 September 2023](#), and the letter [Ref No: MC23*002877, dated 10 September 2023](#), from the Hon Matt Keogh MP, Minister for Veterans' Affairs and Minister for Defence Personnel, which you forwarded to me.

Thank you for forwarding my concerns regarding the Defence Force Retirement and Death Benefits (DFRDB) scheme to the Minister. It elicited a response I have already seen many times before.

Some 50,000 DFRDB benefit recipients are frustrated and disconcerted by the Minister's latest response because **their concerns have still not been addressed.**

If you truly wish to represent your constituents on this matter then you must question the Minister's reply, which contains a litany of **mistruths** and **misinformation** that has been conveyed to Senators, other Members of Parliament and DFRDB recipients for more than two years now.

In particular, I wish to draw your attention to the following from the Minister's letter:

“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.”

That is simply not true. Neither the Ombudsman nor the Committee reviewed the scheme.

After he was approached by the responsible Minister at the time, the Hon Darren Chester MP, the Commonwealth Ombudsman, Michael Manthorpe PSM, decided to commence an ‘own motion’ investigation **into the accuracy of information provided to DFRDB members** by scheme administrators and relevant departments **about commutation of retirement pay.**

The Ombudsman's [Report 06/2019](#) includes:

1.7. *The Ombudsman's role is limited to investigating 'action that relates to a matter of administration'. Accordingly, our focus is on the administration or implementation of legislation and policy, by officials in government departments and statutory agencies.*

1.8. *For this reason, the Ombudsman limited the scope of this investigation to the administration of the DFRDB Scheme, and particularly the issue of commutation. **The primary focus of the investigation is the accuracy of information provided to DFRDB members.** We set out the following questions to guide our investigation:*

- *What information was provided to DFRDB members about the effects of commutation on future retirement pay entitlement?*
- *Was this information inaccurate, inadequate, ambiguous or misleading? If so:*
 - *what were the consequences?*
 - *what remedial action (if any) should be taken?*
- *Were retirement payments indexed as required by legislation? If not, what remedial action (if any) should be taken?*

1.9. *The following issues go to the nature of the legislation passed by parliament and matters of government policy, **and therefore are out of scope of this investigation:***

- *Whether legislation is fair and just, including provisions for:*
 - *use of certain life expectancy tables*
 - *permanency of reductions to commuted pensions*
 - *indexation arrangements.*
- *Whether government ought to take different policy decisions or make amendments to legislation."*

The Minister should be asked to name the review(s) which investigated those particular matters and quote the conclusions which found the legislation to be fair and just.

The Ombudsman found that scheme members had been ***"provided misleading, and even incorrect advice about their rate of retirement pay by Defence"*** and further found ***"defective administration by Defence"***.

The Ombudsman elicited a formal apology from Defence, but did not recommend any form of compensation beyond what individuals could claim through the Compensation for Detriment caused by Defective Administration (CDDA) scheme and eligibility criteria derived from biased financial modelling designed to make the DFRDB scheme appear beneficial.

In 2021, the Senate FADT Committee conducted a similar inquiry, which, like that of the Ombudsman, did not consider if the legislation is fair and just. The Committee recommended that the Government consider:

1. Ways to improve members' understanding of DFRDB and other military superannuation schemes; and
2. More assistance for DFRDB members to make claims under the CDDA scheme and appeal any adverse decisions or a separate reparation payments scheme for DFRDB members who are unsuccessful under the CDDA scheme.

The Minister's letter goes on to say:

“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.”

This statement makes no sense. DFRDB recipients are not seeking an increase in the beneficial nature of the scheme. They only want to receive the **full value** of the benefits they were led to believe they would receive in return for committing to decades of service.

They ask:

1. Is it fair and just, that members who elected to receive a lump sum part pre-payment of their legislated benefit to help them resettle into civilian life after serving for 20 or more years, must in effect repay that advance with what amounts to added compound interest, **for the rest of their lives?**
2. Is it fair and just, that a part (on average 20%) of the benefits of members who did not commute and the pensions of the spouses of deceased members is excluded from indexation thus diminishing the value of those benefits, from the date they became entitled to them, until their death?
3. Is it fair and just, that the Consumer Price Index, already recognized by the Jess Committee in 1972 and the Pollard Enquiry into Superannuation Pension Updating in 1973 as unable to maintain the purchasing power of superannuation benefits, was used from 1977 until 2014 to further diminish the value of their benefits?
4. Is it fair and just, that this method of adjusting DFRDB benefits is deemed to be consistent with the method of adjustment applying in the Commonwealth Public Service Superannuation schemes, where member contributions and Government co-contributions are paid into a Fund, where they are invested and earn a return for members, while DFRDB member's contributions were paid into the Consolidated Revenue Fund and appropriated according to the Government's priorities.

The Minister should be asked to provide an example of how an amendment to one component of the scheme would have secondary effects on the calculation and operation of other benefits provided.

The Minister's letter goes on to say:

“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 commutation provisions in the legislation **do not** reflect the recommendations of the 1972 Joint Selection Committee on Defence Force Retirement Benefits Legislation (the *Jess Committee*). The legislation, as confirmed by the Federal Court in *McKenzie v Commonwealth Superannuation Corporation*, **permanently** reduces benefits after commutation, and **not proportionately** as was recommended by the *Jess Committee*.

The Minister's letter goes on to say:

“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.”

The Minister should be asked to explain how the 1960-62 Australian Life Tables as a commutation factor can be favourable to members, when, according to the latest Australian Bureau of Statistics Life Tables and state-of-the-art forecasting algorithms indicate that the 1960-62 Australian Life Tables **understate** the **Life Expectancy** of every DFRDB recipient still alive today **by as much as 20 years?**

The Minister's letter goes on to say:

“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.”

The Minister should be asked, if those reviews found that the method of indexation allowed DFRDB recipients to maintain the purchasing power of their benefits over time, why was **‘Fair Indexation’** incorporated in the legislation in 2014? And, if the method of indexation was **‘unfair’**, why did **‘Fair Indexation’** not remedy the very substantial erosion, in effect reduction, of DFRDB benefits which resulted from 37 years of **‘unfair’** indexation?

The Minister's letter goes on to say:

“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.”

DFRDB recipients are frustrated and disappointed **only** because the terms of reference of each review were carefully crafted to avoid the substance of their concerns. Consequently, the reviews were superficial, failed to comprehend the complexity of DFRDB legislation, gave precedence to the Departmental position and failed to acknowledge or address the concerns of members as articulated clearly on each occasion.

The Minister should be asked when he will acknowledge DFRDB recipients' concerns as legitimate and take action to address them diligently and with resolve.

I have forwarded a copy of this letter to:

The Hon Matt Keogh MP, Minister for Veterans' Affairs and Minister for Defence Personnel,

The Hon. Matt Thistlethwaite MP, Assistant Minister for Defence, Assistant Minister for Veterans' Affairs, Assistant Minister for the Republic, and

The Hon Barnaby Joyce MP, Shadow Minister for Veterans' Affairs.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'J G Hislop'. The signature is written in a cursive, slightly slanted style.

(J G Hislop) OAM, Lt Col (retd.)