



Australian Defence Force Retirees Association Inc.

No. A0108026R

We represent the interests of Defence Force Retirees regarding their Superannuation

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FOREIGN AFFAIRS, DEFENCE AND TRADE COMMITTEE

Inquiry into Accuracy of information provided to Defence Force Retirement and Death Benefits (DFRDB) members and

SUPPLEMENTARY SUBMISSION

No. 2

by

Australian Defence Force Retirees Association Inc.

23 May 2021

Dear Committee Secretary,

After reviewing the testimony of the witnesses at the hearing on 20 May 2021, we feel that further comment and clarification is necessary.

Class Action

ADFRA also tested the possibility of a Class Action with the same outcome experienced by Mr Ken Stone because there is no pot of gold at the end for a Class Action law firm.

ADFRA is nonetheless aware that individuals are considering challenges on various legal grounds.

AAT decisions

Mr Stone did not understand the questions from Senator Kitching and Senator Lambie regarding approaches to the AAT. Instead, his response related to his claim for Compensation for Detriment caused by Defective Administration (CDDA).

We believe that Senator Kitching may have referred to *Reynolds and DFRDB Authority* [2001] AATA 599 (28 June 2001)¹.

Submission 30.1 by Mr Clinton McKenzie includes a well-informed comment regarding that action.

The Commonwealth Ombudsman's Conjecture

Based on the submissions he received, the Ombudsman determined that the purchase of a home is *"likely to have been the most common use of the commutation lump sum"*.

However, we believe that those who responded to the Ombudsman's investigation were not a valid sample of the total DFRDB recipient population.

Evident, in the number of submissions received by the Ombudsman (some 3,400) and the 4,400 plus membership of ADFRA, is that the other 40,000 plus surviving DFRDB recipients are either unaware, disinterested or resigned to their lot out of frustration. It is reasonable to assume that a significant number of those are not sufficiently articulate or computer literate to prepare a submission.

Nonetheless, the Ombudsman extended, to every scheme member, his conjecture that the commutation lump sum was invested in one way or another.

The financial modelling methodology, commissioned by the Ombudsman, compared the commutation lump sum invested at mortgage and investment rates with the unindexed additional retirement pay members would receive if they did not commute. That produces the same outcome in every instance and is merely a

¹ [Reynolds and Defence Force Retirement and Death Benefits Authority \[2001\] AATA 599 \(28 June 2001\)](#)

commentary on investment return rates and partial indexation of DFRDB benefits. Our view that this modelling methodology is biased remains unchanged.

An unbiased modelling approach would compare the total unindexed *Defined Benefit* received by a member who commutes and one who does not commute at any given point in time. That modelling approach would operate equally for every member in the scheme, regardless of their circumstances.

Rejection of CDDA Scheme Claims

Appendix F of the Ombudsman's Report foreshadowed almost inevitable rejection of all CDDA claims, and the *Note to applicants* under item 6 in Section 3 of the DFRDB CDDA form included:

You must have exhausted all legal options available to seek compensation for your loss before making a CDDA claim. Any other ongoing claims must be fully resolved before commencing your CDDA claim.

That would have discouraged many members from submitting a claim and is undoubtedly why almost 99% of respondents to the Ombudsman's investigation considered it a waste of time.

Defence advised that of the 36 claims processed, all were denied. We have sufficient copies of the rejection letters, including my own, to state confidently that the denial of each claim was based on the Ombudsman's financial modelling.

Inequity of DFRDB and Public Service Scheme Indexation

The absence of questions from the Committee on DFRDB indexation suggests that further explanation of this aspect is necessary.

When the Minister moved that the Bill which incorporated automatic adjustment in the DFRDB Act be read a second time, he said that the *"updating method was consistent with those applying to comparable classes of pensioners under the Commonwealth Public Service superannuation schemes."*

That is not so.

In the Commonwealth Public Service superannuation schemes, the Commonwealth's share of the total pension payable, payable from the Consolidated Revenue Fund, is deemed to be five-sevenths (71.4%), and it is indexed at 1.4 times the increase in the Consumer Price Index (CPI). The indexation increase is applied to 100% (71.43% x 1.4) of the total pension payable.

The member's share of the entire pension payable is invested and generates a return. For example, according to Commonwealth Superannuation Corporation's Annual Report of 2016-17², the 7-year rate of return, net of fees and taxes, was:

- 8.3% for the Commonwealth Superannuation Scheme (CSS); and

² [Commonwealth Superannuation Corporation 2016–17 Annual Report](#)

- 8.2% for the Public Sector Superannuation Scheme (PSS).

In just seven years, the members' share of the pensions payable increased by 74.7% and 73.6%, respectively.

In the DFRDB scheme, the Commonwealth's share of the total pension payable is deemed to range from 60% to 90%, depending on gender, age, the decision to commute and the date of commutation. The total benefit (100%) is paid from the Consolidated Revenue Fund.

The deemed member's share is not invested and does not increase.

The Defence Force Welfare Association (DFWA) Proposal

DFWA members were not consulted on this proposal which would provide the least benefit for the majority who have been retired the longest, and the greatest benefit, albeit still only small, for the 900 odd members who have not yet retired and the relative few most recently retired.

The DFWA proposal ignores the impact of the Expectation of Life Factors on the indexation of their benefits and that of their spouses and dependent children.

The permanent reduction of retirement pay after commutation, based on Life Expectancy, produces inequitable outcomes which discriminate by age, gender and date of retirement, regardless of which version of Life Tables are used.

Apart from an aberration in 1967 and 1972, life expectancy has steadily increased since records first commenced in 1881. By the time the Australian Bureau of Statistics publishes the Life Tables, they are already out of date, as would be the case with the DFWA proposal.

Outcomes sought by ADFRA

ADFRA is seeking:

- The amendment of the DFRDB Act to cease retirement pay and invalidity pay reduction after Notional Life Expectancy is reached.
- The reimbursement of all retired pay and invalidity pay reductions after members reached their Notional Life Expectancy; and
- The restoration of the rate of all DFRDB *Defined Benefits* to a fair, current value.

I stress that we are not seeking the retrospective recovery of vast benefits already lost due to unfair indexation from the date of retirement to the present day.

As stated in our initial submission, a small part of the annual earnings of the *Future Fund*, the primary purpose of which is to underwrite unfunded Commonwealth Defined Benefit schemes (of which DFRDB is one), would cover the cost of the outcomes we are seeking.

Members' Decision to Commute

For many Defence Force members, the commutation lump sum was essential to their re-settlement and re-establishment in civilian life. But few would have understood that the Expectation of Life Factor, which determined the reduction of their retirement pay or invalidity pay after commutation, was a statistical mean and what the implications of that were. Fewer still would have anticipated that life expectancy would increase significantly beyond their Expectation of Life Factor.

Many members made fundamentally important decisions many years before the end of their period (or periods) of service in the Defence Force, based upon their understanding of the scheme when those decisions were made. As was the case in my situation, the knowledge of the scheme was often limited due to posting and operational circumstances.

Yours sincerely,



(H. F. Ellerbock)

23 May 2021

Secretary
Australian Defence Force Retirees Association Inc.