



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

SUPPLEMENTARY SUBMISSION

No. 4

by

**Australian Defence Force Retirees
Association Inc.**

31 May 2021

Dear Committee Secretary,

So far, we have forwarded Supplementary Submissions which:

1. Draw attention to factual errors in Defence Submission No. 39;
2. Provide general clarification after the public hearing; and
3. Comment of the testimony of Defence and CSC.

After reviewing the testimony¹ of Mr. Michael Manthorpe, the Commonwealth Ombudsman, we feel that further comment is necessary.

Ombudsman's Investigation Terms of Reference

In his reply to Senator Kitching's question:

"Were you satisfied that your terms of reference were sufficiently broad and that the consultation was wide enough?"

Mr. Manthorpe replied:

"I normally don't go into matters of policy in this or any of the other many, many areas that I touch on as the Ombudsman. However, recognising how strongly people felt about these DFRDB Scheme design questions, I did summarise those views and put them into my public report, or at least attempted to capture them adequately in the public report, so that the parliament and the public could see that, yes, there are still a bunch of other issues here that could be considered but they're fundamentally outside my remit."

In a face-to-face meeting with the Ombudsman's investigation team, which lasted almost two hours, an ADFRA delegation detailed many of the concerns we have expressed to this Inquiry and presented much of the evidence, regarding the commutation provision, we have also presented to this Inquiry.

The Ombudsman did not summarize those views and put them in his public report.

Despite the term 'permanent reduction' never having been mentioned once in any advice to the members of the scheme in the 32 years between 1972 and 2008, the Ombudsman used the term no fewer than 44 times in his Report, as if to emphasise his interpretation of the commutation provision.

When a Court is required to rule on a disputed interpretation of an Act of Parliament it rightly examines all admissible evidence in order to establish the purpose and intent of the legislation. But the Ombudsman dismissed the evidence presented by ADFRA and without considering any other evidence, placed his own interpretation on the commutation provision.

¹ [Proof Committee Hansard](#)

In Part 4 of his Report, the Ombudsman said:

"4.33. Each brochure has a section explaining pension increases. The explanation provided, which varied over time, is that retirement pay increases are based on the upward movement of the Consumer Price Index."

"4.34. Brochures published after 1985 explain that retirement pay increases are also based on the amount of retirement pay that would be applicable if four times the amount of retirement pay been commuted."

"4.35. The brochures and booklets do not explicitly state the impact of commuting more than four times the annual dollar amount of retirement pay, and in particular, that the annual increases to the member's retirement pay will be less than if they commute four times or less."

And in Part 5:

"5.15. A member's retirement pay is not indexed in full if the person did not commute, or commuted less than four times their annual retirement pay."

The ADFRA delegation explained in detail how a member's retirement pay is not indexed in full and why. But the Ombudsman made no reference to this or offered any explanation.

And in Part 5 of his Report, the Ombudsman said:

"5.10. It is understandable why members would prefer the use of later life expectancy figures. If the commutation divisor had increased in line with changes to life expectancy, the flow on effect would have been increased retirement pay for those who commuted (because a higher commutation divisor results in a smaller reduction)."

"5.16. The impact of the permanency of the commutation reduction, and the impact of commutation on indexation, have been addressed earlier in this report. Indexation arrangements more generally have been the subject of numerous government reviews and inquiries. There is no reason to believe that each of these issues are not the intended policy outcome following deliberate and considered government policy decisions."

"5.17. Nevertheless, many members are dissatisfied with these government decisions and are hoping for change. It is understandable why-any of these steps would, if applied, leave scheme members better off financially, with commensurate expense to the taxpayer."

The Ombudsman failed to grasp the concept that, because DFRDB was a *Defined Benefit* scheme, the flow-on effect of using later life expectancy figures was not an increase of retirement pay but a decrease of the deduction from what was already their *defined* retirement pay entitlement.

Matters which the Senate Committee might be able to address

In his reply to Senator Kitching's question:

"I'm wondering if there's anything that has come to your attention through your investigation but that couldn't be addressed, given your remit, or that you think a Senate committee might be able to address."

Mr. Manthorpe replied:

"I asked myself: 'What else could be done here?' Clearly, what the submitters to your committee would like done is that the clock be wound back and the legislation amended in such a way that, when people get to their notional life expectancy age, they go back on to a higher pension, and I understand that desire."

The Ombudsman failed to grasp that DFRDB recipients are seeking amendments to cease the reduction of their *defined* retirement pay entitlement.

In paragraph 5.20. of his Report, the Ombudsman said:

"However, given the breadth of concern about these issues, it may be appropriate for the Government to publicly clarify its policy position to the broader DFRDB member cohort. In saying this, the Office makes no comment on the appropriateness of these policy settings, which are rightly the domain of government and parliament. We do, however, note that if changes are to be considered, the Government should have regard to the potential impact on other members, namely those who did not commute or transferred to other schemes."

Now, some 18 months after the Ombudsman submitted his Report, no clarification of the Government's policy position to the broader DFRDB member cohort has occurred. The letter from the Minister, the Hon Darren Chester, to Senator Andrew Bragg (copy attached) exemplifies the clarification which has since emerged from the Minister's office.

In his reply to Senator Kitching, Mr. Manthorpe continued:

"But, equally, I pointed to some, if you will, perverse outcomes that that might then generate. One is that there were people who understood how the scheme was intended to work. There was certainly a group of people, probably in their thousands, as my report says, who were misinformed."

"But there were other people who understood how it worked, so I found it difficult to make a recommendation that said the taxpayer should now go and give those people, who knew exactly what they'd signed up for, a further payment for something that happened decades ago."

Is the Ombudsman suggesting here that because they understood how the legislation worked they should not receive their full defined retirement pay entitlement?

The Ombudsman continued:

"I also thought about the group who understood how the scheme worked and chose the other option—that is to say, they chose the higher pension but not taking the lump sum up-front. They would, I think, be rightly aggrieved if the other group got a further payout, but they didn't get anything even though they understood the scheme properly and they've ended up, if the actuarial modelling is reliable, in a position that is genuinely worse off than the group that commuted."

Again, the 'other' group would merely get their full defined benefit, which the group who did not commute had already received.

The Commonwealth Ombudsman said that he *"brought an entirely open mind to the issues and was subject to no improper influence"*. But that is not evident in his Report.

Yours sincerely,



(H. F. Ellerbock)

31 May 2021

Secretary
Australian Defence Force Retirees Association Inc.



The Hon Darren Chester MP

Minister for Veterans' Affairs
Minister for Defence Personnel

MC20-002610

Senator Andrew Bragg
Senator for New South Wales
GPO Box 5411
SYDNEY NSW 2001

Dear  Senator

Thank you for your letter of 15 July 2020 on behalf of your constituent, Mr Paul Legdin, regarding the Defence Force Retirement and Death Benefits (DFRDB) scheme.

Mr Legdin believes that DFRDB members have been denied benefits, as a result of DFRDB legislation being passed through Parliament without proper consideration. Mr Legdin also believes the legislation has subsequently been interpreted intentionally to the detriment of members.

The DFRDB scheme legislation was derived from the 1972 report of the Joint Select Committee (Jess Committee) on Defence Forces Retirement Benefits (DFRB) legislation. The Jess Committee made 20 recommendations, the majority of which were accepted by the Government of the day.

The DFRDB scheme was tailored to meet the unique nature of military service. Like all Commonwealth defined benefit schemes, DFRDB was developed as a structure of benefits and therefore elements of the structure should not be considered in isolation.

The DFRDB scheme has been formally reviewed multiple times and enhancements to the scheme have occurred over time as a result. The review of 1974, conducted by Professor Pollard and Mr Melville, resulted in the introduction of automatic annual indexation for DFRDB pensions in 1976.

The 1990 review of DFRDB, chaired by Sir William Cole, formalised the three percent Productivity Benefit arrangement and introduced the option of commutation for dependent spouses on the death of a contributing member.

In 2001, the Watson Senate Select Committee recommended bi-annual indexation, which was subsequently accepted by the Government of the day.

The 2007 Review into Military Superannuation Arrangements, chaired by Andrew Podger, resulted in the indexation methodology for DFRDB retirement pay, and reversionary recipients aged 55 and over, changing in 2014. These pensions are now indexed in the same way as age and service pensions.

Most recently, in 2019, the Independent Commonwealth Ombudsman published a report on its investigation into the administration of the DFRDB scheme. The investigation focused on the accuracy of information about commutation provided to scheme members by Defence and the DFRDB scheme administrators.

Whilst the Ombudsman found that some DFRDB scheme members were provided with misleading, and in some cases incorrect, advice about their rate of retirement pay by Defence, he confirmed that at all times the scheme was administered in accordance with the law.

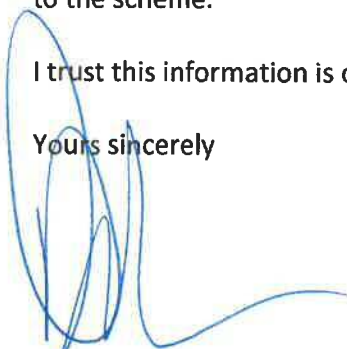
However, if members believe they have suffered a detriment as a result of defective administration of the DFRDB Scheme, they may lodge a claim for Compensation for Detriment caused by Defective Administration. Please note that the Ombudsman's report sets out criteria (Appendix F of the report) that should be considered prior to lodging a Compensation for Detriment claim. Further details and the application form can be found by visiting the Directorate of Special Financial Claims webpage: www.defence.gov.au/Legal/Directorates/dsfc.asp

With regards to Mr Legdin's concerns regarding the Australian Defence Veterans' Covenant (the Covenant), I can assure you that the Australian Government is committed to providing better outcomes for veterans and their families through integrated and increased community support, employment, healthy living initiatives and better access to the existing programs and support provided by both the Department of Veterans' Affairs and the community.

As the DFRDB scheme has been reviewed multiple times and these reviews have recognised the beneficial nature of the scheme, the Government has no plans to make further changes to the scheme.

I trust this information is of assistance to Mr Legdin.

Yours sincerely



DARREN CHESTER

26 AUG 2020