



Australian Defence Force Retirees Association Inc.

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We represent the interests of Defence Force Retirees regarding their Superannuation

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Understanding the Defence Force Retirement and Death Benefits Scheme

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We set the record straight about an article which appears in the August 2024 edition of *Vetaffairs*. To view the article click on the link or paste it into your browser.

Selective facts, false dichotomies and false equivalences

The *Vetaffairs* article includes all the usual selective facts, false dichotomies and false equivalences that DFRDB members have come to expect from the office of the Minister of Veterans Affairs, who is also the Minister for Defence Personnel responsible for the DFRDB scheme.

Typical is this in the article's opening paragraph:

*... members will generally be eligible for an indexed benefit **plus** [emphasis added] an optional "Commutated Benefit of up to 5 times their annual pension amount.*

In reality, members could opt to receive a **part** (up to 5 times) **of their future unindexed retirement pay or invalidity pay entitlements** as a lump sum to help them resettle into civilian life after decades of service in the ADF.

The 2019 Ombudsman's probe and 2021 Senate 'review'

The description of the 2019 Ombudsman probe and the 2021 Senate Foreign Affairs, Defence and Trade Reference Committee enquiry as "reviews of the DFRDB scheme" is misleading. The description suggests – if not positively asserts – that the reviews were of the entirety of the scheme.

However, there has never been a detailed investigation into the DFRDB Act as the governments of the day developed the Terms of Reference (TOR) for every review to ensure they got the answers they wanted.

It is not beyond the Department of Defence (DoD) to present incorrect or partial evidence. A case in point; in evidence provided to the 2021 FADT review, DoD stated at paragraph 3.21 "Defence noted that when the DFRDB Act 1973 was legislated the commutation provisions were mirrored off the DFRB Scheme". That is false as under DFRB a member applying for commutation was required to undertake an exhaustive medical examination to ensure there was a better than reasonable chance of their survival to Life Expectancy and was required to explain what they intended to do with the commuted lump sum. The application for commutation could be refused.

Whereas under DFRDB, commutation was an unfettered right.

The members of any review committee have a responsibility to verify the accuracy and validity of any evidence presented to the review. A responsibility, often abrogated as indicated in the example above.

The deliberately narrow TOR of the Ombudsman's investigation and the FADT Committee enquiry focussed on the issue of the detriment caused to members who were misled about the consequences of commutation. That issue was conveniently hosed down on the basis of contingent modelling showing that, although members were misled, the value of the commuted lump sum paid 'up front' was greater than the accumulated periodic higher pay had the member not commuted. In the rare cases in which a member could show causal detriment having commuted, the member could be compensated through the Compensation for Detriment caused by Defective Administration (CDDA) scheme; only a few small hurdles in that process!

That is logical as far as it goes, but it's still a false dichotomy. The 'reviews' focussed on the decision to commute or not commute by members who, by definition, had served for decades to become entitled to make that choice. The 'reviews' avoided confronting the question whether members would have made the decision not to join the ADF at all, or to not remain in the ADF for decades, if they had been properly informed at the time those decisions were made.

In one instance, where a member did not use the CDDA application form tailored by Defence to focus on the decision to commute and challenged the initial denial of his claim, Defence Legal has so far (now 215 days) failed to complete a review of the initial decision.

More importantly, although misleading ADF members as to the consequences of commuting is a substantial issue, it pales into insignificance when compared to how members were misled – again through omission – by the Commonwealth on other issues, by far the most significant of which is indexation. That is why the Commonwealth is happy for members to continue to be distracted by commutation, as if it is the only controversial aspect of how members were treated.

The truth about the dirty tricks pulled on potential enlistees in the ADF and members considering signing on for further periods of service is revealed in Cabinet Minutes dated 8 December 1976. In order to understand the tricks, it is first necessary to understand a bit of the history and features of the DFRDB Scheme.

The DFRDB scheme is unique

The DFRDB Scheme is unique, it was designed to be unique as it had to be unique in order to attract and keep young, fit volunteers in the ADF in the wake of the very unpopular Vietnam War and the equally unpopular conscription system. Among the unique aspects of the scheme are that the entirety of members' compulsory contributions were paid into the Commonwealth Revenue Fund (CRF). The CRF is the Commonwealth's piggy bank to spend on what the Commonwealth chooses from time to time. Not one cent of DFRDB members' compulsory 5.5% contributions deducted from their modest ADF pay was invested for their benefit. The 'benefit' was a Government commitment to provide a life time "retirement pay", with reversionary benefits to a surviving spouse and dependent children, for service to the nation.

Another unique feature is that the DFRDB benefits payable bore no relationship to the value of contributions made by members. The lifetime retirement pay and

invalidity pay entitlements – and reversionary entitlements – are dependent only on years of service and the rate of the member’s ADF pay immediately before becoming a recipient. Finally, the entirety of DFRDB benefits is payable out of the CRF.

All of that was intended. Simple, understandable concepts, to make joining and remaining in the ADF for decades of the best years people’s lives attractive.

And it worked.

The purpose of the DFRDB scheme

Another key piece of history is that the DFRDB Scheme was effectively designed by a Joint Parliamentary Committee known as the Jess Committee. The Minister of the day stood up in Parliament and said:

“The Bills give effect to the Government’s decision announced last year to implement the recommendations of the [Jess Committee].”

And...

*“[T]he scheme encompassed by these Bills reflects not only the needs expressed by the Services themselves for the provision of a modern retirement benefits structure that takes account of their particular career patterns, but also it is one that is comprehensible to them. It is a tangible application of the Government’s policy to provide all volunteer forces. Taken together with the series of other measures we have introduced in the area of financial **conditions of service** [emphasis added] generally, there is clearly substantial inducement to become and remain a member of the armed forces.”*

The automatic adjustment of the DFRDB benefits

One of the Jess Committee recommendations was that DFRDB benefits be adjusted by reference to Average Weekly Earnings (AWE). The Committee did that after analysing and rejecting adjustments by reference to CPI. Here are the words, straight out of the Committee’s Report:

“The Committee considers that it is essential that retired pay should be adjusted automatically with increases in average weekly earnings. Unless the payment made to retired members is kept abreast of rising community standards its real value is quickly eroded.”

Despite the Jess Report recommendation that benefits be adjusted by reference to AWE rather than CPI, and despite the responsible Minister saying that the legislation gave effect to the Jess Report recommendations (or improved on them), the original DFRDB Act did not make provision for AWE-linked adjustments. After two ‘one-off’ adjustments by separate legislation, adjustment provisions were inserted into the DFRDB Act itself, with effect 1 July 1976. Those provisions implemented CPI-linked adjustments.

The deliberate decision to adopt CPI-linked rather than AWE-linked adjustments was made with the clear knowledge that doing so was directly contrary to the Jess Report recommendation and the underlying reasons for it, and that doing so would result in the “real value” of DFRDB benefits being “quickly eroded”. The subsequent history of AWE increases compared with CPI increases vindicates the Jess Report recommendation and the reasons underlying it.

The 'fair indexation' provisions added to the DFRDB Act in 2014 failed to address the prior decades of value erosion caused by CPI-linked adjustments.

Commutation

But that was not the only trick pulled on DFRDB members and potential DFRDB members back in 1976. Although it is true – as stated in the *Vetaffairs* article – that commuting a portion of a member's retirement pay or Class C invalidity pay was a choice, the article failed to mention is that if members chose not to commute, their retirement pay would be indexed as if they had commuted. Only a notional portion of the non-commuted pay was subject to indexation.

In other words, regardless of the choice to take a commutation advance, the only portion of retirement pay entitlement subject to indexation was the residual entitlement, after deducting the advance recovery increment as if the member had taken the full value of commutation, a 4-year advance (later 5 years). Indexation was applied to a notional rate of retirement pay.

That 'notional rate' concept was purportedly justified on the basis of a false equivalence with the public sector superannuation scheme back in 1976. Under that public sector scheme only the portion of benefits paid out of the CRF was indexed. But that scheme included a separate Fund invested for the benefit of the members and those investments usually had a substantially higher return than CPI.

Recall: the entirety of DFRDB contributions were paid into the CRF, not a cent was invested for the benefit of DFRDB members, and the entirety of DFRDB benefits are paid out of the CRF. Rather than the portion of DFRDB benefits paid out of the CRF being adjusted – that is, the entirety of them – the government of the day decided that the commutation portion of DFRDB benefits was the equivalent of the public sector invested component and would not be indexed even though the portion excluded was not invested for the benefit of those members, in contrast to the public sector scheme and was paid out of the CRF.

Damned if you do (permanent reduction in your rate of retirement pay if you commute) and damned if you don't (only partial indexation of your uncommuted ongoing retirement pay if you don't commute).

All of this was intended to achieve "expenditure savings" as laid bare in the Cabinet Minutes. And it did achieve expenditure savings, at the expense of DFRDB beneficiaries. That is why the Commonwealth is very happy for everyone to keep looking 'over there' at commutation rather than at the dirtiest trick pulled on members: indexation.

The *Vetaffairs* article argues another false equivalence: The "static commutation factors" in the DFRDB Act are "consistent with the static commutation factors in the civilian Commonwealth Superannuation Scheme". If that's a valid comparison, then where are the proceeds of the investment of DFRDB members' compulsory contributions "consistent with the civilian Commonwealth Superannuation Scheme"? Where are the dislocation, family stability and lost vocational opportunities and risks to life and limb in a public servant career? All of those comparisons are usually to the effect that DFRDB members should be treated 'like everyone else', while overlooking or avoiding the fact that 'everyone else' didn't serve the nation faithfully subject to ADF constraints and obligations for decades during the best years of their lives.

DFRDB beneficiaries are not 'pensioners'

The terms "retirement pay" and "invalidity pay" are used in the DFRDB Act because of a specific Jess Committee recommendation. The Committee was aware that members who had served for decades in the ADF resented being described as "pensioners" with all of the connotations that came with that term. The Committee instead chose "pay" as the term to describe the conceptual basis for the entitlement, because the term "pay" accurately encompassed the fact that the benefit would have to be earned through decades of contributions to the scheme and service in the defence of the nation.

As can be seen from the *Vetaffairs* article, the Commonwealth is very happy to continually use the terms "pensioner" and "pension" instead of the entitlement DFRDB members earned and are paid: "retirement pay" or "invalidity pay". The "pensioner" and "pension" terminology makes the false equivalences easier to draw.

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