

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

Your ref: MC22-002635

By email: minister@dva.gov.au
Cc: Peter.Dutton.MP@aph.gov.au

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Dear Minister

MISLEADING INFORMATION IN DEFENCE SUBMISSION TO FADT DFRDB INQUIRY

I refer to your letter dated 21 December 2022. Thank you for at least doing me the courtesy of responding to my letter, dated 2 September 2021, to the Minister for Defence in the previous government, which letter I forwarded to you on 26 September 2022. I have cc'd the previous Minister for Defence, as a courtesy.

The content of your response reinforces rather than allays the concern that led me to write to the Minister on 2 September 2021. That letter was prompted by the content of the Department of Defence's submission to the Senate Standing Committee on Foreign Affairs, Defence and Trade inquiry into the accuracy of information provided to Defence Force Retirements and Death Benefits (DFRDB) members. The report of that Inquiry quotes, twice, this statement from Defence's submission:

When the DFRDB Act 1973 was legislated, the commutation provisions were mirrored off the DFRB Scheme.

I asserted, in my letter of 2 September 2021, that describing the DFRDB commutation provisions as being "mirrored off" the DFRB provisions is misleading. I remain of that view.

You state, in your letter dated 21 December 2022, that you do not agree with my view. You state that the point Defence is making in its submission is:

[T]he ability to convert part, or all, of a pension to a lump sum through commutation was possible under both schemes.

If Defence intended to make that specific point, Defence should have made that statement in its submission (preferably without the tautology: "[T]he ability to convert ... was possible..."). More importantly in the context of my correspondence and the FADT Inquiry: That statement is also misleading. It was *not* possible to convert *all* of a pension to a lump sum under either scheme.

For the record, here is a table comparing the operation of the commutation provisions of the DFRB scheme with the operation of the commutation provisions of the DFRDB scheme:

	DFRB Scheme Commutation	DFRDB Scheme Commutation
It is “possible” for a member to convert part (but not all) of a pension to a lump sum through commutation?	YES But the member does not have an unfettered statutory right to a commuted lump sum and must be under the age of 57. See answers below.	YES The member has an unfettered statutory right to a commuted lump sum. See answers below.
Must the member be under the age of 57?	YES	NO
Is the member required to explain, to a government authority, what the member intends to do with the commuted lump sum, if paid?	YES	NO
Is the member required to provide, to a government authority, information about the member’s health and habits?	YES	NO
Is the member required to submit to a medical examination by a practitioner nominated by a government authority?	YES	NO
Is the member required to be regarded as a ‘first class life’ by a government authority?	YES	NO
Can a government authority refuse a member’s application to commute?	YES	NO
Can a government authority impose conditions on commutation?	YES	NO
Is the commuted lump sum paid other than out of the consolidated revenue fund (CRF)?	YES	NO
Is the amount of contributions made by the member relevant to commutation?	YES	NO

I can provide statutory authority for each of those answers if you require.

As is evident from the content of the table, the commutation provisions of the DFRDB scheme produce vastly different outcomes to the commutation provisions of the pre-existing DFRB scheme. The differences extend well beyond the “personal agency” matters, to which you referred in your letter, to matters including the *source* of the commuted funds (and other benefits) and the relevance, to commutation, of the amount of contributions made by the member. The vastly different outcomes were intended by the Joint Parliamentary Committee which designed the DFRDB scheme and whose recommendations were accepted by the government of the day.

The DFRDB scheme is unique, was intended to be unique and had to be unique (and vastly different to the pre-existing DFRB scheme) in order to achieve the defence capability imperatives of the time. But having joined and remained members of the ADF on the basis of the unique features of the DFRDB scheme, we spend our post-ADF lives being told that unpleasant surprises about the scheme are the result of, for example, provisions “mirrored off” other legislation, when that mirroring does not exist, and, as another example, the result of equivalent arrangements of other schemes, when that equivalence is false. All DFRDB contributions are paid into the CRF and are not invested. All DFRDB benefits are paid out of the CRF. The amount of contributions made by a member of the DFRDB is *irrelevant* to the calculation of *any* of that member’s pension benefits, including commutation. There is no equivalent Commonwealth scheme.

The statement in the Defence submission to which I have taken objection is not a big issue at one level, because no one has consequentially committed a crime or become exposed to liability. The submission attracts parliamentary privilege. And the content may have made no difference to the outcomes of the Inquiry.

But we cannot be certain that the statement made no difference. The FADT Committee must have had *some* reason for quoting the statement, twice, in its report.

The point that you say Defence is making – that it was “possible” to commute a pension under both the DFRB scheme and DFRDB scheme (setting aside the “all” inaccuracy) – was not the subject of the controversy that precipitated the Inquiry. Nobody complained that they were wrongly told that it was *not* possible to commute under either or both schemes. The complaints were about not being told what *all the consequences* of commutation would be under the DFRDB scheme, when members were making fundamentally important career and financial decisions.

In that context it is, I would suggest, very easy and reasonable for the Committee to have construed Defence’s statement, that the DFRDB commutation provisions were “mirrored off” the DFRB provisions, as meaning among other things that the *consequences* of commutation under the DFRDB scheme were *the same* as the consequences of commutation under the pre-existing DFRB scheme. If that is how the Committee construed the statement, the Committee was evidently misled. (If prospective and serving members of the ADF like me had been advised that commutation under the DFRDB scheme would operate in the same way as commutation under the DFRB scheme, the DFRDB scheme would have failed, abjectly, to achieve the intended defence capability outcomes and the architects of the scheme would have been pulling their hair out, in despair at the misleading advice.)

And that is the bigger issue: The integrity of government and parliamentary processes.

Minister, no reasonable person would expect that you fully understand the complexities of the DFRDB and DFRB schemes. But you put your signature at the bottom of the letter to me dated 21 December 2022. I consider that you bear ultimate responsibility for the accuracy of its content (just as the Minister of Defence bears ultimate responsibility for the accuracy of the content of a Department of Defence submission to an FADT Inquiry). No perversion of the English language is sufficient to result in the DFRDB commutation provisions being accurately described as “mirrored off” the DFRB commutation provisions. And, contrary to the statement made in your letter, neither set of provisions enabled a member to convert all of his or her pension to a lump sum.

I trust that you, like me, comprehend some considerable irony arising out of the inaccuracy of the statement in your letter, which attempts to explain away the inaccuracy of a statement made by Defence in a submission to a Parliamentary inquiry, which inquiry was into the accuracy of information provided to members of the DFRDB like me.

It is obvious to me - and to many of my ex-ADF colleagues with whom I discuss the way they are treated by governments (of whatever political affiliation) and their agencies - that these kinds of statements are drafted by people who do not care enough about the accuracy of what they write. That lack of care is a manifestation of a lack of concern about the substance of the matters we raise. It is therefore unsurprising to me that faith in the institutions of government is at an all-time low in Australia, and that the percentage of the primary vote in favour of major political parties in Australia is inexorably decreasing.

I invite you to take a small step to help reverse this trend. I request that you acknowledge that when the DFRDB Act 1973 was legislated, the commutation provisions were *not* mirrored off the DFRB Scheme and, therefore, Defence’s statement that they were mirrored is misleading. Hopefully we have not reached and will never reach the point at which our government institutions lack sufficient collective integrity to concede something this simple and obvious.

In any event, I hope you and yours have a happy, healthy and prosperous 2023.

Yours sincerely

Clinton McKenzie

20 January 2023