

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

Terms of Reference	Response
<p>a. the accuracy of information provided to DFRDB members about the effects of commutation on future retirement pay entitlement, the consequences of this, and what remedial action (if any) could be taken;</p>	<p>I joined the RAN at age 15½ in 1964. The DFRB contribution age was 17. No instruction on DFRB pensions or commutation arrangements were provided. At age 17 an automatic reduction from my pay as a contribution to DFRB commenced. Some years later those that joined at 15½ were asked if they wanted their contribution date to the DFRDB (enacted in 1977) to be extended from the date of attaining the age of 17 back to the date of joining. In effect this meant that I would be eligible for a pension at age 35 rather than 37. I accepted this proposal. However, we knew nothing about DFRDB and were offered a period of instruction by Navy Office staff. During that instruction commutation was discussed and how it was determined including life expectancy.</p> <p>We were advised that in recognition of our service an interest free loan was available to help us integrate back into society, by commuting a portion of our pension. We were told that we would pay it back based upon life expectancy whereupon the pension would revert to the pre-commutation rate. It is inconceivable to think that had we been appropriately educated on DFRDB that we would agree to continue paying it back on a permanent basis, beyond our life expectancy and to then have the same penalty imposed upon our widows, for the rest of their natural lives.</p> <p>I retired on 01 September 1991 after 27 years of effective service.</p> <p>Five years ago, we downsized to a gated community with the expectation of a small increase in pension upon reaching life expectancy. 3½ years ago we found out about this issue. At 72 years of age I am devastated, dreading yet another downsizing experience.</p> <p>My recommendation is that the Government acknowledge that existing commutation arrangements are unfair, unjust and that DFRDB pensions be adjusted to return to a pre-reduced pension rate (appropriately indexed) upon reaching life expectancy.</p>

<p>b. whether retirement payments were indexed as required by legislation and, if not, what remedial action (if any) could be taken</p>	<p>Since 1973 (the Defence Force Retirement and Death Benefits Act) until 2014 (Defence Force Retirement Benefits Legislation Amendment (Fair Indexation)) Act (41 years), the true value of Defence Force Retiree pensions has been going backwards.</p> <p>The unsuitability of the Consumer Price Index (CPI) as a measure of the cost of living was well known before the enactment of the Defence Force (Retirement and Death Benefits Amendments) Act 1977, as is evident in paragraph 124 of the Joint Select Committee (the Jess Committee) on Defence Forces Retirement Benefits Legislation’s Report of May 1972, which advised: “The Committee has concluded that the adjustment should be related to average weekly earnings and the relativity of retired pay with that index maintained. This will ensure that the man in retirement will be able to maintain his position in relation to rising community standards and that he will obtain those increases when they are needed. To some extent this is a compromise between the proportion of salary method of adjustment discussed in paragraphs 118-119 and the proposal that adjustment be related to the CPI. The Committee rejects the latter suggestion because it considers that the index does not fairly represent changes in general community standards.”</p> <p>In paragraph 125, when referring to the Commonwealth Actuary’s most recent report on the Commonwealth Public Service Superannuation Fund: “It will be observed that the rate of increase of average weekly earnings is almost double that of the Consumer Price Index.”</p> <p>Despite the Jess Committees Report, the government of the day enacted the Defence Force (Retirement and Death Benefits Amendments) Act 1977 which related all adjustments to the CPI.</p> <p>As well, from 10 October 1986, Superannuation and Other Benefits Legislation Amendment Act 1986 discounted the effect of CPI increased by 2%, and from 20 October 1989, Superannuation and Other Benefits Legislation Amendment Act 1989 removed that discount and restored the indexation baseline but did not restore the benefits deducted over those three years.</p> <p>In 2014 the Defence Force Retirement Benefits Legislation Amendment (Fair Indexation) Act altered the method of adjustment. Section 98AA, inserted in the DFRDB Act, provides this simplified outline:</p> <p>“Certain pension benefits are indexed each 1 January and 1 July.</p>
---	--

For pensioners aged under 55, the indexation is based on positive movements in the CPI.

For pensioners aged 55 or older, the indexation is based on the more favourable of positive movements in:

- (a) the CPI: and
- (b) the pensioner and beneficiary living cost index:

With an adjustment if needed to ensure that affected pension benefits are increase by at least the percentage required to maintain a hypothetical pension at 27.7% of Male Total Average Weekly Earnings (MTAWE).”

When he moved that the Defence Force Retirement Benefits Legislation Amendment (**Fair Indexation**) Bill 2014 be read a second time, the Hon Robert Stuart said:

“This bill gives effect to this government’s election commitment to **fairly** index Defence Forces Retirement Benefits (DFRB) and Defence Force Retirement and Death Benefits (DFRDB) pensions for recipients aged 55 and over from 1 July 2014.”

The obvious conclusion in the Minister’s statement is that, prior to the introduction of the Bill, DFRB and DFRDB pensions were **unfairly** indexed.

I recommend that the benefits deducted over the three years 1986 to 1989 be restored.

I believe it is reasonable to request compensation between CPI and the process for indexation described in the Defence Force Retirement Benefits Legislation Amendment (Fair Indexation) Act 2014 from my date of retirement in 1991 until 2014.

<p>c. policy and legislative issues, including provisions for: i. use of certain life expectancy tables,</p>	<p>Schedule 3 of Section 24 of the DFRDB Act provided a basis for determining my life expectancy at 42 years of age in 1991 to be 30.03 years. By the end of this year I will have reached my life expectancy. The tables utilised are inappropriate. For example, the latest Australian Bureau of Statistics (ABS) suggest that I could live for a further 7 years beyond the DFRDB life expectancy estimation.</p> <p>There is also a discriminatory factor with the use of life expectancy tables. A female with the same rank and retiring at the same age has a longer life expectancy. This means that a female has less to pay back each fortnight and the result is a higher per fortnightly pension.</p>
<p>ii. permanency of reductions to commuted pensions,</p>	<p>My DFRDB pension is determined as being a <u>Defined Benefit</u> where the benefits are financed by myself and the Department of Defence. That being the case then if the Government agrees that a portion of it can be commuted (which it does) and then I return to the Government that same amount by way of a reduced pension, then surely, if I live beyond the DFRDB ACT determined life expectancy, the Government is unjustly taking more money from me than it is entitled to do so.</p> <p>To make matters worse, a widow who may live another 20 years or more continues to receive a reduced pension rate. Clearly, the commuted amount has been returned to the Government. The requirement for permanency is not understood, it is unfair and unjust.</p>
<p>iii. indexation arrangements; and</p>	<p>Addressed at b. above.</p>

<p>d. recommendations on any potential changes to administrative arrangements, policy or legislation;</p>	<p>The Minister for Veterans' Affairs, the Hon Darren Chester MP has had meetings with the Australian Defence Force Retirees Association (ADFRA) about the unfairness of the DFRDB Act and commutation, but he has done nothing. The Commonwealth Ombudsman, despite many representations from retiree's did nothing about commutation. The Department of Defence supposedly issued an apology at the bequest of the Commonwealth Ombudsman, but I am yet to see it. If the Department agreed to apologise then they have obviously done something wrong.</p> <p>It seems that everyone now knows about it but does not want to do anything about it.</p> <p>If Governments wish to continue to use Life Expectancy tables as a means of estimating a commutation amount then they should use the female table to ensure equality between male and female pension rates.</p> <p>I recommend that the Government acknowledge that the commutation arrangements are unfair and amend policy and legislation arrangements which would entitle me to my pre-commutation pension (appropriately indexed) upon reaching my life expectancy.</p>
<p>e. advice on costs associated with any recommendations;</p>	<p>The difference between my initial retirement pension entitlement and my initial reduced rate of retirement pension in 1991 was \$2880.60 per annum. However, I am unable to determine what the effects of DFRDB Acts since 1991 have had on that initial amount. In some graphs I have seen some DFRDB Acts impact the initial retirement pension or the reduced pension entitlement or the difference between initial pension entitlement and reduced pension entitlement, or all of them. I do not have the capability to determine costs on this issue.</p> <p>I am unable to determine the loss from 10 October 1986, when the Superannuation and Other Benefits Legislation Amendment Act 1986 discounted the effect of CPI increased by 2%, until 20 October 1989, when the Superannuation and Other Benefits Legislation Amendment Act 1989 removed that discount and restored the indexation baseline but did not restore the benefits deducted over those three years.</p> <p>I am unable to determine the loss as a dollar amount between CPI and the indexation process described in the Defence Force Retirement Benefits Legislation Amendment (Fair Indexation) Act 2014 from my retirement date of 01 September 1991 and 2014.</p>

	<p>I recommend that an expert assessment be undertaken to determine exactly what has happened following the introduction of DFRDB Acts since 1977 upon the different components of the DFRDB pension entitlements. Only then will we truly know what has happened. Alternatively, I understand that the ADFRA submission may address this issue.</p>
<p>f. all relevant existing information and previous reviews in relation to DFRDB, including the findings of the Ombudsman's investigation;</p>	<p>It is a tragedy that the Government rejected the Jess Committee's report in May 1972 in favour of a CPI based indexation in its 1977 DFRDB Act.</p> <p>It is a tragedy that the Government did not restore the benefits deducted over the three years between 1986 and 1989.</p> <p>It is a tragedy that the Minister for Veterans' Affairs, the Hon Darren Chester MP has done nothing about commutation despite many submissions asking him to do so.</p> <p>It is a tragedy that the Commonwealth Ombudsman failed to promote fair and equitable treatment of Defence Force Retirees, despite many submissions asking him to do so. That he sits within the very Department responsible for this fiasco is clearly a conflict of interest.</p>

<p>g. the level of understanding among DFRDB members about how the legislation works, and ways to improve this; and</p>	<p>I served in the Royal Australian Navy with the utmost dedication. It cost me a marriage and several other relationships. Despite the treatment we received from Governments and some in the Australian community on our return from two trips to Vietnam in 1969 - I still believed that I would be looked after.</p> <p>Yes, I knew about the DFRDB Act in 1977 but only because it was in the news. I continued to assume that the Government would look after me. On reflection, we should have been properly educated by people who knew what they talking about and what the long-term effects were going to be on our lives.</p> <p>On joining the RAN I was one of 200 in my intake that left school at Year 10. Very few of us went on to Year 12 as adult students. Even with a degree of education the legislative process is difficult enough as it is. The DFRDB Act is confusing unless you have a good understanding of what it is all about.</p> <p>The Defence Force has initial training and it has ongoing promotional courses throughout a Service person's career. In each of those courses there should be an opportunity to educate personnel on DFRDB (or the new MSBS) and the legislative process, if only in terms that can be easily understood.</p>
<p>h. any related issues.</p>	<p>I am deeply saddened that I must address the Department of the Senate, the House of Review, because the House of Representatives does not want to hear our concerns. But I am excited that you have agreed to hear our case and that with your usual fervour I feel that you will acknowledge that we have been unjustly and unfairly treated and that we will have a positive outcome.</p>