

SENATE FPA COMMITTEE

False or misleading information provided by DoD to previous inquiries

Extract from the Ombudsman's report 06/2019

2.4. Commutation, the option to take a lump sum up front in exchange for a reduced retirement pay, had been included as a feature of the original DFRB scheme on the basis that an ADF member often required a lump sum on discharge to assist with re-settlement and transition to civilian life.⁵ A DFRB member could request commutation, but the request had to be approved by the DFRB Board. The Board would only approve commutation for specific purposes (e.g. purchase of a house) and had discretion to not allow commutation if a medical examination indicated a person was unlikely to reach life expectancy. This led the Jess Committee to recommend that commutation be an unfettered right in the new scheme.

Extract from the FADT Report on DFRDB July 2021

3.21 Defence noted that when the DFRDB Act 1973 was legislated the commutation provisions were mirrored off the DFRB scheme

DEPARTMENT OF DEFENCE HAVE A PROBLEM WITH THE TERM MIRROR IMAGE

DFRB Act

74 Commutation of pension

(1) Subject to the regulations, a pensioner who has not attained the age of 57 years may apply to the Authority for the commutation of a portion of his pension, being a portion that does not exceed one-third of the pension.

(2) When an application is made to the Authority under this section, the Authority may, at its discretion, grant or refuse the application, or grant the application subject to such terms and conditions as the Authority thinks fit.

DFRDB Act

24 Commutation of retirement pay

(1) A person who is, or is about to become, entitled to retirement pay may, by notice in writing given to CSC, elect to commute a portion of his or her retirement pay in accordance with this section.

(1AA) A notice under subsection (1) shall be given not earlier than 3 months before becoming entitled to retirement pay and not later than one year after becoming so entitled or such further period as CSC, in special circumstances, allows.

(1A) Subsection (1) does not apply to a person who, after the commencement of this subsection, became a person to whom section 62 applied and is not excluded, under subsection (1B), from the operation of this subsection.

(1B) A person who, after the commencement of this subsection, becomes, or is about to become, entitled to retirement pay is excluded from the operation of subsection (1A) if:

(a) the person was a former recipient member whose invalidity pay was cancelled under section 62 on the person again becoming an eligible member of the Defence Force; and

(b) the person reached, or will reach, immediately before retirement, the retiring age for the rank then held by him or her or the person's total period of effective service is not, or will not be, less than 20 years.

(2) An election by a person under subsection (1) shall specify the amount that is to be payable to him by virtue of the commutation.

(2A) The amount specified in an election by a person under subsection (1) shall not be an amount that, together with:

(a) any amount or amounts specified in any previous election or elections by the person, under this section or section 32A of this Act, to commute a portion or portions of his or her retirement pay or invalidity pay, as the case may be; and

(b) any amount paid to the person as a result of an application, under section 74 of the previous Act, to commute a portion of any pension payable to him or her under that Act reduced by any amount or amounts required, under subsection 69(1B) or 69(3A) of the previous Act, to be paid by the person to the Defence Forces Retirement Benefits Fund established under the previous Act, in respect of that commutation;

exceeds the amount per annum of the retirement pay to which the person was or will be entitled on retirement multiplied by the maximum commutation factor.

Note: This amount is reduced if a release authority lump sum has been paid: see section 49M.

(2B) For the purposes of subsection (2A), the maximum commutation factor is the number calculated in accordance with the formula:

$$\frac{80 + A}{20}$$

where **A** is:

(a) if the number (treating zero as a number) of whole periods of 12 months between 30 June 1982 and the date of retirement of the recipient member is less than 20—that number of periods; or

(b) in any other case—20.

(3) Where a person makes an election under this section, then, subject to subsections (8) and (9):

(a) there shall be paid to him by the Commonwealth an amount equal to the amount specified in the election as the amount that is to be payable to him by virtue of the commutation; and

(b) the amount per annum of the retirement pay payable to him, on and after the day on which the election takes effect, is the amount per annum that, but for this paragraph and subsection 98K(1), would be payable reduced by an amount calculated by dividing the amount referred to in paragraph (a) by the expectation of life factor that, having regard to the age and sex of the person on the day on which the election takes effect, is applicable to him under Schedule 3.

(4) For the purposes of this section, an election shall be deemed to have been made, and shall take effect, on the day on which the notice of election is received by CSC or the day following the day on which the person retires, whichever is the later.

(8) If:

(a) a member of the scheme makes an election under this section (**first election**); and

(b) the member's surcharge debt account is in debit when retirement pay becomes payable to the member; and

(c) the member also makes an election under subsection 124(1);

the following provisions apply:

(d) the Commonwealth must pay to the member the difference between the amount (**specified amount**) specified in the first election as the amount that is to be payable to the member by virtue of the commutation and:

(i) the member's surcharge deduction amount; or

(ii) if the member's surcharge deduction amount exceeds the specified amount—so much of the surcharge deduction amount as does not exceed the specified amount;

(e) the amount per annum of the retirement pay payable to the member, on and after the day on which the first election takes effect, is:

(i) if subparagraph (ii) does not apply—the amount per annum referred to in paragraph (3)(b); or

(ii) if the member's surcharge deduction amount exceeds the specified amount—the amount per annum worked out by using the formula:

$$\text{Basic rate} + \frac{\text{Excess}}{\text{Conversion factor}}$$

where:

basic rate means the amount per annum referred to in paragraph (3)(b).

conversion factor is the factor that is applicable to the member under the determination made by CSC under section 124A.

excess means the amount by which the member's surcharge deduction amount exceeds the specified amount.

(9) If:

(a) a member of the scheme makes an election under this section; and

(b) the member's surcharge debt account is in debit when retirement pay becomes payable to the member; and

(c) the member does not make an election under subsection 124(1); and

(d) the member's surcharge deduction amount exceeds the amount of the member's productivity superannuation benefit;

the following provisions apply:

(e) the Commonwealth must pay to the member an amount equal to the amount specified in the election as the amount that is to be payable to the member by virtue of the commutation;

(f) the amount per annum of the retirement pay payable to the member, on and after the day on which the election takes effect, is the amount per annum worked out by using the formula:

$$\text{Basic rate} = \frac{\text{Excess}}{\text{Conversion factor}}$$

where:

basic rate means the amount per annum referred to in paragraph (3)(b).

conversion factor is the factor that is applicable to the member under the determination made by CSC under section 124A.

excess means the amount by which the member's surcharge deduction amount exceeds the amount of the member's productivity superannuation benefit.