



# **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 and**

## **SUBMISSION**

by

**Australian Defence Force Retirees  
Association Inc.**

**25 April 2021**

### **About the Author**

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A Vietnam veteran retired from the Australian Defence Force in 1983 after serving in the Army for 20 years and subject to Defence Force Retirement and Death Benefits Act 1973.

Since then, has consulted as a systems analyst and database application developer.

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## FOREWORD

The Australian Defence Force Retirees Association (ADFRA) Inc. was formed when member Ex-Service Organizations of the Alliance of Defence Service Organizations, such as the RSL and Defence Force Welfare Association, failed to represent DFRDB members' concerns regarding their superannuation scheme.

ADFRA, which has attracted more than 4,400 members in under three years, does represent those concerns.

Because of the information disseminated by the Department of Defence, members of the Defence Force did not fully understand the DFRDB legislation or its effect on their benefits. From the correspondence we have received from our members, it is evident that most still do not.

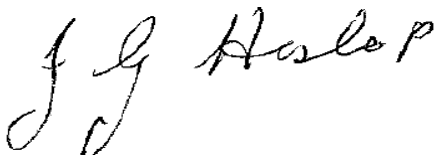
We have developed a good understanding of the DFRDB Act and the legislation history. We would welcome an opportunity to appear before the Committee to advocate for ADFRA members and all DFRDB beneficiaries.

In our email to the Committee Secretariat, we have already expressed our concerns regarding the Terms of Reference for this Inquiry, in which there is a primary focus on the *"accuracy of information provided to DFRDB members"*.

In our view, this focus creates the potential for an Inquiry that will be nothing more than a review of the narrow scope *own motion* investigation by the Commonwealth Ombudsman in 2019.

ADFRA members hope that will not be the case and expect the review to recommend resolving the ambiguity and divergence between the accepted Joint Select Committee on Defence Forces Retirement Benefits Legislation recommendations and the enacted legislation and its subsequent amendment.

This submission is comprehensive and covers all the concerns raised by ADFRA members. We trust it will receive due consideration.



**J G Hislop OAM**

President  
Australian Defence Force Retirees Association Inc.

## EXECUTIVE SUMMARY

In this submission, we will demonstrate the operation of the *Benefit Updating* and *Commutation* provisions in *Defence Force Retirement and Death Benefits Act 1973* and show how these provisions diminish the legislated *defined benefits* over recipients' lifetimes.

We will show the impact of these provisions on 650 de-identified ADFRA members and use that analysis to extrapolate the scale of benefit reduction for the total DFRDB recipient population.

We will provide evidence which shows that:

- (1) After it was elected in 1972, the Whitlam Government committed to implementing the recommendations of the Joint Select Committee on Defence Forces Retirement Benefits Legislation (*Jess Committee*) unchanged. However, some of those recommendations were not correctly translated into legislation.
- (2) From the outset, Treasury had opposed implementing the *Jess Committee* recommendations, particularly the early retirement and commutation provisions, which were an acknowledgement of the unique nature of military service. And that, the Department of Defence supported Treasury's opposition.
- (3) Through their representation on the legislation drafting committees, Treasury and Defence, with the aid of the Australian Government Actuary and the Parliamentary Counsel, mounted a sustained attack on DFRDB members' *defined benefits*, seizing on every opportunity to reduce members' benefits, commencing with the initiating Act in 1973 and continuing until the closure of the scheme in 1991.
- (4) Because of its complexity and the short lead times before it was debated, draft DFRDB legislation was not properly scrutinised. The Parliament did not understand the outcomes of the legislation, a circumstance exploited by Defence and Treasury bureaucrats.
- (5) By excluding Service representation from the legislation drafting committees and disseminating misleading information regarding the scheme's provisions, DFRDB members were not alerted to the contrived benefit reductions until, for many, it was too late.
- (6) The findings of the investigation conducted by the Commonwealth Ombudsman in 2019, and other prior reviews relating to the DFRDB scheme, were pre-destined by their Terms of Reference and based on a less than complete understanding of the operation and effect of the DFRDB Act.

## Background

1. The Committee will, no doubt, be briefed on the history to the DFRDB scheme. However, that briefing may not include the following, which is significant to this submission and pertinent to the inquiry:
  - a. **The Genesis of the DFRDB Scheme.** The Joint Select Committee on Defence Forces Retirement Benefits Legislation (*Jess Committee*) was formed in September 1970 to inquire into and report on the then current Defence Forces Retirement Benefits (DFRB) legislation. The *Jess Committee's* final report<sup>1</sup> was tabled in the Parliament on 18 May 1972. In his *Report of Joint Select Committee* Speech in the House, the Committee's Chairman, Mr. John Jess, said:
 

*"The Committee's conclusions were greatly influenced by 2 considerations: Firstly, the special nature of a career in the Defence Forces. Very few members indeed are permitted to continue to serve until the age of 60, and the risk of death or injury, in peace as well as war, is far higher than in civilian employment. For these reasons **we do not believe that the Commonwealth superannuation scheme is an appropriate foundation on which to base a retirement benefits scheme for the Defence Forces.** The second consideration was the need for simplicity and comprehensibility."*<sup>2</sup> (emphasis added)
  - b. **The Jess Committee Recommendations.** The *Jess Committee's* Report included 20 recommendations which can be viewed [here](#).
  - c. **Treasury and Defence opposed the Jess Committee Recommendations.** In Submission No's 913<sup>3</sup> and 916<sup>4</sup> to Cabinet, Treasury, and the Department of Defence opposed the *Jess Committee's* recommendation to introduce a new scheme. They rejected the recommendations that acknowledged the unique nature of military service and those they considered more generous than provisions in the Commonwealth Superannuation scheme for public servants.
  - d. **The McMahon Government Decision.** In Decision No. 1447 of 24 October 1972<sup>5</sup>, the McMahon Cabinet sided with Treasury and Defence and decided not to implement the main *Jess Committee* recommendations.
  - e. **Response to the McMahon Government Decision.** After Prime Minister McMahon conveyed the Cabinet Decision to the House in a

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<sup>1</sup> [Joint Select Committee on Defence Forces Retirement Benefits Legislation Report, May 1972](#)

<sup>2</sup> [House of Representatives Hansard, 18 May 1972, p.2760](#)

<sup>3</sup> [Cabinet Minute, Canberra, 24 October 1972, Decision No. 1447, p.6](#)

<sup>4</sup> [Ibid, p.5](#)

<sup>5</sup> [Ibid, p.1](#)

Ministerial Statement<sup>6</sup>, Mr John Jess<sup>7</sup>, the Chairman of the Jess Committee, said:

*"As Chairman of the (Jess) Committee and as a Government supporter **I am not impressed one iota with the support that this scheme has been given by the Department of Defence** whose job it is to stand and speak on behalf of the Defence Forces. In my opinion, in any Cabinet discussions or any meetings with Treasury officials, representatives of the Department of Defence, are there to represent the views of the services and of the soldiery from wherever they come. I have been amazed in respect to the negotiations in which I have been involved - and this is my opinion and I am subject to correction - as to what appears to be the little stand that they have made on many of these points."* (emphasis added)

*"In regard to the Treasury, all I can say is that when we introduced our interim report last December we stated that we could and wished to introduce our full report but that we had not been able to obtain the figures or the facts that were necessary for that report. When we introduced the final report in May we said that we had endeavoured to obtain costings and financial information from the Treasury but that we had been unable to obtain satisfactory material. Indeed, I question what the Departments of Defence and Treasury have been doing in respect to the Defence Forces Retirement Benefits Fund over the period from May, when we introduced our final report until now."*

- f. **The Whitlam Government Decision.** During the Prime Minister's Press Conference, on 19 December 1972<sup>8</sup>, in response to the question:

*"Are you encountering any unforeseen difficulties in carrying out the policy promise to implement the DFRB Jess Committee's Report as quickly as possible?";*

the Deputy Prime Minister, Mr. Barnard, responded:

*"it was a policy decision during the last election that we would implement the recommendations of the Jess Committee. Now, I began last week by having discussions with those concerned, with the Treasury Department and from the armed services. I have indicated to them that I would hope to have legislation ready for the first session of the Federal Parliament."*

<sup>6</sup> [House of Representatives Hansard, 26 October 1972, p.3279](#)

<sup>7</sup> [ibid, p.3287](#)

<sup>8</sup> [First Whitlam Ministry decisions and other administrative actions, p.16](#)

## The Introductory Legislation

2. The DFRDB scheme was introduced by *Defence Force Retirement and Death Benefits Bill 1973*. When the Minister, the Hon Lance Barnard<sup>9</sup>, moved that the Bill be read a second time, **concurrently with three other Bills**, he said:

*"The Bills give effect to the Government's decision announced last year **to implement the recommendations of the Joint Select Committee on Defence Forces Retirement Benefits Legislation** (emphasis added)."*

3. Pertinent comments, during the Second Reading debate, were made by:

- a. **Mr Robert Bonnett**<sup>10</sup>, who was a former member of the *Jess Committee*:

*"The Jess Committee, as the Minister well knows, set out to devise a simple scheme which servicemen could understand, and I believe it succeeded. **But when translated into the present legislation its recommendations are on the way to becoming incomprehensible.**"* (emphasis added)

and;

*"... the Government has been dealing with this matter since 22 December last year. Surely since that time something more definite than this legislation could have been produced so that servicemen would easily understand what is being afforded to them. In fact, I think it was the Minister's responsibility to ensure that this was done. But how could this be possible, how could simplicity of understanding be achieved, when **the Minister permitted the exclusion of Service representation from the drafting committee?**"* (emphasis added)

- b. **Mr David Hamer**<sup>11</sup>, also a former member of the *Jess Committee*:

*"... what we are considering today are 3 Bills of great complexity. The main one contains 79 pages. These Bills affect about 70,000 present servicemen and many thousands of retired ones. It was introduced into this House last Friday and 5 days later we are debating it. For a Bill of such complexity, in my opinion, that is a **grossly inadequate time for proper consideration.**"* (emphasis added)

- c. **Mr Rendle Holten**<sup>12</sup>;

*"Last Friday afternoon the Minister for Defence, Minister for the Navy, Minister for the Army, Minister for Air and Minister for Supply (Mr Barnard) introduced these Bills, one of which is a 79 page Bill containing 131 clauses. He wants them passed on the second sitting day since last Friday. **Surely it is not reasonable to expect any members of the***

<sup>9</sup> [House of Representatives Hansard, 25 May 1973, p.2707](#)

<sup>10</sup> [House of Representatives Hansard, 30 May 1973, p.2879](#)

<sup>11</sup> [Ibid, p.2879](#)

<sup>12</sup> [Ibid, p.2882](#)



***House who was not a member of the Jess Committee to be in the race even to read the contents of the Bills, let alone to have studied them in detail and to have had consultations with people affected by the Bills.*** (emphasis added)

The Parliament did not adequately scrutinise Defence Force Retirement and Death Benefits Bill 1973, and on a balance of probabilities, did not understand the operation of the Bill or its effect.

## The Legislated Defined Benefits

4. The ***Defined Benefits*** legislated by the *DFRDB Act* are:
- a. ***Retirement Benefit.*** Section 23<sup>13</sup> entitles members of the Australian Defence Force with a minimum of 20 years' service, or late entry officers with a minimum of 15 years' service, to *retirement pay* at a percentage of final salary, as determined from Schedule 1<sup>14</sup>.
  - b. ***Class A and Class B Invalidity Benefits.*** Section 31<sup>15</sup> entitles members, classified as Class A or Class B under Section 30<sup>16</sup>, to *invalidity pay* equal to 76.5% and 38.25%, respectively, of the annual rate of pay applicable immediately before retirement.
  - c. ***Class C Invalidity Benefit.*** Section 32<sup>17</sup> entitles members classified as Class C under Section 30 to *invalidity pay* on the same basis as that determined for *retirement pay* under Section 23.
  - d. ***Contributor Spouse's Benefit.*** On the death of a contributing member, Section 38<sup>18</sup> entitles the widow or widower to a *spouse's pension* equal to 5/8ths of the rate of the *Class A Invalidity Benefit* the deceased member would have received had he or she been classified Class A under Section 30.
  - e. ***Recipient Spouse's Benefit.*** On the death of a member in receipt of *retirement pay*, or *Class C invalidity pay*, Section 39<sup>19</sup> entitles the spouse to a *pension* equal to 5/8ths of the rate of the *retirement pay*, or *Class C invalidity pay* the deceased member would have received before death, had he or she not commuted four times the *retirement pay* or *Class C invalidity pay*.

<sup>13</sup> [Defence Force Retirement and Death Benefits Act 1973, Section 23](#)

<sup>14</sup> [Ibid, Schedule 1](#)

<sup>15</sup> [Ibid, Section 31](#)

<sup>16</sup> [Ibid, Section 30](#)

<sup>17</sup> [Ibid, Section 32](#)

<sup>18</sup> [Ibid, Section 38](#)

<sup>19</sup> [Ibid, Section 39](#)

- f. **Children's Benefit.** On the death of a member in receipt of *retirement pay*, or *Class C invalidity pay*, Section 42<sup>20</sup> entitles the member's dependent children to a *pension* equal to 1/6<sup>th</sup> of the *recipient spouse's benefit*.
- g. **Orphan's Benefit.** On the death of a member in receipt of *retirement pay*, or *Class C invalidity pay*, Section 43<sup>21</sup> of the *Act*, entitles the member's dependent orphans to a *pension* equal to 1/8<sup>th</sup> of the *recipient spouse's benefit*.

**The quantum of the *Defined Benefits*, set down in Sections 23, 31, 32, 39, 42 and 43, is not subject to *Commutation*, the method of *Pension Updating*, or how the recipient members use those *benefits*.**

**The quantum of these *Defined Benefits* is the same for males and females, regardless of age, and bears no direct relationship to members' contributions.**

## The 1974 and 1976 Interim Adjustments

5. When he moved that *Defence Force Retirement and Death Benefits (Pension Increases) Bill 1974* be read a second time<sup>22</sup>, the Minister for Defence, the Hon. Lance Barnard, said:

*"The increases in both DFRB and DFRDB pensions as proposed by this Bill will be related to the 16.2 per cent increase in average weekly earnings during the 12 months ending 31 March 1974. In the case of DFRB pensioners ... the amount of the increase is determined by applying that percentage to a notional Consolidated Revenue share of the total pension payable, which comprises the amount of the pension adjusted last year plus the amount of last year's pension increase. In practical terms, the 16.2 per cent will be applied, in the great majority of cases, to almost 80 per cent of the total pension currently payable."*

*"For pensioners retired under the conditions of the new DFRDB scheme a notional Consolidated Revenue share of five sevenths of the total pension payable is to be adjusted by 16.2 per cent."*

<sup>20</sup> [Ibid, Section 42](#)

<sup>21</sup> [Ibid, Section 43](#)

<sup>22</sup> [House of Representatives Hansard, 13 November 1974, p.3443](#)

The Parliament did not question why the increase in Average Weekly Earnings was applied to only five sevenths (71.4%) of DFRDB benefits but almost 80% of DFRB benefits and was seemingly unaware that **DFRDB was a wholly Defined Benefit scheme**, in which the Consolidated Revenue share of benefits is 100%, and that **DFRB was a composite accumulation and defined benefit scheme**.

6. When he moved that *Defence Force Retirement and Death Benefits (Pension Increases) Bill 1976* be read a second time, the Minister for Defence, the Hon James Killen, said:

*"Both Acts which this legislation seeks to amend have of course a clear relationship to the 17.6 per cent increase in the consumer price index to, I believe, March 1975. In the case of DFRB pensions the Government's share will be multiplied by 1.4 times 17.6. This calculation is applied to the Government's share of the DFRB pension. But in the case of defence force retirement and death benefits recipients it will be one times 17.6 applied to the whole of the pension."*

*"There would be very few members of this Parliament who would know better than you, Mr Deputy Speaker, that there are distinctions between the 2 schemes. While it would not be appropriate for me now in introducing a Bill of this nature to dilate on those differences, I observe that these differences exist and as a consequence of them there is a different method of updating the 2 pensions. In general terms there will be approximately a 20 per cent increase in the pension entitlement of DFRB beneficiaries."*

Again, the Parliament **did not question why** the adjustment of DFRDB benefits was not the same as it was for DFRB benefits.

7. The reason for the mute acceptance of the difference was apparent in the Second Reading Speech<sup>23</sup> of then Leader of the Opposition, The Hon Bill Hayden, who said:

*"The legislation before the Parliament proposes what I think one could with some studied restraint describe as uncomplicated adjustments to the system of retirement benefits for ex-service personnel. Unfortunately, with equal restraint in describing the legislation, I must say that it is rather confusing if not overwhelming, for the average layman."*

8. There was further evidence in the Second Reading reply speech<sup>24</sup> by the Minister, the Hon James Killen when he said:

<sup>23</sup> [House of Representatives Hansard, 4 May 1976, p.1858](#)

<sup>24</sup> [Ibid, p.1861](#)

*"The complexity of the Bill is quite daunting. One of the reasons why the Jess Committee was appointed was to try to take out of the legislation the complexities which were lodged there. It is an old school, I know, but I still adhere to it, which believes that legislation should be intelligible to people who have been instructed in the 3 Rs; but I venture the view that one would need to go to a lawyer with a considerable degree of brashness, to those who are involved in the discipline of administering the legislation constantly or indeed to actuaries to gain a perceptive understanding of the full implications of the Bill."*

*"Even though I would be quite confident of sustaining an argument on any aspect of the Bill, I would have some doubts that I should be confident as to the quality of the argument that I might mount."*

9. In the case of the members who had commuted a part of their *retirement benefit*, both the 1974 and 1976 Interim Adjustments applied the increase to their *residual benefits*.

**The Parliament was seemingly unaware that applying the increases to the residual benefit was to apply the increases the benefit reduction after commutation. The 1974 adjustment applied 71.4% of the 16.2% increase (an 11.6% increase), while the 1976 increase applied the full 17.6% increase to retirement benefit reductions after commutation.**

## **The Incorporation of Permanent Annual Adjustments**

10. The permanent methods of annual adjustment to DFRDB benefits were recommended in Submission No. 862<sup>25</sup> to Cabinet and announced in the House by the Hon James Killen in a Ministerial Statement<sup>26</sup>, in which he said:

*"I am pleased to inform the House that the Government has decided upon permanent methods of annual adjustment to Defence Forces Retirement Benefits and Defence Forces Retirement and Death Benefits pensions. In both cases, the index of adjustment will be the movement in the consumer price index during the 12 months period ending 31 March of each year. The adjustment will be payable from the first pension payday in July of each year, including 1976, in respect of the March 1975-1976 period."*

*"For DFRB pensions, the index of adjustment will apply to the total pension. For DFRDB pensions, the index will apply to the pension remaining after a pensioner has to the maximum extent, or could have, taken part of his pension as a lump sum. These methods of adjustment are consistent with those currently applying to Public Service pensioners"*

<sup>25</sup> [Cabinet Minute, Canberra, 8 December 1976, Amended Decision No. 1991, p.23](#)

<sup>26</sup> [House of Representatives Hansard, 9 December 1976, p.3656](#)

*and thus the long-standing principle of comparable treatment amongst former employees of the Crown is maintained."*

11. The *Defence Force (Retirement and Death Benefits Amendments) Bill 1977 Bills Digest*<sup>27</sup> is the Parliamentary Library's description of the effect of the Bill.
12. When he moved that *Defence Force (Retirement and Death Benefits Amendments) Bill 1977* be read a second time<sup>28</sup>, then Minister for Construction and Minister Assisting the Minister for Defence, the Hon John McLeay said:

*"In essence, therefore, the pension updating arrangements encompassed by this Bill achieve the earlier stated aim of consistency with those currently applying to comparable classes of pensioners under the Commonwealth Public Service superannuation schemes."*

**However, the DFRDB benefit updating arrangements encompassed by this Bill is not, in any way, like those applying to the Commonwealth Public Service superannuation schemes.** The DFRDB Scheme is a wholly defined benefit scheme, whereas Commonwealth Public Service superannuation schemes are composite defined benefit and accumulation schemes.

13. In the Commonwealth Public Service superannuation schemes, indexation increases are applied to 100% of the Consolidated Revenue share of pensions. The remaining portion of pensions is paid from a Fund that is invested and grows at a substantially higher rate than the indexation increases. In the DFRDB scheme, a part of most benefits is excluded indexation, and **there is no Fund which increases the part excluded.**
14. The [DFRDB Benefit Adjustment](#) (click to view) and [Effect of DFRDB Benefit Adjustment](#) (click to view) presentations demonstrate the operation of this Bill and the compounding diminishing outcomes for DFRDB recipients.

The effect is: **For the same amount *commuted*, Section 98B produces a different outcome**, depending on the member's gender, age at the time of commutation and the date of commutation. In the examples shown, ***defined benefit reductions* resulting from the updating provisions range from almost 40% for members who retired in 1974 to less than 1% for those who retired in 2019.**

<sup>27</sup> [Defence Force \(Retirement and Death Benefits Amendments\) Bill 1977 Bills Digest](#)

<sup>28</sup> [House of Representatives Hansard, 17 February 1977, p.196](#)

15. When he moved that the Bill be read a second time<sup>29</sup>, then Minister for Construction and Minister Assisting the Minister for Defence, the Hon John McLeay, stated:

*"The adjustment provisions incorporated in the Bill are detailed and complex. I propose therefore to explain in broad terms only how they are to operate. A more detailed explanation of their practical effects will be made available to beneficiaries by the Defence Force Retirement and Death Benefits Authority when the increased rates of pension become payable."*

16. In his Second Reading Speech<sup>30</sup>, the Hon Bill Hayden said:

*"This Bill provides an initiative on the part of the Minister for Defence (Mr Killen), which is welcomed. Its proposal is to index in accordance with the consumer price index and a simple formula outlined by the Minister in this House last week, the payments under the DFRB and DFRDB pension system. The Opposition endorses and proposals and I see little point in debating the subject further and unnecessarily taking up the time of this House and its officers."*

17. In his Second Reading Speech<sup>31</sup>, Mr Robert Bonnett, then the last former member of the *Jess Committee* in the House of Representatives, said:

*"During his second reading speech the Minister Assisting the Minister for Defence (Mr McLeay) said "the adjustment provisions incorporated in the Bill are detailed and complex". That would be the understatement of the year so far, but as long as the provisions correct the injustice that ex-service pensioners have suffered for so long I am satisfied, and I know that they will be too."*

The amendments incorporated by this Bill are the most punitive of all the amendments to the DFRDB Act. **The cursory dismissal of the adjustment provisions by Mr Hayden and the comment by Mr Robert Bonnett is testimony to the Parliament's ignorance of the effect of this Bill.**

## The Commutation Entitlement

18. Sections 24<sup>32</sup> of the *DFRDB Act* enables members entitled to a *retirement benefit* to receive, as a lump sum, a partial pre-payment of their *retirement benefit*.

<sup>29</sup> [House of Representatives Hansard, 17 February 1977, p.196](#)

<sup>30</sup> [House of Representatives Hansard, 23 February 1977, p.371](#)

<sup>31</sup> [Ibid, p.371](#)

<sup>32</sup> [Defence Force Retirement and Death Benefits Act 1973, Section 24](#)

19. In his statement in the House on 18 May 1972<sup>33</sup>, the Chairman of the Jess Committee, Mr. John Jess, said:

*"Members should have the right to commute a maximum of 4 times the annual retired pay payable to them on retirement and this amount **should not be subject to reduction either on grounds of the member's life expectancy** or for any other reason."* (emphasis added)

20. *Jess Committee Recommendation (14)(b)* states:

*"That retired pay **proportionately** reduced in relation to commutation remain payable after commutation."*

21. In the Attachment to Submission No. 913 to Cabinet<sup>34</sup>, titled *"Comments and Conclusions reached on the Recommendations of the Joint Select Committee"*, regarding Recommendation (14), Treasury said:

*"In effect therefore what the Committee is proposing is **an advance loan on future expected pension income** over the number of years of his life expectancy **without interest**."* (emphasis added)

22. There is no record, in the National Archives of Australia, of any alteration of the *Jess Committee* recommendations by the First Whitlam Ministry Cabinet before it approved the text of *Defence Force Retirement and Death Benefits Bill 1973* in Decision No. 706(LEG)<sup>35</sup>.

23. When he moved that *Defence Force Retirement and Death Benefits Bill 1973*, be read a second time<sup>36</sup>, the Minister said:

*"Commutation of retirement pay will be a right for members who retired after 1 October 1972, **subject only** to applications for commutation being made within one year of retirement or such longer period as may be necessary in special circumstances;"* (emphasis added)

24. Yet, Section 24(3)(b) of the *DFRDB Act* states:

*"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."*

<sup>33</sup> [House of Representatives Hansard, 18 May 1972, p.2760](#)

<sup>34</sup> [Cabinet Minute, Canberra, 24 October 1972, Decision No, 1447, p.79](#)

<sup>35</sup> [Cabinet Minute, Canberra, 25 May 1973, Decision No. 706\(LEG\)](#)

<sup>36</sup> [House of Representatives Hansard, 25 May 1973, p.2707](#)

That means **retirement pay is permanently reduced** by an amount determined from the *Expectation of Life Factor* in Schedule 3.

25. The [Effect of Commutation](#) (click to view) presentation shows that their defined benefit is reduced if they live beyond their Schedule 3 life expectancy for members who elected to commute.

For any given commuted amount, Section 24(3)(b) produces a different outcome, depending on the recipient's gender, age, and date of commutation. **Defined Benefit reduction** resulting from *Commutation* ranges from **2% to more than 20% for members who live to 90 years of age.**

26. The [Effect of Schedule 3 Life Expectancy](#) (click to view) presentation shows that the Schedule 3 *Expectation of Life Factors* underestimate actual life expectancy by up to more than 38% and disproportionately increase the Retirement Benefit reduction.

Depending on the *Commutation* date of effect, **the disproportionate reduction of the Retirement Benefit after Commutation**, relative to current life expectancy, **can exceed 60%**. After they reach their *Notional Life Expectancy*, older members are burdened with a higher reduction of their *defined benefit* than younger members, which is at odds with one of the primary objectives of the DFRDB scheme of retaining experienced members.

27. Section 32A<sup>37</sup>, incorporated in the *DFRDB Act by Defence Force (Retirement and Death Benefits Amendments) Act (No. 2) 1979*, extended to members entitled to a *Class C Invalidity Benefit*, the entitlement to commutation defined in Section 24. And therefore, the same magnitude of reduction of their benefits.

### **Reduction of the Commutation Entitlement for Re-entrants**

28. On 13 March 1991, when he moved that *Defence Force Superannuation Legislation Amendment Bill 1991* be read a second time<sup>38</sup>, the Hon Gordon Bilney said that "*this Bill effectively closed the DFRDB scheme*".
29. The House wished to debate the *Military Superannuation and Benefits Bill 1991* concurrently with *Defence Force Superannuation Legislation Amendment Bill 1991*. There being no objection, this was allowed.
30. The Minister said that the matters to be dealt with by the Bill included "*changes in the nature of the benefits payable to members who retire a second time.*" He

<sup>37</sup> [Ibid, Section 32A](#)

<sup>38</sup> [House of Representatives Hansard, 13 March 1991, p.1907](#)



did not elaborate but did present an Explanatory Memorandum to the Bill<sup>39</sup> , which included only:

*"e. Changes in the nature of benefits payable to members who retire a second time."*

31. However, the [Effect of Commutation for Re-entrants](#) (click to view) presentation shows that the *Defined Benefit* of members who re-enlisted and again became eligible for a *Defined Benefit*, between 1 October 1991 and 30 June 2016, was substantially reduced. In the example shown, the penalty imposed was almost \$100,000.

In many cases, **members were induced to re-enlist** to meet Defence Force specialist manpower shortages **with "a chance to top up your Super"**.

## The Scale of Defined Benefit Reduction

32. **Every request for the necessary recipient data** required to reasonably estimate the scale of the financial impact of the *Pension Increases* and *Commutation* provisions **has been denied by CSC (Treasury)**. Therefore, our estimate is based on an analysis of the entitlements of [650 ADFRA members](#) (click to view) who provided us with their details. Statistically, this sample size is sufficiently large to represent the total DFRDB recipient population.
33. The [Scale of Benefit Reduction](#) (click to view) presentation shows that 80% of the sample population:
- a. Have a *defined benefit* entitlement of less than \$20,000 per annum;
  - b. Commuted less than \$100,000;
  - c. Separated from the Defence Force and Commuted before 1997;
  - d. Separated/Committed before the Age of 44; and
  - e. Will reach their Current Life Expectancy before 2036.
34. The reduction of the *Fair Current Value* of the *defined benefits* ranges from \$715 per annum for members who separated from 2014 to almost \$1,650 per annum for members who retired in 1979.
35. The effect of the CPI in the reduction of the *Fair Current Value* ranges from \$0 per annum for members who separated in 2019 to almost \$21,700 per annum for members who retired in 1979.

<sup>39</sup> [Defence Force Superannuation Legislation Amendment Bill 1991 Explanatory Memorandum](#)

36. To restore the rate of *Defined Benefits* to a *Fair Current Value* would require an average increase of 19.9% in the rate of all current *Defined Benefits*, which was \$1,608,370,000, according to the Department of Defence Annual Report 19-20<sup>40</sup>, under **Special Allocations** for *Defence Force Retirement and Death Benefits Act 1973, Part VII, s.125*.

Based on the \$1,608.37 Million FY 2019-20 payment for DFRDB benefits, the total reduction of *Defined Benefits*, resulting from the *Pension Increases* provisions, is **\$328 Million at the end of FY 2020-21**, increasing to between **\$11 Billion and \$12 Billion** (for indexation rates ranging from 2.0% to 4.0% per annum) **at the end of FY 2060-61**.

37. In the sample population, the total reduction of *Defined Benefits* after *Commutation*, after members reached their *notional Life Expectancy*, is \$4.2 Million at the end of FY 2020-21, increasing to \$26.0 Million at the end of FY 2060-61.

Extrapolated to an estimated 40,000 remaining members who commuted, the **total reduction** of *Defined Benefits*, resulting from *Commutation*, is **\$41 Million at the end of FY 2020-21**, increasing by **\$1.34 Billion to the end of FY 2060-61**.

## The 2019 Commonwealth Ombudsman's Investigation

38. In his letter to the Ombudsman, dated 5 April 2019<sup>41</sup>, The Hon Darren Chester MP wrote:

*"Noting your independent role as both Commonwealth Ombudsman and the Defence Force Ombudsman, I consider you would be well placed to investigate these issues under the own motion powers of the Ombudsman Act 1976, and this view has been supported by the members of the Ex-Service Organisations Round Table (ESORT) held by the Department of Veterans' Affairs."*

39. However, military superannuation is not included in the Charter of ESORT, and its delegates have no knowledge or understanding of the subject.

40. In his response to the Minister<sup>42</sup>, dated 10 April 2019, the Ombudsman wrote:

*"Prior to commencing the investigation, my officers will engage with the Department of Defence to reach agreement on appropriate funding arrangements for this investigation. We will also consult with the Department of Defence and the Commonwealth Superannuation*

<sup>40</sup> [Department of Defence Annual Report 19-20, Table 4.1](#)

<sup>41</sup> [The Commonwealth Ombudsman's Report 06|2019, Annex A, Ministerial Correspondence](#)

<sup>42</sup> [Ibid](#)

*Corporation (CSC), as the scheme administrators, on the scope of the investigation."*

41. **There was no consultation with the DFRDB recipient community** on the scope of the investigation or its terms of reference.

**The Ombudsman's investigation was not independent.** Defence funded it, and its scope determined by Defence and CSC (Treasury), the same organisations whose actions were to be investigated.

42. We agree with the Ombudsman's finding in his *Report 06/2019*<sup>43</sup> that there was an *"absence of clear guidelines and instructions to staff which led to incorrect information being provided"* to DFRDB members.
43. The information provided directly to members by the Department of Defence is epitomised in the following publications published by the DFRDB Authority:
- a. [Transfer to the New Scheme - October 1973](#) (click to view). This brochure was published by the DFRDB Authority three months after the DFRDB Act was enacted.
  - b. [Widows', Widowers' and Children's Benefits - November 1981](#) and [Retirement Benefits - December 1981](#). These were the first brochures published by the DFRDB Authority. Four years after the significant amendment of the DFRDB Act in 1977.
  - c. [An Outline of the DFRDB Scheme – Circa 1991](#). This booklet was published after the DFRDB scheme was closed to new members, and DFRDB members were given the option of transferring to the new Military Superannuation Benefits Scheme.

There has never been any official explanation of why members' defined benefits continue to be reduced after reaching their Notional Life Expectancy, which determined the reduction of their *defined benefits* after commutation, or how the *defined benefits* are adjusted. **This Inquiry should determine: Why not?**

44. We dispute that the financial modelling commissioned by the Ombudsman was in any way relevant to the operation of the legislation. Treasury and Defence have long used this modelling methodology to make *Commutation* appear to be excessively generous and something other than what the *Jess Committee* recommended, which was an interest-free partial pre-payment of a member's *Defined Benefit*, to enable him or her to re-settle into civilian life after many years of posting turbulence.

<sup>43</sup> [Ibid, Foreword](#)

45. As shown in the [Effect of Commutation](#) (click to view) presentation, when compared with members who do not commute, the accumulated *Defined Benefit* payment of every member who commutes is reduced if he or she lives beyond the *notional Life Expectancy* in Schedule 3.

We submit that the **primary aim** of the Ombudsman's investigation was **to provide a basis for denying compensation claims**, which is evident in the denial of all claims for compensation under the Compensation for Detriment caused by Defective Administration (CDDA) Scheme, submitted to the Directorate of Special Financial Claims.

### Other Reviews of the DFRDB Scheme

46. The **1973 Pollard Review**<sup>44</sup> recommended that the Commonwealth share of pensions, including the total value of non-contributory pensions, be increased from 1 July each year by a percentage equal to 1.4 times the percentage increase of the Consumer Price Index, with the proviso that the increase should not exceed the percentage increase in Average Weekly Earnings.
47. The **1974 Melville Pollard Report**<sup>45</sup> recommended that the proposed Government-financed pension payable on age retirement be increased automatically and annually by the percentage increase in the Consumer Price Index. The Report included:

*"Where a pension is the benefit, that benefit should not be eroded by inflation, but should be adjusted to compensate for the increased cost of living."*

These recommendations were adopted in the Commonwealth Superannuation Schemes for public servants and the DFRB scheme. **But not in the DFRDB scheme.**

48. In the **2001 Watson Review**<sup>46</sup>, the Senate Select Committee on Superannuation and Financial Services said:

*"The Committee recommends that the Government examine the feasibility of adopting an indexation method other than the Consumer Price Index (CPI) for Commonwealth public sector and defence force superannuation schemes, to more adequately reflect the actual increases in the cost of living."*

<sup>44</sup> [Enquiry into Superannuation Pension Updating, March 1973, Recommendation 5](#)

<sup>45</sup> [Report on the Treasurer's Proposals for a new Superannuation Scheme for Australian Government Employees, June 1974, Recommendation 5](#)

<sup>46</sup> [A 'Reasonable and Secure' Retirement? The Benefit Design of Commonwealth Public Sector and Defence Force Unfunded Superannuation Funds and Schemes, p.11](#)

49. That recommendation was not acted on.
50. In the *Watson Review*<sup>47</sup>, the Committee also said:

*"The DFRDB is an Exempt Public Sector Scheme for the purposes of the Superannuation Industry (Supervision) Act 1993 (SIS Act), and so is a complying fund under the Income Tax Assessment Act and Superannuation Guarantee (Administration) Act<sup>48</sup>."*

51. The DFRDB scheme is funded by a **special appropriation** from the Defence Budget<sup>49</sup>, which implies that the Department of Defence is the *Trustee* of the *Fund* and, therefore, has a **fiduciary** obligation to the beneficiaries of the DFRDB scheme.

But the Department of Defence **is conflicted** between DFRDB beneficiary interests and its budgetary interests and has consistently placed the interests of DFRDB beneficiaries last.

52. The **2007 Podger Review**<sup>50</sup> includes:

**"Life Expectancy Factors.** *The Review Team acknowledges the significant improvement in life expectancy since the 1960s, but is not persuaded by the claim for a more generous treatment of commutation arrangements under the DFRDB which still applies those life expectancy factors. The fact is that the conversion factor based on a 1960s life expectancy is substantially more generous than a **cost-neutral conversion factor that takes into account opportunities to earn interest on the commuted lump sum** (emphasis added). A conversion factor based solely on current life expectancy figures would be even more excessively generous."*

53. This finding was based on a *cost-neutral commutation conversion factor*, that is, *"the annual (partially indexed) pension reduction required in exchange for a lump sum at age 45"*. The Report does not show how this factor is calculated, but the likelihood is that it applies indexation increases to the lump sum, which, in exchange, would require a greater rate of pension reduction.

The Podger finding on *Life Expectancy Factors* implies reliance on the same financial modelling methodology used by the Commonwealth Ombudsman in 2019.

<sup>47</sup> [A 'Reasonable and Secure' Retirement? The Benefit Design of Commonwealth Public Sector and Defence Force Unfunded Superannuation Funds and Schemes, paragraph 2.41](#)

<sup>48</sup> [Annual Report of the DFRDB Authority 1999-2000, pp 5-6, and see discussion of Heads of Government Agreement in relation to Exemptions in Chapter 3](#)

<sup>49</sup> [Department of Defence Annual Report 19-20, Table 4.1](#)

<sup>50</sup> [Report of the Review into Military Superannuation Arrangements, July 2007,](#)

54. The *Podger Review* also recommended:

*"If the Government is willing to go beyond the envelope of current costs, it should consider indexing DFRDB/DFRB pensions for those over 55 on a similar basis to that applying to age pensions. Because of the costs involved, this option does not warrant the priority attached to the other recommendations."*

55. That recommendation was finally adopted **seven years later**.

## Other Concerns

56. Members in receipt of a Service Pension have raised the effect of DFRDB benefit increases in their Service Pensions. DFRDB benefits for members aged 55 and over are indexed in the same way as Service Pensions, yet the combined increase rate is always less than the individual DFRDB and Service Pension increase.
57. That is because the *income free area* for Service Pensions is linked to increases in the CPI, resulting in income creep.

Again, the CPI is used by Treasury as a '**Future Discounting**' method to reduce members' legislated entitlements.

58. For members aged under 55, who retired after 30 June 1983, there was a significant effect of the 1984 amendment, which increased the commutation entitlement from 4 to 5 times the *defined benefit*. Many members considered this increase was to offset the introduction of a 31% flat tax deduction from the *Commutation* lump sum. But none realised it would increase the reduction of their defined benefit for the rest of their lives.
59. Section 23(3)(b) reduces an officer's *retirement benefit* by 3% for every year his or her age is below their *Notional Retirement Age*. Many of our members have commented on this excessive penalty, resulting in most receiving lower retirement benefits than the junior officers and other ranks they commanded.

It is doubtful that this provision met the manning requirements at the time, retaining many officers, who would otherwise, in their own and Defence Force interests, have left the service.

## Conclusion

60. The *Defined Benefit* entitlements, set down in the original *DFRDB Act*, were altered by:

- a. Section 24(3)(b) in the original *Act*, which interpreted the meaning of ***proportionately*** reduced in *Jess Committee* recommendation (14)(b) as ***permanently*** reduced;
- b. Schedule 3, which based benefit reduction after commutation on outdated 1960-1962 rather than current life expectancy tables;
- c. *Defence Force Retirement and Death Benefits (Pension Increases) Act 1974*, which applied the increase to only five-sevenths (71.4%) of benefits and also applied the increase to retirement benefit reductions after commutation;
- d. *Defence Force Retirement and Death Benefits (Pension Increases) Act 1976*, which applied the increase to *Defined Benefit* reductions after commutation;
- e. ***Defence Force (Retirement and Death Benefits Amendments) Bill 1977***, which related all benefit increases to the Consumer Price Index, long known for its failure to maintain relativity with the cost of living, but also excluded from the application of those indexation increases a part of benefits ranging from 10% to 32%;
- f. *Defence Legislation Amendment Act 1984*, which increased the amount which could be commuted, to compensate for a change in taxation arrangements, but also increased the part of benefits excluded from indexation to between 12% and 40%;
- g. *Defence Force Superannuation Legislation Amendment Act 1991*, which substantially reduced the commutation entitlement for re-entrants.

**That was a sustained attack on the *Defined Benefits* set down in the DFRDB Act in 1973.**

61. The ***Jess Committee recommended Defined Benefit entitlements***, set down in the *DFRDB Act* **are identical for male and female members, regardless of age**. However, the effect of the incorporated amendments produces vastly different outcomes:
  - a. For recipients of *Class A* and *Class B Invalidation Benefits*, an inequitable reduction of their benefits, depending on the date they became eligible for those benefits.
  - b. For recipients of *Contributor Spouse's Benefits*, an inequitable reduction of their *defined benefits*, depending on the date the recipient member became eligible for those benefits.
  - c. For recipients of *Retirement* and *Class C Invalidation Benefits* who did not commute a minimum of four times their *defined benefit*, an inequitable

reduction of their *defined benefits* depending on their age on the date of their retirement and their gender.

- d. For recipients of *Recipient Spouse's Benefits*, an inequitable reduction of their *defined benefits* depending on the age of their spouse on the date of their retirement and their gender.
  - e. For recipients of *Retirement* and *Class C Invalidity Benefits* who commuted the maximum allowable amount of their *defined benefit*, an inequitable reduction of their *defined benefits* depending on their gender, date of retirement and their age on that date.
62. The effect of the *Commutation* provision is:
- a. For members who elected to receive a pre-payment of a part of their *defined benefit*, an **additional** inequitable reduction of their *defined benefits* depending on their gender, date of retirement and their age on that date.
  - b. For members who, having re-enlisted after commuting and again becoming eligible for a *retirement benefit* between 1 October 1991 and 1 July 2016, a substantial reduction of their commutation entitlement.
63. There is much evidence in the record of Parliamentary debate which supports a conclusion that the Parliament did not understand the operation or effect of the DFRDB legislation, and there is also evidence that supports a view that the responsible Ministers, who introduced the legislation, did not have any better understanding.

**The Government's and Parliament's scrutiny of draft DFRDB legislation was a travesty** which bureaucrats in Treasury and Defence exploited **to reduce, at will, the *Defined Benefits* set down in the *DFRDB Act*.**

We submit that **this reduction amounts to "*acquisition of property on other than just terms*" within the meaning of Section 51(xxxi) of the Constitution.**

### **The Outcomes Sought by ADFRA Members**

64. ADFRA members seek recommendations from the Committee stating that:
- a. The DFRDB Act be amended to:
    - (i) make clear that any valid reduction of retirement/invalidity pay due to commutation only lasts until the commuting member's *Notional Life Expectancy* (NLE) is reached; and
    - (ii) repeal the partial indexation provisions.



- b. The rates of all DFRDB *Defined Benefits* are restored to a *Fair Current Value*. That is, the rates those benefits would now be if;
  - (i) they been adjusted per the 'fair' indexation method incorporated in the DFRDB Act; and
  - (ii) the reduction of *Retirement/Invalidity Benefits* after commutation, had ceased on the date NLE is reached.
- c. All *Retirement/Invalidity Benefit* reductions, after NLE was reached, be reimbursed for members who commuted a part of their *defined benefit*; and
- d. For members who re-enlisted and subsequently commuted again from 1 October 1991 and 1 July 2016;
  - (i) the additional deductions from the subsequent commutation entitlement, resulting from the indexation of the initial commutation entitlement from the date of commutation to the date of re-enlistment, be reimbursed; and
  - (ii) all *Retirement Benefit* reductions in respect of the first commutation be reimbursed.

### **Estimated Cost of the Outcomes Sought**

65. The scale of the reduction of DFRDB members' benefits is considerable. So, it should come as no surprise that the cost of remediation will be likewise.
66. Given the current economic climate, the Committee may have concerns over the size of a \$41 Million reimbursement of the benefit reductions which exceeded the amounts commuted, and a \$11 Billion to \$12 Billion cost over the next 40 years to restore, to a *Fair Current Value*, the rate of the *Defined Benefits* which were reduced by unfair updating methods. However, at the first CSC Annual Member Meeting<sup>51</sup>, in response to the question "*I would like to find out how safe my pension is*" from a *Defined Benefit* client, the Chief Executive Officer, Mr. Damien Hill replied:

*"We're very fortunate in Australia that governments of all persuasions have supported our sovereign wealth fund, the Future Fund, and the large majority of its assets are there to support DB (Defined Benefit) pensions and pensioners such as yourself."*

67. The *2019-20 Future Fund Annual Report*, includes:

*"The Future Fund is a long-term fund. Over 10 years the Fund has achieved a return of 9.2% per annum, exceeding its benchmark of 6.1%*

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<sup>51</sup> [CSC First Annual Member Meeting](#)

*per annum. Since the Fund was established in 2006, it has added \$100.6 billion in earnings.*"<sup>52</sup>

And:

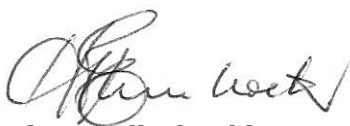
*"The Fund stood at \$161.1 billion at 30 June 2020"*<sup>53</sup>

68. The cost of the outcomes sought by ADFRA members, as at the end of FY 2020-21, represents just 3.2% of the 10-year average earnings of the Future Fund. Even if the Future Fund earnings achieved only the benchmark of 6.1% per annum, the peak annual cost in FY 2028-29 would still only be 5.8% of the 10-year average earnings.

**More than 80,000 men and women**, subject to the provisions of the DFRDB Act through no choice of their own, served in the Australian Defence Force for up to 40 or more years. Many of them because of the *Defined Benefits*, they believed, the DFRDB scheme offered. But they **were misled**.

**The Parliament failed these men and women** by failing to adequately scrutinise legislation that will continue to diminish their *Defined Benefits*, in many cases, for another 40 years.

**This Inquiry should endeavour to answer why men and women, who committed their lives to the service of their country, are treated like that.**



**(H. F. Ellerbock)**

Secretary  
Australian Defence Force Retirees Association Inc.

**ANZAC Day, 25 April 2021**

<sup>52</sup> [Future Fund Annual Report, p.5](#)

<sup>53</sup> [Ibid, p.29](#)