Defence FOI 0044/26/27
Internal Review
Document 1

Australian Government
Department of Defence

Submission

For decision
PDMS Ref. Number GR21-000012
Date of Clearance: 6 October 2021

To	**Minister for Defence**
Subject	**Senate Foreign Affairs, Defence and Trade (SFADT) References Committee - Inquiry into Accuracy of Information Provided to Defence Force Retirement and Death Benefits (DFRDB) Members - Government Response**
Timing	**Due to be tabled on 1 October. Defence has engaged with your office in the development of the proposed response.**

Recommendations

That you:

1. **agree** to the Department of Defence's proposal to support Recommendation 1 of the SFADT References Committee inquiry into the accuracy of information provided to DFRDB members; — agreed / not agreed
2. **agree** to Defence's proposal to partially support Recommendation 2; — agreed / not agreed
3. **sign** the proposed letter to the Prime Minister, the Hon Scott Morrison MP (Attachment A), seeking his approval to the proposed Australian Government Response; — signed / not signed
4. **agree** to table the proposed Australian Government Response (Attachment B) following approval by the Prime Minister; — agreed / not agreed
5. **agree** to sign and not date the draft letter to support the tabling of the Government Response following approval by the Prime Minister (Attachment C); — agreed / not agreed
6. **sign** and not date the tabling letter (Attachment C); and — signed / not signed
7. **note** a further submission will be provided seeking your signature of a tabling letter to the President of the Senate (Attachment D) if tabling outside of a sitting period is required. — noted / please discuss

Minister for Defence

Signature... s22

Date: 25/10/2021

Minister's Comments				
Rejected Yes/No	**Timely** Yes/No	**Relevance** ☐ Highly relevant ☐ Significantly relevant ☐ Not relevant	**Length** ☐ Too long ☐ Right length ☐ Too brief	**Quality** Poor 1……2……3……4……5 Excellent **Comments:**

Key Issues

1. On 2 July 2021 the Senate Foreign Affairs, Defence and Trade References Committee (the Committee) released its report into the "Accuracy of information provided to Defence Force Retirement and Death Benefits (DFRDB) members" following its inquiry into this matter.

2. The Committee's report made two recommendations;

   a. Recommendation 1:

   The Committee recommends that the Australian Government consider ways to improve members' understanding of DFRDB and other military superannuation schemes. This could include additional information and education for ADF recruits and officer cadets, and ongoing updates for ADF personnel. It could also comprise a dedicated website or webpage for members, including a summary of the scheme and information on a member's contributions history and any residual pension payable.

   b. Recommendation 2:

   The Committee recommends that the Australian Government consider more assistance for DFRDB members to make claims under the Compensation for Detriment caused by Defective Administration (CDDA) scheme and appeal any adverse decisions or a separate reparation payments scheme for DFRDB members who are unsuccessful under the CDDA scheme to recognise the Government's moral obligation to address any confusion and distress caused by defective administration. Where a CDDA claim was successful, compensation could include any professional costs expended in preparation of the claim, and legal and other professional costs if a claimant successfully appealed an adverse finding. Further, where the claimant's CDDA appeal was unsuccessful, the Commonwealth should consider not applying for costs to be awarded against the claimant.

Recommendation 1

3. Defence supports Recommendation 1 of the SFADT Committee's findings. The DFRDB scheme has been closed to new members since 1 October 1991, but Defence has implemented a continuous improvement approach to the education of ADF members on financial matters including their understanding military superannuation arrangements, including the DFRDB scheme for the limited number of members still affected by it. This is done through a variety of media including: Defence's Pay and Conditions website, and the information and education services provided by the ADF Financial Services Consumer Centre and the Commonwealth Superannuation Corporation (CSC).

4. In 2006 the Chief of the Defence Force established the ADF Financial Services Consumer Centre (ADF Consumer). ADF Consumer operates pursuant to a charter from the Chief of Defence Force in support of the Australian Government's National Financial Capability Strategy. They administer and deliver Defence's financial literacy education service for ADF members and their families. Their aim is to help ADF members and their families become more financially capable. This includes providing a range of information regarding the DFRDB, Military Superannuation and Benefits Scheme and ADF Super, in consultation with CSC.

5. ADF Consumer works closely with CSC and delivers seminars to ADF members in different stages of their service, such as at initial training and transition to civilian life. In an average year, ADF Consumer delivers around 150 seminars on various financial topics for approximately 15,000 members. In addition, CSC's member education team provides on-base presentations to ADF members which provide superannuation scheme overviews and free individual member consultation to all ADF members. The information supplied to members at these seminars and consultations is carefully vetted for accuracy. The Ombudsman found that the information products supplied to members about their commutation rights has been accurate and complete since 2004.

6. In 2020–21 CSC delivered 231 seminars throughout the year, 150 of which were live webinars (due to COVID travel restrictions) and scheduled over 4,000 one-on-one consultations to individual members.

Recommendation 2

7. Defence partially supports Recommendation 2 of the Senate Committee's findings.

8. The Committee suggests a range of recommendations regarding the CDDA scheme.

(a) The Committee recommends that the Australian Government consider more assistance for DFRDB members to make claims under the CDDA scheme and appeal any adverse decisions.

9. Defence supports this aspect of Recommendation 2. For members who believe they have sustained financial detriment as a result of their decision to commute, Defence has implemented an approach involving a tailored CDDA claim form intended to direct members' attention to the issues critical to the determination of their claim. Also, when claims are acknowledged, members receive a personalised email responding to the specific issues arising in the claim, and discussing how they might go about showing how their situation differs from the majority of members who the Ombudsman concluded were unlikely to have sustained a loss. Members are also given the name and contact details of a specific case manager who is available to discuss the claim with them, or correspond with them, depending on their preference.

10. It is noted that both the Commonwealth Ombudsman and the Committee report indicate that it is unlikely a member has suffered a financial detriment and therefore the likelihood of any member being successful appears to be limited.

11. The Committee report stated that:

> *"5.11 Despite the findings of the Commonwealth Ombudsman, some DFRDB members remain strongly of the view that they have suffered financial detriment based on their understanding at the time, which is actually a misunderstanding of how the scheme operates. In other words, the financial detriment is perceived rather than actual as it compares their current financial situation to a scheme that does not exist in law, ie. claiming an actual loss as opposed to a financial disappointment."*

12. Against that background, there is a delicate balance to be struck when dealing with claimants, between giving them the assistance they need to put their best case forward, and also managing their expectations. This is necessary to ensure that claimants, especially those who are elderly and infirm, are not given unrealistic expectations about their prospects for success. Defence has found to date that some members have been misinformed about the Ombudsman's report and the Committee's conclusions, and have been encouraged to claim based on a false factual foundation. As the Ombudsman put it in his report:

> *"It would do a disservice to falsely raise hopes of compensation among the members. Futile claims result merely in further inconvenience and frustration to the member, and an unnecessary use of public resources for assessment processes."*

13. Where it is not possible to meet a claimant's expectations, it is important to explain why a claim has not succeeded. Decision letters to DFRDB claimants include comprehensive reasons written in plain English, acknowledging the claimant's disappointment that the DFRDB scheme did not turn out to be as generous as they were led to believe it would be. The letters also acknowledge and apologise that there was defective administration in the claimant's case.

14. If claimants are dissatisfied with the decision, they are advised about their right to contact the Ombudsman and contact details are provided. If claimants disagree with specific aspects of the decision or present new evidence, their decision will be reviewed internally by a different decision-maker.

(b) A separate reparation payments scheme for DFRDB members who are unsuccessful under the CDDA scheme to recognise the government's moral obligation to address any confusion and distress caused by defective administration.

15. The Commonwealth Ombudsman, Mr Michael Manthorpe, considered and rejected a separate reparation scheme for affected members, on equity grounds. In his statement on 20 May 2021 to the Senate Committee hearing, he said:

> *"… I stopped short of recommending that the government pay compensation or some form of reparation as, in my view, to do so would have: created new inequities between different groups; potentially produced an unjustified windfall for those who properly understood the scheme, at taxpayers' expense; and presumed to set aside what parliament had intended in the first place."*

16. Defence does not support a separate reparation scheme for DFRDB members who commuted, on both equity and accountability grounds. A reparation payment in legal principle addresses expense or damage and so unlikely to assist in this situation where claimants have, to date, been unable to demonstrate more than a disappointment, albeit genuine. The CDDA scheme and the item (d) discussion explain that it is already possible to provide reparation, if a loss is demonstrated.

(c) Where a CDDA claim was successful, compensation could include any professional costs expended in preparation of the claim, and legal and other professional costs if a claimant successfully appealed an adverse finding.

17. Subject to the rules in the CDDA Guidelines published by the Department of Finance, payment of professional costs for successful claims is an issue that Defence could consider on a case by case basis. In fact, claimants generally do not need professional advice to make a claim. Their argument is generally straightforward (i.e. they ask for what they claim that they understood they would get when they commuted) so there is no legal or financial complexity which requires specialist assistance.

18. If a claimant successfully appeals an adverse finding, costs will be payable based on the Federal Court scale.

(d) Where the claimant's CDDA appeal was unsuccessful, the Commonwealth should consider not applying for costs to be awarded against the claimant.

19. This is an issue that the Commonwealth could consider on a case by case basis, depending on whether there is considered to be any value in settling the matters agitated on appeal.

Background

20. On 18 March 2021, Chair of the Committee, Senator Kimberley Kitching moved a motion regarding the “Accuracy of information provided to DFRDB members” for inquiry and report.

21. The Terms of Reference for the Inquiry were:

    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;

    b. whether retirement payments were indexed as required by legislation and, if not, what remedial action (if any) could be taken;

    c. policy and legislative issues, including provisions for:

        i. use of certain life expectancy tables,

        ii. permanency of reductions to commuted pensions,

        iii. indexation arrangements; and

    d. recommendations on any potential changes to administrative arrangements, policy or legislation;

    e. advice on costs associated with any recommendations;

f. all relevant existing information and previous reviews in relation to DFRDB, including the findings of the Ombudsman's investigation;

g. the level of understanding among DFRDB members about how the legislation works, and ways to improve this; and

h. any related issues.

22. The Terms of Reference for this inquiry were broader in scope than the terms of reference set by the Ombudsman as part of his investigation into the administration of the DFRDB scheme undertaken in 2019. The Ombudsman investigation looked into the administration of the DFRDB scheme, particularly the accuracy of information provided to members when electing to commute.

23. The Committee received 82 submissions from a range of individuals and organisations including from Defence, which is included as Attachment E.

24. The Committee held a public hearing on 20 May 2021, which Defence appeared at along with the following individuals and organisations:

a. s47F independent advocate on behalf of the 'DFRDB commutation campaign';

b. s47F on behalf of the Australian Defence Force Retirees Association;

c. s47F and s47F on behalf of the Defence Force Welfare Association;

d. s47F, General Counsel, Commonwealth Superannuation Corporation; and

e. s47F, the Commonwealth Ombudsman and s47F, Senior Assistant Ombudsman.

25. On 2 July 2021 the Committee released their final report into the "Accuracy of information provided to Defence Force Retirement and Death Benefits (DFRDB) scheme members" following their inquiry into the matter. A copy of the report is at Attachment F.

26. The Inquiry required the Committee to focus on information provided to DFRDB members. The Committee concluded this matter was comprehensively addressed through the investigation undertaken by the Commonwealth Ombudsman in his 2019 report.
The Committee agreed there is no dispute that incorrect information was provided by Defence to many DFRDB members which led them to believe that their commuted pension would increase once they reached their life expectancy factor age. This has been recognised as defective administration by Defence and an apology has been issued by the Secretary of the Department of Defence and the Chief of the Defence Force.

27. The Committee further concluded that contrary to claims that all DFRDB members received incorrect information, this was not the case with the Ombudsman finding that Defence provided some correct as well as incorrect information to members on the long term impact of commutation. The Committee also noted that it did receive submissions where the submitters indicated that they had full knowledge of the operation of the legislation and this was also found by the Ombudsman.

28. The Committee concluded from the evidence, including statements by DFRDB members to the Committee and the Ombudsman that the vast majority of DFRDB members would have chosen to commute even if they had known about the reduction in retirement pay as they needed the capital to purchase a home or business after leaving the ADF.

29. The Committee agreed with the Ombudsman's statement regarding any perceived financial detriment that DFRDB members suffered. As noted by the Ombudsman, "missing out on a benefit to which a person is not actually entitled under the law does not necessarily mean that the person has suffered financial detriment".

30. The Ombudsman's statement is consistent with guidance published by the Department of Finance in relation to the CDDA under *Resource Management Guide 409: Scheme for Compensation for Detriment Caused by Defective Administration (RMG 409)*. In particular section 53 pf RMG 409 provides:

> *53. Financial detriment can be distinguished from financial disappointment - for example, where a formal assessment results in the amount of an entitlement being less than a 'ballpark' figure given to a person at the time they made inquiries. A claimant does not suffer financial detriment merely because they were correctly not granted a benefit after being advised that they would receive that benefit, or if a debt was raised due to a benefit being incorrectly paid.*

31. The modelling commissioned by the Ombudsman demonstrated the decision to commute is not likely to have, of itself, caused financial loss, relative to the other available option of not commuting. However, while unlikely, he could not rule out there may be outlying cases with circumstances of which he was not aware, and he deemed the CDDA scheme would be suitable for any such cases.

32. The Committee noted that currently, no CDDA claims by DFDRB scheme members have been successful. Therefore, more support may be required to assist DFRDB members to access the CDDA scheme and appeal any adverse decisions.

33. Further, the Committee considers that for DFRDB members who were unsuccessful in their claims and any appeals under the CDDA scheme, some form of reparation payment may be appropriate as a fall back. This is broadly consistent with an option considered by the Ombudsman and discussed by him in the Inquiry public hearing. The Ombudsman gave evidence to the Committee that he stopped short of recommending a reparation payment including because it would presume to set aside Parliament's original design of the scheme and as a matter of principle compensation should only be paid where poor administrative practices cause actual financial loss.

Consultation – internal/external

34. The following were consulted through the development of this submission:

- s47E(c), Director, Employment Law and Discretionary Claims, Office of General Counsel, Defence Legal
- s47F, General Counsel, Commonwealth Superannuation Corporation
- s47E(c), Operations Manager, ADF Financial Services Consumer Centre
- s47F Assistant Secretary, Government Division, Department of Finance

- s47F, Senior Assistant Ombudsman, Commonwealth Ombudsman

Consultation – Secretary/CDF

35. This advice has been cleared through the Secretary and CDF.

Sensitivities

36. Veterans have previously written to Defence, the Prime Minister, other Ministers and CSC regarding these matters. There are two main campaign groups: the DFRDB Commutation Campaign led by s47F and the Australian Defence Force Retirees Association (ADFRA) led by s47F. Both groups appeared before the public hearing into the Inquiry and continue to campaign on these matters.

37. ADFRA in their July 2021 newsletter expressed their dissatisfaction with the Committee's inquiry and report. ADFRA outlined that one of their members would be applying to the Federal court for a declaration to cease retirement pay reduction after reaching their life expectancy age. Proceedings have since commenced in the Federal Court: McKenzie v Commonwealth Superannuation Corporation NSD670/2021. The Australian Government Solicitor is acting for CSC and has advised there are strong prospects of defending the claim. Defence Legal has received separate legal advice from counsel to the same effect. Defence Legal will continue to monitor the progress of the claim and will provide updates as necessary.

Financial/systems/legislation/deregulation/media implications

38. Veterans appeared on the ABC's '7.30' program in 2019, had interviews published in newspapers and have posted to varying social media outlets over the years concerning the DFRDB scheme and perceived inequities.

Attachments

Attachment A	Proposed Letter to the Prime Minister, the Hon Scott Morrison MP
Attachment B	Proposed Australian Government Response to the Senate Foreign Affairs, Defence and Trade References Committee.
Attachment C	Proposed letter to the Chair of the Senate Foreign Affairs, Defence and Trade References Committee.
Attachment D	Proposed letter to President of the Senate.
Attachment E	Defence submission to the Senate Foreign Affairs, Defence and Trade References Committee inquiry into the "Accuracy of information provided to DFRDB members".
Attachment F	Senate Foreign Affairs, Defence and Trade Committee "Accuracy of information provided to DFRDB members" final report.

Authorising Officer
Cleared by: Justine Greig Deputy Secretary Defence People Group Date: 06 October 2021 Mob: s22

Contact Officer: s47E(c) , Director, Directorate of Superannuation Policy, Ph: s22

Through: Secretary CDF

CC:
Assoc Sec, VCDF, DEPSEC DP, FASMECC

THE HON BEN MORTON MP
MINISTER ASSISTING THE PRIME MINISTER AND CABINET
MINISTER FOR THE PUBLIC SERVICE
SPECIAL MINISTER OF STATE

Reference: MC21-127798

The Hon Peter Dutton MP
Minister for Defence
Parliament House
CANBERRA ACT 2600

Dear Minister

Thank you for your letter dated 25 October 2021 regarding the Government response to the Senate Standing Committee on Foreign Affairs, Defence and Trade report on its inquiry into the Accuracy of Information provided to Defence Force Retirement and Death Benefits members. I am responding on behalf of the Prime Minister.

I approve the proposed Government response, without reference to the Cabinet, on the basis that the response does not involve significant policy and/or contentious issues. I also agree to the response being tabled in Parliament.

In line with established procedures, a copy of the response should be forwarded to the Chair of the Committee and arrangements made for tabling as soon as possible.

Yours sincerely

s22

BEN MORTON

/ / 2021

THE HON PETER DUTTON MP
MINISTER FOR DEFENCE

Ref No: GR21-000012

The Hon Scott Morrison MP
Prime Minister
Parliament House
CANBERRA ACT 2600

Dear Scott,

I write to seek your approval of the Government response to the Senate Standing Committee on Foreign Affairs, Defence and Trade (SSCFADT) report on its inquiry into the "Accuracy of information provided to Defence Force Retirement and Death Benefits (DFRDB) members".

The SSCFADT undertook an inquiry into the "Accuracy of information provided to DFRDB members" and tabled its report in Parliament on 2 July 2021. The Committee requested a whole-of-Government response against the two recommendations be tabled by 1 October 2021.

Defence has considered the two recommendations and led the development of the Government response in consultation with the Commonwealth Superannuation Corporation, the Department of Finance and the Commonwealth Ombudsman.

I request your review and approval of the Government response to the SSCFADT inquiry report into the "Accuracy of information provided to DFRDB members" at your earliest convenience.

Yours sincerely

s22 [redacted]

25/10/21

PETER DUTTON

THE HON PETER DUTTON MP
MINISTER FOR DEFENCE

Ref No: GR21-000012

Senator the Hon Slade Brockman
President of the Senate
Parliament House
CANBERRA ACT 2600

Slade,

Dear ~~Mr~~ President

I present to you the Australian Government response to the Senate Standing Committee on Foreign Affairs, Defence and Trade inquiry report into the "Accuracy of information provided to Defence Force Retirement and Death Benefits (DFRDB) members" approved by the Prime Minister, the Hon Scott Morrison MP.

Yours sincerely

s22 [redacted]

PETER DUTTON

THE HON PETER DUTTON MP
MINISTER FOR DEFENCE

GR21-000012

Senator Kimberley Kitching
Chair
Foreign Affairs, Defence and Trade References Committee
PO Box 6100
Parliament House
CANBERRA ACT 2600

Dear Senator Kitching Kimberley,

I write to provide you with a copy of the Australian Government response to the Senate Standing Committee on Foreign Affairs, Defence and Trade (SSCFADT) report on its inquiry into the "Accuracy of information provided to Defence Force Retirement and Death Benefits (DFRDB) members".

The SSCFADT undertook an inquiry into the "Accuracy of information provided to DFRDB members" and tabled its report in Parliament on 2 July 2021. The report makes two recommendations.

The Department of Defence considered the two recommendations and led development of the Australian Government response, in consultation with the Commonwealth Superannuation Corporation, the Department of Finance and the Commonwealth Ombudsman.

Yours sincerely

s22 [redacted]

PETER DUTTON 26/10/21.

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Australian Government

Australian Government Response to the Senate Foreign Affairs, Defence and Trade References Committee:

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

1 OCTOBER 2021

Recommendation 1
The committee recommends that the Australian Government consider ways to improve members' understanding of DFRDB and other military superannuation schemes. This could include additional information and education for ADF recruits and officer cadets, and ongoing updates for ADF personnel. It could also comprise a dedicated website or webpage for members, including a summary of the scheme and information on a member's contributions history and any residual pension payable.

The Australian Government **supports** Recommendation 1 of the Senate Foreign Affairs, Defence and Trade Committee's findings. The Australian Government notes that the Department of Defence has implemented a continuous improvement approach to the education of Australian Defence Force (ADF) members on financial matters including their understanding of the DFRDB and other military superannuation arrangements. This is done through a variety of mediums including: Defence's Pay and Conditions website, and the information and education services provided by the ADF Financial Services Consumer Centre and the Commonwealth Superannuation Corporation (CSC).

In 2006 the Chief of the Defence Force established the ADF Financial Services Consumer Centre (ADF Consumer). ADF Consumer operates pursuant to a charter from the Chief of Defence Force in support of the Australian Government's National Financial Capability Strategy. They administer and deliver Defence's financial literacy education service for ADF members and their families. Their aim is to help ADF members and their families become more financially capable. This includes providing a range of information regarding the DFRDB, Military Superannuation and Benefits Scheme and ADF Super, in consultation with CSC.

ADF Consumer works closely with CSC and delivers seminars to ADF members in different stages of their service, such as at initial training and transition to civilian life. In an average year, ADF Consumer delivers around 150 seminars on various financial topics for approximately 15,000 members. In addition, CSC's member education team provides on-base presentations to ADF members which provide superannuation scheme overviews and free individual member consultation to all ADF members.

In 2020–21 CSC delivered 231 seminars throughout the year, 150 of which were live webinars (due to COVID travel restrictions) and 4,000 one-on-one consultations to individual members.

Recommendation 2
The committee recommends that the Australian Government consider more assistance for DFRDB members to make claims under the Compensation for Detriment caused by Defective Administration (CDDA) scheme and appeal any adverse decisions or a separate reparation payments scheme for DFRDB members who are unsuccessful under the CDDA scheme to recognise the government's moral obligation to address any confusion and distress caused by defective administration. Where a CDDA claim was successful, compensation could include any professional costs expended in preparation of the claim, and legal and other professional costs if a claimant successfully appealed an adverse finding. Further, where the claimant's CDDA appeal was unsuccessful, the Commonwealth should consider not applying for costs to be awarded against the claimant.

The Australian Government **partially supports** Recommendation 2 of the Senate Committee's findings.

With regards to the Committee's recommendation about a separate reparation payments scheme for DFRDB members who are unsuccessful under the CDDA scheme, the Australian Government suggests that any such scheme would create perverse outcomes to different groups of DFRDB members. The Commonwealth Ombudsman, Mr Michael Manthorpe, outlined this issue in his public hearing statement on 20 May 2021 to the Senate Committee:

> *"… I stopped short of recommending that the government pay compensation or some form of reparation as, in my view, to do so would have: created new inequities between different groups; potentially produced an unjustified windfall for those who properly understood the scheme, at taxpayers' expense; and presumed to set aside what parliament had intended in the first place."*

The Committee suggests a range of recommendations regarding the CDDA scheme.

The Australian Government supports this aspect of Recommendation 2. For members who believe they have sustained financial detriment as a result of their decision to commute, the Department of Defence has implemented an approach involving a tailored CDDA claim form intended to direct members' attention to the issues critical to the determination of their claim. Also, when claims are acknowledged, members receive a personalised email responding to the specific issues arising in their claim. Members are also given the name and contact details of a specific case manager who is available to discuss the claim with them, or correspond with them, depending on their preference.

It is noted that both the Commonwealth Ombudsman and the Committee report indicate that it is unlikely a member has suffered a financial detriment and therefore the likelihood of any member being successful appears to be limited.

The Committee report stated that:

> *"5.11 Despite the findings of the Commonwealth Ombudsman, some DFRDB members remain strongly of the view that they have suffered financial detriment based on their understanding at the time, which is actually a misunderstanding of how the scheme operates. In other words, the financial detriment is perceived rather*

than actual as it compares their current financial situation to a scheme that does not exist in law, ie claiming an actual loss as opposed to a financial disappointment."

There is a balance to be struck when dealing with claimants, between giving them the assistance they need to put their best case forward, and also managing their expectations. This is necessary to ensure that claimants are not given unrealistic expectations about their prospects for success. The Department of Defence has found to date that some members have been misinformed about the Ombudsman's report and the Committee's conclusions, and have been encouraged to claim based on a false factual foundation. As the Ombudsman put it in his report:

> *"It would do a disservice to falsely raise hopes of compensation among the members. Futile claims result merely in further inconvenience and frustration to the member, and an unnecessary use of public resources for assessment processes."*

If claimants disagree with specific aspects of the decision or present new evidence, their decision will be reviewed internally by a different decision-maker.

Subject to the rules in the CDDA Guidelines published by the Department of Finance, payment of professional costs for successful claims is an issue that Defence could consider on a case by case basis. In fact, claimants generally do not need professional advice to make a claim. Their argument is generally straightforward so there is no legal or financial complexity which requires specialist assistance.

Australian Government
Department of Defence
PO Box 7900 CANBERRA BC ACT 2610

EC21-001254/IS21-000032

Standing Committee on Foreign Affairs, Defence and Trade
Department of the Senate
PO Box 6100
Parliament House
CANBERRA ACT 2600

Dear Committee Secretary

Senate Standing Committee on Foreign Affairs, Defence and Trade inquiry into the 'accuracy of information provided to Defence Force Retirement and Death Benefits (DFRDB) members'

The Department of Defence welcomes the opportunity to assist the Senate Standing Committee on Foreign Affairs, Defence and Trade regarding its inquiry into the 'accuracy of information provided to Defence Force Retirement and Death Benefits (DFRDB) members'.

The DFRDB scheme or elements of have been formally reviewed multiple times since the scheme began in 1973. A number of enhancements to the scheme have occurred during this period, to the benefit of members. Enclosure 1 is a summary of the main reviews of the DFRDB and enhancements and provides an explanation of commutation and life expectancy factors, indexation and accuracy of information provided to DFRDB members.

The most recent review of DFRDB was the 2019 independent investigation undertaken by the Commonwealth Ombudsman into the administration of the DFRDB scheme. The Ombudsman found that misleading information amounting to defective administration was provided in some cases to members by Defence personnel in relation to the DFRDB scheme, but this did not cause financial detriment to these members.

The Ombudsman did not recommend compensation be provided to DFRDB members as defective administration alone does not mean a financial detriment has occurred and there was no entitlement to compensation under the legislation as expressed. Independent actuarial analysis suggests where a member acted on the incorrect information and commuted their pension, it generally resulted in a beneficial overall financial outcome for DFRDB members, particularly for DFRDB members who retired before 2010.

We issued a joint apology for Defence having provided incorrect advice in the past to some DFRDB members and for any confusion and emotional impact this may have caused.

The final report and Defence letter provided information to DFRDB members on how to submit a Compensation for Detriment caused by Defective Administration (CDDA) claim to Defence if they believed they suffered a detriment due to defective administration of the DFRDB scheme. Currently no claims have been successful as claimants have been unable to demonstrate they have incurred a financial detriment due to this issue.

The Australian Government Actuary has advised that any changes to the scheme itself, including life expectancy factors could involve significant Commonwealth costs, both prospective and retrospective.

The DFRDB legislation is consistent with the policy intent of the scheme and is consistent with other Australian Public Service and Australian Defence Force defined benefit superannuation arrangements.

Our point of contact is First Assistant Secretary, People Policy and Culture Division, Mr David Nockels. David can be contacted by telephone on s47E(c) or email: s47E(c) @defence.gov.au.

Yours sincerely

s22

Greg Moriarty
Secretary

28 April 2021

s22

Angus J Campbell, AO, DSC
General
Chief of the Defence Force

28 April 2021

Enclosure:
1. Defence submission to the Senate Standing Committee on Foreign Affairs, Defence and Trade regarding the 'accuracy of information provided to Defence Force Retirement and Death Benefits (DFRDB) members'.

ENCLOSURE 1

Defence submission to the Senate Standing Committee on Foreign Affairs, Defence and Trade

ACCURACY OF INFORMATION PROVIDED TO DEFENCE FORCE RETIREMENT AND DEATH BENEFITS (DFRDB) MEMBERS

Introduction

The Department of Defence submission to the Standing committee on Foreign Affairs, Defence and Trade regarding the 'accuracy of information provided to Defence Force Retirement and Death Benefits (DFRDB) members' provides:

- Section 1: an overview ADF superannuation schemes
- Section 2: a summary of the key historical reviews of the DFRDB and the key outcomes
- Section 3: a summary relating to the Commonwealth Ombudsman Investigation into the administration of the DFRDB scheme and additional information on the Compensation for Detriment caused by Defective Administration (CDDA scheme)
- Section 4: The use of set Life Expectancy Factors and the Resulting Permanent Reduction to Pensions (Commutation)
- Section 5: Indexation - Methodology and Application

1. Overview of ADF Superannuation Schemes

The DFRDB scheme legislation was derived from the 1972 report of the Joint Select Committee (the Jess Committee) which made 20 recommendations to the Government of the day. The majority of the recommendations were accepted, with modifications to some.

The Defence Forces Retirement Benefits (DFRB) scheme was established in 1948 and closed to new members when DFRDB commenced on 1 October 1972. All contributory members of DFRB were transferred to DFRDB at that time. Pensions payable under the DFRB however, continue to be paid under the provisions of the *Defence Forces Retirement Benefits Act 1948* (DFRB Act).

DFRDB is a fully unfunded defined benefit arrangement and was closed to new members from 30 September 1991 when the Military Superannuation and Benefits Scheme (MSBS) was introduced. MSBS is a 'hybrid' scheme consisting of a mostly unfunded defined benefit and a fully funded accumulation benefit. Contributing members of DFRDB were able to elect to transfer schemes from 1 October 1991 until 30 September 1992. It was not compulsory for DFRDB contributory members to transfer to the MSBS.

MSBS closed to new members on 30 June 2016. From 1 July 2016 ADF Super became the default employer fund for all new ADF members however, members may also choose another complying superannuation fund (Choice members). ADF Cover provides statutory death and invalidity cover for all ADF members who are ADF Super or Choice members.

2. Summary of the Key Historical Reviews of the DFRDB and Key Outcomes

2019 Commonwealth Ombudsman: *Investigation into the administration of the DFRDB scheme*. The 2019 independent investigation undertaken by the Commonwealth Ombudsman focused on the accuracy of information about commutation provided to scheme members by Defence and the DFRDB scheme administrators (including the Commonwealth Superannuation Corporation (CSC)).

Outcome: The Ombudsman found that some DFRDB scheme members were provided with misleading, and in some cases incorrect advice about the effect of commutation on the retirement pension but did not recommend that compensation should be paid to these members. The Ombudsman found this to be defective administration by Defence and recommended an apology be issued. More information on the 2019 independent investigation undertaken by the Commonwealth Ombudsman, including the findings is provided in Section 3.

2008 Matthews Review: *Review of Pension Indexation Arrangements in Australian Government Civilian and Military Superannuation Schemes*. The 2008 Matthews Review was a Government commitment which was tasked with looking at the indexation of superannuation pensions and whether the Consumer Price Index (CPI) was an appropriate measure or if there are more appropriate measures that could be used.

Outcome: The 2008 Matthews Review recommended no change to indexation for any of the Government schemes including DFRDB. The Government of the day accepted this recommendation and CPI continued to be used as the indexation method until 2014.

2007 Podger Review: *Report of the Review into Military Superannuation Arrangements*. The 2007 Podger Review considered the military superannuation arrangements (MSBS and DFRDB) and the long term viability of MSBS. The 2007 Podger Review considered the unique nature of military service while considering the on-going unfunded liability of the DFRDB and MSBS.

Outcome: The 2007 Podger Review resulted in a change to the indexation methodology in 2014 for all DFRB and DFRDB pension recipients aged 55 and over. As a result, these pensions are now indexed in the same way as age and service pensions. The 2007 Podger Review also recommended that there should be no change to the DFRDB life expectancy factors.

2002 Senate Select Committee on Superannuation (2002 Watson Committee): *Superannuation and standards of living in retirement*. The 2002 Watson Committee reviewed the adequacy of the tax arrangements for superannuation and related policy to address the retirement income and aged and health care needs of Australians.

Outcome: The 2002 Watson Committee recommended that the indexation methodology could be changed for the Commonwealth funded schemes, however the Government of the day did not accept this recommendation and no changes to indexation were made at that time.

2001 Senate Select Committee on superannuation and financial services (2001 Watson Committee): *A 'Reasonable and Secure' Retirement?* The 2001 Watson Committee reviewed the benefit design of Commonwealth public sector and Defence Force unfunded superannuation funds and schemes.

Outcome: The 2001 Watson Committee review resulted in bi-annual CPI indexation adjustments being adopted for all Commonwealth schemes from January 2002. The 2001 Watson Committee also recommended that the feasibility of changing the indexation method from CPI should be examined. However the Government of the day did not support this recommendation and no changes to indexation were made until 2014.

1990 Cole Review: *Report of the DFRDB scheme review committee.* The 1990 Cole Review report looked into the suitability of DFRDB and the creation of a new scheme.

Outcome: The 1990 Cole Review considered the design of a replacement scheme for DFRDB and MSBS was introduced in 1991 as a result. The 1990 Cole Review also formalised the three per cent Productivity Benefit arrangement for DFRDB members and introduced the option of commutation for dependent spouses on the death of a contributing member.

1974 Melville & Pollard Review: *Report of the Treasurer's proposals for a new superannuation scheme for Australian Government Employees* and **1973 Pollard Review:** *Enquiry into superannuation pension updating.* The 1974 Melville & Pollard Review focused on the suitability of the existing arrangements for the superannuation of Australian Government employees (1922 Scheme), the proposal for a new Commonwealth superannuation scheme and what indexation method should apply for pensions paid under the new Commonwealth superannuation scheme. The 1973 Pollard Review enquired into the methods of adjusting the Commonwealth superannuation and DFRB scheme pensions.

Outcome: The 1974 Melville & Pollard Review considered the design of a new superannuation scheme for Australian Government employees and the Commonwealth Superannuation Scheme (CSS) was introduced in 1976 as a result.

Both the 1974 Melville & Pollard Review and the 1973 Pollard Review recommended automatic indexation of the Commonwealth superannuation scheme pensions using CPI as the method of indexation. This resulted in the introduction of automatic annual indexation using CPI for DFRDB pensions in 1976.

1972 Jess Committee: *Joint Select Committee on DFRB legislation.* The 1972 Jess Committee focused on the suitability of the DFRB scheme and the proposal for a new superannuation scheme for ADF members.

Outcome: The 1972 Jess Committee considered the design of a new superannuation scheme for ADF members and made a range of recommendations for the new scheme. As a result DFRDB was introduced in 1973 and the Government of the day accepted most of the 1972 Jess Committee recommendations when creating DFRDB, but did not accept them all.

3. A summary relating to the Commonwealth Ombudsman Investigation into the administration of the DFRDB scheme and additional information on the CDDA scheme

Commonwealth Ombudsman Investigation into the administration of the DFRDB scheme

The 2019 independent investigation undertaken by the Commonwealth Ombudsman concluded there were numerous examples of incorrect written and verbal information that had been disseminated within Defence from commencement of the DFRDB scheme. This information helped create and reinforce a relatively widespread misunderstanding among DFRDB members that the retirement pay reduction due to commutation would cease on reaching life expectancy factor age.[1]

The Ombudsman found that Defence was responsible for allowing this incorrect information to be provided to members of the DFRDB and this amounted to defective administration by Defence. Many DFRDB members were misled to believe that the commutation related reduction to their retirement pay would cease upon reaching life expectancy factor age.[2]

From the early 2000s onwards Defence has provided DFRDB members with the correct information and all CSC information was updated to contain correct information.[3]

The Ombudsman recommended that the Secretary of the Department of Defence and the Chief of the Defence Force apologise for the defective administration that occurred and the disappointment this had on affected DFRDB members. This recommendation was accepted and an apology letter was included in the final Commonwealth Ombudsman report.

The Ombudsman commissioned expert independent actuarial reports from the Australian Government Actuary (AGA) and KPMG which showed that it is unlikely any ADF members who commuted through the DFRDB scheme would have suffered a financial detriment. Both KPMG and the AGA considered a range of investment scenarios in coming to this conclusion. The scenarios used were based on conservative assumptions including:

- the commutation lump sum being invested in property and thus reducing the amount the member would have to borrow in relation to a home loan;
- the commutation lump sum being invested using the cash rate; and
- the commutation lump sum being invested in a term deposit.

The Ombudsman found that the modelling demonstrated having early access to capital provided by commutation was generally beneficial to DFRDB members relative to the alternative of not commuting.

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[1] 2019 Independent Commonwealth Ombudsman *Investigation into the administration of the DFRDB scheme*, Mr Michael Manthorpe, December 2019 (Page 22).
[2] 2019 Independent Commonwealth Ombudsman *Investigation into the administration of the DFRDB scheme*, Mr Michael Manthorpe, December 2019 (Page 54).
[3] 2019 Independent Commonwealth Ombudsman *Investigation into the administration of the DFRDB scheme*, Mr Michael Manthorpe, December 2019 (Page 55).

Information on the CDDA scheme

The Ombudsman could not exclude the possibility that there may be outlying cases in which financial loss might have occurred and said those should be dealt with on a case by case basis under the CDDA scheme. Members who believe they suffered a detriment have been, and are still able to, lodge claims on a specifically designed form. Information about how to make a claim can be found on the Defence Directorate of Special Financial Claims website.[4] The special claim form for DFRDB members can also be accessed on this page.

In each case that Defence has already considered and finalised, Defence contacted the claimant by email, mail or telephone to discuss the issues arising in the claim. In particular, their attention was drawn to the relevant conclusions of the Ombudsman: that there had been defective administration in the information supplied to members but that the defective administration alone did not cause financial detriment.

Claimants were asked to turn their mind to how their situation might have differed from the rest of their cohort, who were shown not to have sustained any detriment based on the modelling undertaken for the Ombudsman. Several members rang or emailed before they lodged a claim and Defence discussed with them the issues they should turn their minds to. The AGA was not engaged formally for the CDDA process, however AGA were consulted on some technical issues raised in specific claims. All claimants received a decision from Defence with reasons.

As at 9 April 2021, there has been 38 claims under the CDDA scheme. 36 claims were refused and two claims were withdrawn after discussion or correspondence. Two of the 36 claimants sought internal review of their decision. Both decision were affirmed on review. There were also telephone and email enquiries from a handful of others who did not choose to make a claim.

The Director, Employment Law and Discretionary Claims (previously Director, Special Financial Claims), in Defence Legal, made most of the decisions. Some decisions were made by the Assistant Director. One review decision was made by General Counsel-Defence.

Consistent with the Ombudsman's conclusion, Defence accepts there was defective administration in the information supplied to members before 2004. However, there were cases where it was apparent or acknowledged that the member did know in advance of their election that the pension would not be restored to the pre-commutation amount when they reached the life expectancy factor age.

On examination of claimants' circumstances, none were able to show how their situation differed from those who the Ombudsman's commissioned modelling showed were generally better off having commuted. Most were in the cohort who used the commutation lump sum to help them purchase a house.

Generally, the claimants did not dispute they were better off having commuted than had they not commuted. Their complaint about the DFRDB scheme and the Ombudsman's conclusion was that the scheme was not as generous as they were led to believe it would be.

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[4] https://www.defence.gov.au/Legal/Directorates/dsfc.asp

For compensation to be payable under the CDDA scheme, claimants must be able to show that they have sustained detriment of some kind. The distinction between financial detriment and financial disappointment is addressed in the CDDA Guidelines:

> *'Financial detriment can be distinguished from financial disappointment - for example, where a formal assessment results in the amount of an entitlement being less than a "ballpark" figure given to a person at the time they made inquiries.* ***A claimant does not suffer financial detriment merely because they were correctly not granted a benefit after being advised that they would receive that benefit****, or if a debt was raised due to a benefit being incorrectly paid'.*[5]

On that test, none of the claimants were able to show they had suffered detriment.

Information on the CDDA scheme was included in the letter of apology from the Secretary and CDF dated 3 December 2019. This information was also published on the Defence website[6] as an annexure to the Ombudsman's report[7] and on the CSC website[8].

Defence is also aware that affected DFRDB members were encouraged to claim by the Australian Defence Force Retirees Association (ADFRA) on their website[9] and in their newsletter. Many of the claims were copied directly from a template supplied to claimants by ADFRA.

4. The use of set Life Expectancy Factors and the Resulting Permanent Reduction to Pensions (Commutation)

Commutation is the early payment of part of a member's retirement pay in the form of a lump sum. The decision to commute is entirely voluntary and is neither an advance nor loan, but rather an immediate payment in exchange for a permanent reduction in pension. The lump sum forms part of the member's overall superannuation benefit and the pension is permanently reduced to recognise that lump sum recipients obtain long-term advantage from the immediate use of their lump sum.

The DFRDB commutation provisions reflect the recommendations of the 1972 Jess Committee on DFRB legislation and include the retention of a permanent reduction to the pension to account for the commutation.

When the *DFRDB Act 1973* was legislated, the commutation provisions were mirrored off the DFRB scheme. The 1970 DFRB Booklet provides that:

> *'Every pensioner should think carefully before relinquishing portion of his continuing pension entitlement to obtain an immediate lump sum payment. Factors such as the following are significant;*
>
> - *Once commutation is approved, the relevant portion of the pension is cancelled and cannot be restored subsequently*
>
> - *By commutation the pensioner cancels, not only a portion of this current pension entitlement at the date of approval of the commutation, BUT ALSO a similar*

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[5] https://www.finance.gov.au/individuals/act-grace-payments-waiver-debts-commonwealth-compensation-detriment-caused-defective-administration-cdda/scheme-compensation-detriment-caused-defective-administration-rmg-409 (para 56, emphasis added)
[6] https://www.defence.gov.au/PayAndConditions/ADF/Super-DFRDB-review.asp
[7] https://www.ombudsman.gov.au/How-we-can-help/australian-defence-force/dfrdb
[8] https://www.csc.gov.au/Members/News/DFRDB-Commutation-Inquiry/
[9] https://www.adfra.org/

portion of any likely pension increases by the notional category method[10] based on that pension entitlement'.[11]

The calculation undertaken to determine a member's lump sum and residual pension benefit includes a Life Expectancy Factor.[12] The Life Expectancy Factor is an element of the commutation calculation, which is undertaken to determine a DFRDB member's lump sum and resultant pension benefit.

Should a member live for more than the Life Expectancy Factor years used in the calculation of their lump sum, the pension is not adjusted accordingly. No part of the lump sum is recovered from a deceased member's estate, should the recipient die before reaching the Life Expectancy Factor years used.

The AGA has advised Defence that when the DFRDB scheme was introduced, the use of the 1960-1962 Australian Life Tables as a commutation factor was favourable to members relative to the alternative pension.

Over the years, it has been suggested by some DFRDB pensioners that the existing Life Expectancy Factors in DFRDB should be replaced with the current (or more contemporary) Australian Life Tables in the belief that the increase in life expectancy will improve a member's pension. The AGA has advised Defence that were the Life Expectancy Factors to be increased for future retirees, there would be increased Commonwealth costs due to this benefit improvement.

The 2019 independent investigation undertaken by the Commonwealth Ombudsman made note of the Life Expectancy Factors.[13] The Ombudsman noted that if the commutation divisor increased, it could have a beneficial flow on to members, however the Ombudsman concluded that as the scheme drafters did not include a provision to update the tables from time to time, it would suggest that the tables were meant to be used as a static commutation factor.

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[10] Pensions paid under the DFRB scheme were reviewed by the Government in conjunction with the annual Budget reviews. When pension increases were budgeted as part of the Federal Budget, the cost of the increase had historically been met from Consolidated Revenue. Pensions were increased using a notional category method applicable to their rank at termination from Service (Page 48 para 138).

[11] The DFRB Booklet issued by the DFRB Board in 1970 was at the time considered the equivalent of a Trust Deed and Rules for the DFRB scheme (Page 94 para 251).

[12] Schedule 3 of the *DFRDB Act 1973* provides for the 'Expectation of Life Factor' to be used for the commutation of retirement and Class C Invalidity pay. The 'Expectation of Life Factor' is interchangeably known as the Life Expectancy Factor or Life Expectancy Tables. The Expectation of Life Factor is based off the Australian Bureau of Statistics (ABS) 1960-1962 Australian Life Tables but does not use the ABS table itself.

[13] 2019 Independent Commonwealth Ombudsman *Investigation into the administration of the DFRDB scheme,* Mr Michael Manthorpe, December 2019 (Pages 51-52).

The 2007 Podger Review, acknowledged there had been a significant improvement in life expectancy and found that:

> *...the conversion factor based on a 1960s life expectancy is substantially more generous than a cost-neutral factor that takes into account opportunities to earn interest on the commuted lump sum. A conversion factor based solely on current life expectancy figures would be even more excessively generous...*
>
> ...
>
> *If any change were made to the DFRDB, it should be to require a substantially larger reduction in pension in return for the commuted lump sum, not a smaller reduction. In line with the Terms of Reference requirement of no detriment, the Review Team recommends no change to the life expectancy factors currently applying to the DFRDB commutation calculation.*[14]

The permanent lifetime reduction to a DFRDB pension as a result of commutation is consistent with the arrangements in the other civilian and military superannuation schemes. In CSS, the Public Sector Superannuation Scheme (PSS) and MSBS if a member chooses to take part of their benefit as a lump sum, the amount of their lifetime pension is permanently reduced from what it would have been had the member not taken a lump sum. The factors used to convert pensions into lump sums (or vice versa) in the CSS, PSS and MSBS have not been amended or reviewed since the schemes commenced and are considered as permanent design features of the schemes.

5. Indexation - Methodology and Application

Indexation Methodology

Since the introduction of DFRDB in 1973 there have been a range of reviews to consider the most appropriate method of indexation for DFRDB pensions. While some reviews differ in the exact methods to be used, they broadly agree that a fair method of indexation allows for pension recipients to maintain the purchasing power of the pension over time.

The 1973 Jess Committee recommended that pensions paid from DFRDB should be indexed annually to maintain relativity with Average Weekly Earnings. However, only ad hoc increases in line with Average Weekly Earnings were made to pensions between 1973 and 1976.

Annual indexation adjustments to DFRDB pensions commenced in 1976 using the CPI rate, following the recommendations from the 1973 Pollard Review and the 1974 Melville & Pollard Review.

The 2001 Watson Committee review recommended bi-annual CPI indexation adjustments being adopted for all Commonwealth funded schemes including the DFRDB. This took effect from January 2002 after the Government announced an increase to Commonwealth superannuation pensions in the 2001-02 Budget in line with CPI twice yearly instead of annually.[15] The 2001 Watson Committee also recommended that the feasibility of changing the indexation method from CPI should be examined.

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[14] 2007 Podger Review *Report of the Review into Military Superannuation Arrangements*, Mr Andrew Podger, July 2007 (Pages 61-62).

[15] 2001-02 Federal Budget *Budget Paper No.1 Statement 1 Part III Budget Priorities*, May 2001 (Page 1-16).

The 2002 Watson Committee recommended that the Government consider indexing Commonwealth funded superannuation pensions (including DFRDB) in line with increases to the Male Total Average Weekly Earnings or CPI, whichever is the higher, in order that recipients share in the increases in living standards enjoyed by the wider community.[16] The Government of the day did not adopt this recommendation and bi-annual CPI indexations adjustments continued to be used.[17]

The 2007 Podger review recommended that 'if the Government is willing to go beyond the envelope of current costs, it should consider indexing DFRDB and DFRB pensions for those over 55 on a similar basis to that applying to age pensions'. In its finding, the review noted that given government policy on preservation arrangements, it considered there was no case to increase the generosity of benefits payable prior to age 55.[18]

While the 2007 Podger Review considered there was an in-principle case for changing the indexation arrangements of these pensions, it also found 'the DFRDB is a particularly generous scheme for those in receipt of pensions; that CPI indexation does maintain purchasing power, and is generous when compared to most contemporary superannuation schemes that may only provide account-based pensions at the member's risk'.[19]

The 2008 Matthews Review recommended that the Commonwealth funded superannuation pensions (including DFRDB) should continue to be indexed by CPI. The 2008 Matthews Review acknowledged that although CPI has changed in some respects over time, it remained the most suitable available prices index for the purpose of pension indexation.[20]
The Government of the day accepted this recommendation and no changes were made.

In 2014 in line with the recommendation of the 2007 Podger Review, the Australian Government made a beneficial change to the DFRDB and DFRB schemes indexation methodology. This change means DFRDB and DFRB pensions for people over age 55 are now indexed in the same way as age and service pensions.

Since 2014 there have been no further changes or reviews into the indexation methodology for DFRDB pensions.

Indexation Application

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[16] 2002 Watson Committee *Senate Select Committee on Superannuation: Superannuation and standards of living in retirement – Report on the adequacy of the tax arrangements for superannuation and related policy*, December 2002, (Page 194 para 14.28).
[17] Government Response *Senate Select Committee on Superannuation: 'Superannuation and Standards of Living in Retirement'*, tabled in Parliament 14 February 2005 (Page 19).
[18] 2007 Podger Review *Report of the Review into Military Superannuation Arrangements*, Mr Andrew Podger, July 2007, (Pages 60-61).
[19] 2007 Podger Review *Report of the Review into Military Superannuation Arrangements*, Mr Andrew Podger, July 2007, (Page 60).
[20] 2008 Matthews Review *Pension Indexation Arrangements in Australian Government Civilian and Military Superannuation Schemes*, Mr Trevor Matthews, December 2008 (Page 47).

If a member does not elect to commute or commutes less than four times the pension then indexation is only applied to the 'notional rate of retirement pay'.[21] The 'notional rate of retirement pay' is the rate of pension that would be payable if the member had commuted four times the pension (which was the maximum amount that could be commuted at the time indexation arrangements were introduced).

If a member does not elect to commute or commutes less than four times the pension there will be a non-indexed portion of the pension. If a member commutes four times or greater (maximum five times) the residual pension is fully indexed.

Reversionary benefits under the DFRDB scheme are payable to eligible spouses and children on the death of a DFRDB pensioner. An eligible spouse and any eligible children are entitled to a portion of deceased members pension calculated on the pension amount the member would have received had they not commuted. As reversionary pensions are calculated using the non-commuted pension amount, there will always be a non-indexed portion. The non-indexed portion reflects where a member has commuted, the member has received the benefit of that portion as a lump sum upfront. Where a member does not commute, the non-indexed portion reflects that a lifetime pension is being paid instead of the member receiving the benefit from a lump sum being paid up front.

When automatic indexation was introduced in 1976 it was applied only to the 'notional rate of retirement pay' to reflect the employer funded part of the pension. The non-indexed portion of a pension reflects the employee funded (member contributions) part of the pension. This broadly replicates the indexation arrangements of the CSS and was consistent with the recommendations of the 1973 Pollard Review and the 1974 Melville & Pollard Review.

[21] *DFRDB Act 1973* subsection 98B(5)

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Internal Review
Document 1

The Senate

Foreign Affairs, Defence and Trade References Committee

Accuracy of information provided to Defence Force Retirement and Death Benefits (DFRDB) members

July 2021

Defence FOI 0044/26/27
Internal Review
Document 1

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List of Recommendations

Recommendation 1

5.21 The committee recommends that the Australian Government consider ways to improve members' understanding of DFRDB and other military superannuation schemes. This could include additional information and education for ADF recruits and officer cadets, and ongoing updates for ADF personnel. It could also comprise a dedicated website or webpage for members, including a summary of the scheme and information on a member's contributions history and any residual pension payable.

Recommendation 2

5.22 The committee recommends that the Australian Government consider more assistance for DFRDB members to make claims under the CDDA scheme and appeal any adverse decisions or a separate reparation payments scheme for DFRDB members who are unsuccessful under the CDDA scheme to recognise the government's moral obligation to address any confusion and distress caused by defective administration. Where a CDDA claim was successful, compensation could include any professional costs expended in preparation of the claim, and legal and other professional costs if a claimant successfully appealed an adverse finding. Further, where the claimant's CDDA appeal was unsuccessful, the Commonwealth should consider not applying for costs to be awarded against the claimant.

Chapter 1
Introduction and background

Referral

1.1 On 18 March 2021, the Senate referred the following matter to the Senate Foreign Affairs, Defence and Trade References Committee for inquiry and report by 24 June 2021:

> The accuracy of information provided to Defence Force Retirement and Death Benefits (DFRDB) members, including:
>
> (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;
>
> (b) whether retirement payments were indexed as required by legislation and, if not, what remedial action (if any) could be taken;
>
> (c) policy and legislative issues, including provisions for:
>
> (i) use of certain life expectancy tables,
>
> (ii) permanency of reductions to commuted pensions, and
>
> (iii) indexation arrangements; and
>
> (d) recommendations on any potential changes to administrative arrangements, policy or legislation;
>
> (e) advice on costs associated with any recommendations;
>
> (f) all relevant existing information and previous reviews in relation to DFRDB, including the findings of the Ombudsman's investigation;
>
> (g) the level of understanding among DFRDB members about how the legislation works, and ways to improve this; and
>
> (h) any related issues.[1]

Conduct of the inquiry

1.2 Details of the inquiry were placed on the committee website at: http://www.aph.gov.au/senate_fadt. The committee also contacted a number of relevant individuals and organisations to notify them of the inquiry and invite submissions by 30 April 2021. Public submissions received are listed at Appendix 1.

1.3 The committee held a hearing on 20 May 2021 in Canberra. A list of witnesses who gave evidence at the public hearing is available at Appendix 2. Submissions and the Hansard transcript of evidence may be accessed through the committee website.

---

[1] *Journals of the Senate*, No. 96—18 March 2021, p. 3365.

1.4 The committee thanks the organisations and individuals who provided submissions and participated in the committee's hearing.

Background

What is DFRDB?

1.5 The Defence Force Retirement and Death Benefits (DFRDB) scheme operates to provide retirement benefits to members of the Australian Defence Force. (ADF). It commenced on 1 October 1972 and closed to new members on 30 September 1991[2] and has been closed to re-entering members since 1 July 2016.[3] Originally overseen by the DFRDB Authority, from 2011, it has been managed by the Commonwealth Superannuation Corporation (CSC).[4]

1.6 The DFRDB scheme was a 'specially designed pension arrangement which differed from other public sector superannuation schemes to accommodate the particular needs of the ADF'. For example:

- retirement pensions were based on rank, took into account earlier retiring ages and were designed to supplement civil employment earnings
- commutation provided access to capital for relatively young retirees who were transitioning to civilian life.[5]

1.7 The CSC 2019-20 Annual Report indicated that as at 30 June 2020 there were 51,560 DFRDB pensioners[6] (excluding Defence Forces Retirement Benefits (DFRB)) and 1,029 contributors.[7]

Joint Select Committee

1.8 Before the DFRDB scheme commenced, the DFRB scheme was in operation. On 2 September 1970 the Joint Select Committee on Defence Forces Retirement Benefits Legislation[8] was established 'to inquire into and report upon the

---

2 When the Military Superannuation and Benefits Scheme (MSBS) was established.

3 It was not compulsory for DFRDB members to transfer to the MSBS. MSBS closed to new members on 30 June 2016 and from 1 July 2016 ADF Super became the default employer fund for all new ADF members. However members may choose another complying superannuation fund. Defence, *Submission 39*, p. 1.

4 Australian Government, Commonwealth Superannuation Corporation, About your scheme, A summary of the Defence Force Retirement and Death Benefits Scheme, 2016 pp. 5-6.

5 Commonwealth Ombudsman, Investigation into the administration of the Defence Force Retirement and Death Benefits (DFRDB) Scheme, Report No. 06 of 2019, December 2019, p. 5.

6 Pensioners figures indicate the number of pension accounts, not the number of individuals who get a pension (eg. One account can have multiple children or spouses paid from it)

7 *CSC Annual Report 2019-20*, pp. 354-355.

8 Chaired by Mr John David Jess, C.B.E. MP and is therefore referred to as the Jess Committee or Jess Report.

Defence Forces Retirements Benefits legislation…'. The final report of this committee, tabled on 18 May 1972, noted that the appointment of the committee 'reflected the concern of private members and of Senators of all parties with the operation of the present legislation. In particular the very high contribution rates that were being required of certain pre-1959 entrants to the scheme, the delays in completion of the statutory actuarial reviews and the ever growing complexity of the legislation were causing concern'.[9]

1.9 In broad terms, the committee recommended a new military superannuation scheme be established to replace the existing pre-1959 and post-1959 DFRB schemes[10] and that the assets of the DFRB Fund be transferred to the Consolidated Revenue Fund.[11]

1.10 The Department of Defence (Defence) confirmed that the DFRDB scheme legislation 'was derived from the 1972 report of the Joint Select Committee (the Jess Committee) which made 20 recommendations to the Government of the day. The majority of the recommendations were accepted, with modifications to some'.[12] Defence highlighted that the government of the day accepted most but not all of the recommendations.[13]

What is commutation?

1.11 Commutation, is 'the option to take a lump sum up front in exchange for a reduced retirement pay, [and] 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'. Originally:

> 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.[14]

---

9 Joint Select Committee on Defence Forces Retirement Benefits Legislation, Report, 18 May 1972, p. 7.

10 DFRB is a closed scheme established in 1948 which closed to new contributors on 30 September 1972. Contributing customers at that time automatically transferred to DFRDB on 1 October 1972. See https://www.transparency.gov.au/annual-reports/commonwealth-superannuation-corporation/reporting-year/2018-2019-43 accessed 27 May 2021.

11 Leslie Nielson, Military superannuation myths and reality, Parliamentary Library, Research Paper no. 17, 2007-08, 10 January 2008, p. [7].

12 Defence, *Submission 39*, p. 1.

13 Defence, *Submission 39*, p. 3.

14 Commonwealth Ombudsman, Investigation into the administration of the Defence Force Retirement and Death Benefits (DFRDB) Scheme, Report No. 06 of 2019, December 2019, p. 5.

1.12 Defence explained commutation in the following way:

> Commutation is the early payment of part of a member's retirement pay in the form of a lump sum. The decision to commute is entirely voluntary and is neither an advance nor a loan, but rather an immediate payment in exchange for a permanent reduction in pension. The lump sum forms part of the member's overall superannuation benefit and the pension is permanently reduced to recognise that lump sum recipients obtain long-term advantage from the immediate use of their lump sum.[15]

1.13 Defence explained that '[w]hen the DFRDB Act 1973 was legislated, the commutation provisions were mirrored off the DFRB scheme'.[16]

1.14 Eligible DFRDB members 'may elect to commute part of their retirement pay entitlement into a lump sum at the time of their discharge regardless of their age (which could have been as early as 36), or further employment'.[17]

1.15 S24(1) of the DFRDB Act provides the legislative basis for commutation: 'A person who is, or is about to become, entitled to retirement pay[18] may, by notice in writing given to CSC, elect to commute a portion of his or her retirement pay in accordance with this section'.[19]

1.16 It was noted that 'receiving commutation requires an active choice to be made. To receive a commutation lump sum, members needed to fill in a commutation election form and submit it to CSC within 3 months before retirement, or in the 12 months after discharge'.[20]

1.17 If a member elects to commute, paragraph 24(3)(b) of the DFRDB Act contains a statutory process of calculating the resulting reduction to retirement pay:

> the commutation lump sum is divided by the person's 'expectation of life factor' to produce the annual reduction for commutation. The expectation of life factor is worked out according to their age and gender using a table in Schedule 3.[21]

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15 Defence, *Submission 39*, p. 6.

16 Defence, *Submission 39*, p. 6.

17 Commonwealth Ombudsman, Investigation into the administration of the Defence Force Retirement and Death Benefits (DFRDB) Scheme, Report No. 06 of 2019, December 2019, p. 8.

18 A percentage of a person's salary immediately before discharge and depends on the number of complete years of effective service. See Commonwealth Ombudsman, Investigation into the administration of the Defence Force Retirement and Death Benefits (DFRDB) Scheme, Report No. 06 of 2019, December 2019, p. 9.

19 Commonwealth Ombudsman, Investigation into the administration of the Defence Force Retirement and Death Benefits (DFRDB) Scheme, Report No. 06 of 2019, December 2019, p. 9.

20 Commonwealth Ombudsman, Investigation into the administration of the Defence Force Retirement and Death Benefits (DFRDB) Scheme, Report No. 06 of 2019, December 2019, p. 9.

21 Commonwealth Ombudsman, Investigation into the administration of the Defence Force Retirement and Death Benefits (DFRDB) Scheme, Report No. 06 of 2019, December 2019, p. 11.

Numbers choosing to commute

1.18 The Commonwealth Ombudsman (Ombudsman) noted that the numbers choosing to commute dropped slightly in recent years but remains high (at or above 85 per cent).[22]

1.19 Defence reported that data from the CSC 'shows that during the period from 1996 to 2019 there were 19,591 DFRDB members eligible to commute and on average, approximately 94 per cent (18,513) elected to commute'.[23]

Review by the Commonwealth Ombudsman

1.20 The DFRDB has been subject to a number of reviews and these are detailed in the Defence submission.[24] The most recent review was undertaken by the Ombudsman which looked specifically at the information provided to DFRDB members with respect to commutation.

1.21 On 5 April 2019 the Minister for Veterans' Affairs and Defence Personnel wrote to Ombudsman asking that he consider undertaking an inquiry into the DFRDB scheme. After considering the request, on 10 April 2019, the Ombudsman wrote to the minister indicating that he had decided to commence an own motion investigation under the own motion powers *Ombudsman Act 1976*.[25]

1.22 The Ombudsman told the committee that he agreed to do so 'on the basis that there were serious allegations about how the scheme was administered'. The key issue was 'whether DFRDB members, or some of them, had been misled as to their DFRDB entitlements and were, consequently owed compensation'.[26]

Scope of the investigation

1.23 The Ombudsman limited the scope of the investigation to the 'administration of the DFRDB Scheme, and particularly the issue of commutation. The primary focus of the investigation [was] the accuracy of the information provided to DFRDB members'.[27]

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[22] Commonwealth Ombudsman, Investigation into the administration of the Defence Force Retirement and Death Benefits (DFRDB) Scheme, Report No. 06 of 2019, December 2019, p. 14.

[23] Defence, answers to questions on notice, received 4 June 2021, question 5. Note: CSC advised that data prior to 1996 is not available.

[24] Defence, *Submission 39*, pp. 2-3.

[25] Commonwealth Ombudsman, Investigation into the administration of the Defence Force Retirement and Death Benefits (DFRDB) Scheme, Report No. 06 of 2019, December 2019, p. 1.

[26] Commonwealth Ombudsman, *Submission 52*, p. [2].

[27] Commonwealth Ombudsman, Investigation into the administration of the Defence Force Retirement and Death Benefits (DFRDB) Scheme, Report No. 06 of 2019, December 2019, p. 1.

1.24 The Ombudsman informed the committee that as well as inviting submissions, they met with stakeholder groups and interviewed more than 30 people. The submissions showed:

- the majority of DFRDB members who made submissions to our Office chose to commute and some of these decisions were based on a correct understanding of the scheme;
- a small number of submitters understood the scheme's operation and decided not to commute;
- many submitters felt they were misled to believe that the reduction to their retirement pay, resulting from commutation, was temporary and would cease when they reached their life expectancy factor age – some members felt frustration, disappointment and anger when this turned out to be incorrect;
- a large proportion of submitters asserted that they relied on Defence's advice to their detriment, and were owed compensation, however a small number of submitters told us that Defence's advice did not cause financial detriment, and some expressed that awarding compensation to the DFRDB members who chose to commute would be wrong.[28]

1.25 Mr Michael Manthorpe, Commonwealth Ombudsman, clarified for the committee that:

> My investigation was focused on the accuracy of information about commutation that was provided to DFRDB members by scheme administrators in relevant departments. This reflects the scope of my functions under the Ombudsman Act, which authorises me to investigate matters of administration, as opposed to matters of policy, concerning the design of the scheme.[29]

1.26 The Ombudsman noted that the following issues which go to the 'nature of the legislation passed by parliament and matters of government policy' were out of scope of the investigation:

- Whether legislation is fair and just, including provisions for:
  - Use of certain life expectancy tables
  - Permanency of reductions to commuted pensions
  - Indexation arrangements.
- Whether government ought to take different policy decisions or make amendments to legislation.[30]

1.27 The Ombudsman noted:

> While these matters are not within scope, the submissions we received indicated a high level of dissatisfaction with current policy settings, as

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[28] Commonwealth Ombudsman, *Submission 52*, p. [3].

[29] *Proof Committee Hansard*, 20 May 2021, p. 25.

[30] Commonwealth Ombudsman, Investigation into the administration of the Defence Force Retirement and Death Benefits (DFRDB) Scheme, Report No. 06 of 2019, December 2019, p. 2.

> expressed through the statutory arrangements. A section has therefore been included to summarise the out of scope issues arising in the submissions received. There was also evidence of confusion among DFRDB members about how DFRDB legislation works. We have endeavoured to provide clarification on the operation of the legislation.[31]

Design of the scheme

1.28 Issues raised with the committee focused on dissatisfaction with the design of the scheme. This included the effect of commutation on retirement pay (see Chapter 2) as well as indexation arrangements and some others including the use of the expectation of life factor tables (see Chapter 3).

Permanent reduction in retirement pay

1.29 The DFRDB legislation provides two options, to commute with a reduced pension or not to commute. Commutation and its effects are explained above.[32] See Chapter 2 about the information provided to DFRDB members on commutation and Chapter 3 in relation to this design aspect of the scheme.

Indexation

1.30 Defence noted that since the introduction of the DFRDB in 1973 'there have been a range of reviews to consider the most appropriate method of indexation for DFRDB members' and:

> While some reviews differ in the exact methods to be used, they broadly agree that a fair method if indexation allows for pension recipients to maintain the purchasing power of the pension over time.[33]

1.31 Defence further explained that in 1973, the Jess Committee recommended that 'pensions paid from DFRDB should be indexed annually to maintain relativity with Average Weekly Earnings. However, only ad hoc increases in line with Average Weekly Earnings were made to pensions between 1973 and 1976'.[34]

Legislative background

1.32 The Ombudsman went through the legislative background to indexation in his report as briefly described below:

- in 1977 the DFRDB Act was amended by the *Defence Force (Retirement and Death Benefit Amendments) Act 1977* which allowed the pension to be indexed from 1 July 1976 resulting in pensions increasing if there was an

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[31] Commonwealth Ombudsman, Investigation into the administration of the Defence Force Retirement and Death Benefits (DFRDB) Scheme, Report No. 06 of 2019, December 2019, p. 2.

[32] Defence, *Submission 39*, p. 6. See also Commonwealth Ombudsman, Investigation into the administration of the Defence Force Retirement and Death Benefits (DFRDB) Scheme, Report No. 06 of 2019, December 2019, Foreword.

[33] Defence, *Submission 39*, p. 8.

[34] Defence, *Submission 39*, p. 8.

upward movement in the CPI (but not decreased if there was a downward movement);
- the *Superannuation and Other Benefits Legislation Amendment Act 1986* temporarily reduced the annual CPI indexation by 2 per cent from 23 October 1986 to 20 October 1989 at which point the published CPI indexation was again applied each year;
- from 1 January 2002, retirement pay indexation frequency was increased to twice a year;
- in 2014 the *Defence Force Retirement Benefits Legislation Amendment (Fair Indexation) Act 2014* added Division 2 of Part XA of the DFRDB Act which applies to pensioners over 55 years of age, to ensure DFRDB indexation arrangements in this group operate similarly to the indexation arrangements that apply to the age pension.[35]

1.33 The submission from Defence also outlines a number of reviews into this issue. Defence confirmed that since 2014 'there have been no further changes or reviews into the indexation methodology for DFRDB pensions'.[36]

1.34 In summary, currently:

> For members who are under 55, the relevant indexation rate is the Consumer Price Index (unless the CPI is negative, in which case the pension is unchanged. This ensures pensions are not reduced if there is downward movement in the CPI).
>
> For members who are 55 and over, the relevant indexation rate is the higher of CPI or the Pensioner and Beneficiary Living Cost Index. There is an additional safeguard which means the increase must be sufficient to ensure a hypothetical 'indicative' pension does not fall below 27.7 per cent of Male Total Average Weekly Earnings.[37]

1.35 While concerns about the statutory indexation formula increasing the commutation reduction over time fell within the scope of the Ombudsman's investigation, concerns about the statutory formula were beyond the scope but were summarised.[38] See Chapter 3 for discussion of issues raised in relation to indexation.

Structure of the report

1.36 The report consists of five chapters:

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[35] Commonwealth Ombudsman, Investigation into the administration of the Defence Force Retirement and Death Benefits (DFRDB) Scheme, Report No. 06 of 2019, December 2019, pp. 44-45.

[36] Defence, *Submission 39*, p. 9.

[37] Commonwealth Ombudsman, Investigation into the administration of the Defence Force Retirement and Death Benefits (DFRDB) Scheme, Report No. 06 of 2019, December 2019, p. 45.

[38] Commonwealth Ombudsman, Investigation into the administration of the Defence Force Retirement and Death Benefits (DFRDB) Scheme, Report No. 06 of 2019, December 2019, p. 44.

- Chapter 1 is the referral, conduct of the inquiry and some background information;
- Chapter 2 covers the information provided to DFRDB members in relation to commutation;
- Chapter 3 details the design issues with the scheme raised with the committee;
- Chapter 4 covers suggestions and costs; and
- Chapter 5 details the committee's conclusions and recommendations.

Chapter 2
Provision of information to DFRDB members

2.1 This chapter details the provision of information on commutation to DFRDB members, highlighting the information provided by the Commonwealth Superannuation Corporation (CSC) and Defence, as well as the findings of the Commonwealth Ombudsman (Ombudsman) who looked into this issue in detail, including whether there had been financial detriment as a result of the information provided and whether compensation was warranted. It also notes some responses to the Ombudsman's report and the Ombudsman's reply.

2.2 It is worth noting at the start of this chapter information contained in the Ombudsman's report about commutation which summarises the key issue and the options that have been and are available in legislation:

> It is important to note that there have only ever been two options available to DFRDB members: namely, to commute, or not to commute. DFRDB members reported being told that commutation was a loan to be repaid over their life expectancy. Such information is incorrect. At law, commutation is not a loan, but a permanent exchange of one type of entitlement for another. The result is a permanent reduction to retirement pay.[1]

Numbers choosing to commute

2.3 Ahead of investigating the information provided to DFRDB members the numbers choosing to commute is helpful to keep in mind. The Ombudsman's report noted that the numbers choosing to commute dropped slightly in recent years but remains high (at or above 85 per cent),[2] even after improved guidance about the effect of commutation started to be published from 2004. A 2001 Administrative Appeals Tribunal (AAT) decision also made it clear that 'retirement pay cannot revert to the pre commutation rates once life expectancy factor age is achieved'.[3]

2.4 The CSC told the committee that:

> Anecdotally, we are aware that the commutation option has been highly regarded by members of the Defence Force as it has assisted people to make the transition to civilian life (including allowing them to make

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[1] Commonwealth Ombudsman, Investigation into the administration of the Defence Force Retirement and Death Benefits (DFRDB) Scheme, Report No. 06 of 2019, December 2019, Foreword.

[2] Commonwealth Ombudsman, Investigation into the administration of the Defence Force Retirement and Death Benefits (DFRDB) Scheme, Report No. 06 of 2019, December 2019, p. 14.

[3] Commonwealth Ombudsman, Investigation into the administration of the Defence Force Retirement and Death Benefits (DFRDB) Scheme, Report No. 06 of 2019, December 2019, pp. 14-15.

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> choices for their financial future, such as paying off loans and/or purchasing property.[4]

2.5 The Ombudsman reported on interviews held with some DFRDB members, that '[w]ith very few exceptions, we were told they would have still commuted, because at the time they needed access to capital, for example to purchase a home or business'.[5]

2.6 A submitter confirmed that:

> I would like to add that due to the many moves required during defence service most retiring DFRDB members relied on the commutation…lump sum to provide a deposit for their own homes as they settled back into civilian life.[6]

2.7 Mr Herb Ellerbock, Secretary, Australian Defence Force Retirees Association, (ADFRA) noted that his circumstances at the time meant that he needed to commute:

> I had not been able to establish anything after 20 years in the Army. We moved from pillar to post. I had a young family. Interest rates were very high at the time, something in the order of 17 per cent. It was the only way I was going to be able to buy a house. So, yes, I would have made that decision regardless.[7]

2.8 Mr Kel Ryan, President, Defence Force Welfare Association, noted that commutation 'notwithstanding that its future implications were little understood…was a significant attractive element to the scheme…'[8]

2.9 The DFRDB COMMUTATION CAMPAIGN (the Campaign), however, was of the view that '[h]ad the Superannuants been aware of the Life-Term impost of their Retirement Pay, very few would have accepted the lump sum proffered by the DFRDBA'.[9]

Provision of information

2.10 On the question of who provided incorrect information to them, some submitters pointed to Defence, a smaller number to the Defence Force Retirement and Death Benefits Authority (DFRDBA)/CSC and many were not specific, stating that they attended resettlement seminars and outlining what they were told.

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4 CSC, *Submission 50*, p. [4].

5 Commonwealth Ombudsman, Investigation into the administration of the Defence Force Retirement and Death Benefits (DFRDB) Scheme, Report No. 06 of 2019, December 2019, p. 34.

6 Name withheld, *Submission 26*, p. [1]. See also Mr Charles Myhill, *Submission 29*, p. 2.

7 *Proof Committee Hansard*, 20 May 2021, p. 11.

8 *Proof Committee Hansard*, 20 May 2021, p. 12.

9 DFRDB COMMUTATION CAMPAIGN, *Submission 22*, p. 6.

2.11 In summary, the argument to the committee is that some DFRDB members were led to believe that the reduction to their retirement pay as a result of commuting or taking a lump sum was temporary and would cease on reaching their life expectancy factor age. DFRDB members assert that they relied on this information to their financial detriment and/or that this design aspect of the DFRDB scheme is not fair.

2.12 The Campaign which represents over 1,000 veterans registered with the campaign and a further 2,000 with registered interest through social media sites, detailed the understanding that arose from advice provided by Defence:

> Superannuants were fully aware that once the Lump Sum was received, their annual Retirement Pay would be reduced by an amount calculated on their length of Service, rank, salary, and the number of years until they reached their Notional Life Expectancy point. At that point, they understood their Retirement Pay reductions would cease. This too, they were falsely assured of by Defence, in Official publications over a 20-year period….[10]

2.13 Mr Ken Stone, Independent Advocate, the Campaign, pointed out to the committee that Defence published 'six editions of an official publication' that advised ADF personnel that retirement pay reductions would stop once they reached their notional retirement age.[11]

2.14 Commander Anthony Parkin (Rtd) was just one of many who recounted their experience:

> I attended a Resettlement Seminar early 1989 prior to retiring in July 1989 having served in the Royal Australian Navy for 20 years. I was informed of the opportunity to commute a portion of my DFRDB pension and receive a lump sum payment. I understood that, once the lump sum was received, my annual Retirement Pay would be reduced by an amount calculated on my length Service, rank, salary, and the number of years until I reached my Notional Life Expectancy point, when I understood the reduction would cease. At no time was I advised that this reduction in my Retirement Pay would be for life; I expected my full Retirement Pay to be reinstated once I had paid off the lump sum and reached the Life Expectancy point of around 72 years.[12]

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10 DFRDB COMMUTATION CAMPAIGN, *Submission 22*, p. 6.

11 *Proof Committee Hansard*, 20 May 2021, p. 2.

12 Cmdr Anthony Parkin (rtd), *Submission 1*, p. 1. See also Name withheld, *Submission 2*, pp. 1-3; Mr Neville Madden, *Submission 3*, p. 1; Mr William Harrison, *Submission 4*, p. 1; Mr Ian Bawden, *Submission 5*, p. 1; Mr Alan White, *Submission 6*, p. 1; Mr Anthony Ryan, *Submission 7*, p. 1; Mr William Krause, *Submission 8*, p. 1; Mr Kenneth Park *Submission 9*, p. 1; Name withheld, *Submission 10*, pp. 1-2; Mr Keith McIntosh, *Submission 11*, p. 1; Commander Graham J Darcy RAN (Rtd), *Submission 12*, pp. 1-2; Mr Clive Dennett, *Submission 13*, pp. 1-2; Mr John Snell, *Submission 14*, p. 1; Mr Graham Morris, *Submission 15*, p. 1; Mr Bruce Campbell, *Submission 16*, pp. 1-3; Australian Army Training Team Vietnam Association (WA Branch) Inc, *Submission 17*, pp. 1-2; Name withheld, *Submission 18*, p. 1; WG Ritchie AM RAN (Rtd), *Submission 19*, p. 1; Mr Pater Larard,

2.15 Similarly another submission stated:

> 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 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.[13]

2.16 Yet another submitter argued:

> DFRDB members were not informed that if they took the commutation option that they would keep paying for the commutation lump sum with a reduced pension for the rest of their lives. DFRDB Members who chose not to commute their pensions will still be getting the extra amount (circa $2000 per year) for the rest of their lives.[14]

DFRDBA/CSC

2.17 Other submitters pointed to the DFRDBA (now CSC) as the source of misleading information or saw failings in communication with DFRDB members. For example Mr Rodney Cox told the committee that he considers that 'I have been deceived by the DFRDB AUTHORITY in accepting a Lump Sum benefit known as a COMMUTATION – without the conditions, thereof, being openly made known to me'.[15] Mr Keith McIntosh was also of the view that the CSC failed to disclose the fact that commutation 'was for life in the resettlement seminar I attended and in the correspondence I received'.[16]

2.18 The Campaign also pointed to the DFRDBA. Mr Ken Stone explained:

> …the primary DFRDB Authority brochure, that was issued on October 1974 and had DFRDB advice to serving members, was not actually issued

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Submission 20, pp. 1-2; Mr Clive Connor, *Submission 23*, pp. 1-2; Mr Robert Richards, *Submission 24*, p. 1; Name withheld, *Submission 25*, p. [2]; Name withheld, *Submission 27*, p. [1]; Mr Charles Myhill, *Submission 29*, p. 1; Mr David Plummer, *Submission 31*, p. [4]; Name withheld, *Submission 32*, p. 2; Name withheld, *Submission 33*, pp. [1-2].; Mr Richard Usher, *Submission 34*, p. 3; Name withheld, *Submission 35*, p. 2; Name withheld, *Submission 37*, p. [1]; Defence Force Welfare Association (WA Branch, *Submission 38*, p. 1; Name withheld, *Submission 40*, p. [2]; Mr Paul McGregor, *Submission 41*, p. [1]; Name withheld, *Submission 42*, p. 2; Name withheld, *Submission 43*, p. [2]; Name withheld, *Submission 44*, p. [1]; Mr Steven Kersnovske, *Submission 47*, pp. 1-2; Name withheld, *Submission 48*, p. 2; Mr Martin Smith, *Submission 55*, p. [1]; Mr Jim Nicholls, *Submission 56*, p. 2; Name withheld, *Submission 58*, p. [1]; Mr Michael Tehan, *Submission 59*, p. [1]; Mr Tom Williams, *Submission 61*, p. [1]; Mr Greg Decker, *Submission 73*, p. 1; Mr Arthur Drury, *Submission 76*, p. 2.

[13] Name Withheld, *Submission 18*, p. [1].

[14] Name withheld, *Submission 26*, p. [2].

[15] Mr Rodney Cox, *Submission 51*, p. 3. Emphasis in original.

[16] Mr Keith McIntosh, *Submission 11*, p. 1. See also Mr Bruce Campbell, *Submission 16*, p. 3.

> to every serving ADF member. No; the authority only issued it to DFRDB Authority resettlement counsellors and Department of Defence resettlement administrators.[17]

2.19 Mr Stone explained further:

> That authority [DFRDBA] created and clearly enunciated administrative policy for communication to the Department of Defence—the scheme sponsor—to whom they were responsible. Why not the same statement to superannuants? It was clear, it was concise and it was understandable. Conspicuously, though, that same authority abjectly failed to render the clear and concise interpretation and communication of that policy to their clients, those being DFRDB contributors and veteran superannuants.[18]

2.20 Mr Stone concluded:

> The maladministration of client communications by the DFRDB [A]uthority failed to provide accurate policy advice to contributors. In so doing, it failed to identify its prime target audience and failed to deliver [correct] communication policy to them.[19]

2.21 The Campaign alleged that:

> [t]he term Commutation, and the policy it represented, in applying a Life-Term impost (at the full reduction-rate applied to total recovery of the pre-payment sum by their National Life Expectancy Point, ongoing) was duplicitously hidden by DFRDBA from contributors. Additionally, also over-written with false information, by their direct employer, Defence. The TRUE policy was never revealed to eligible superannuants – even on revelation by the DFRDBA some 30-years after the scheme was launched, only ADF personnel were then advised – not Veteran Superannuants.[20]

2.22 Further, the Campaign submitted that there was 'a complete failure in client communications and consequently, client understanding of its Schemes'. It added:

> Such communications should be on a one-on-one basis not through intermediaries such as Departmental processes. The same conditions should apply to CSC in regards to its clients, as are met by private sector financial industry providers.[21]

2.23 Another submitter argued that 'the DFRDB Authority has failed to divulge to contributors, its intent to sustain reductions in pay indefinitely even after the full amount of commutation has been recovered'.[22]

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17 *Proof Committee Hansard*, 20 May 2021, p. 2.

18 *Proof Committee Hansard*, 20 May 2021, p. 1.

19 *Proof Committee Hansard*, 20 May 2021, p. 1.

20 DFRDB COMMUTATION CAMPAIGN, *Submission 22*, p. 12.

21 DFRDB COMMUTATION CAMPAIGN, *Submission 22*, pp. 9, 19. Emphasis in original.

22 Name withheld, *Submission 32*, p. 3.

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2.24 Mr Michael Tehan submitted that there was a 'failure by DFRDB[A] to openly identify a crucial condition; that the pension would be permanently reduced even after the advance payment had been fully repaid'.[23]

2.25 The Vietnam Veterans Association of Australia also alleged that 'false advice [was] often given by representatives of the DFRDB[A].'[24] Mr Jim Nicholls pointed to the incorrect information provided by Defence arguing that 'it serves to demonstrate the ineptitude of the DRDFB Authority to communicate its policy condition even to the Defence Department that sponsors the DFRDB Superannuation Scheme, let alone to individual contributors and superannuants'.[25]

2.26 However, Mr Colin Wade, one of three single service officers representing the respective service nominees on the DFRDB Authority Board who had extensive involvement with and experience of the administration of the DFRDB scheme, provided evidence that:

> [a]ll DFRDB members who voluntarily elected commutation of part of their retirement pay were provided with the correct advice by the DFRDB Authority. Members who elected to apply for a lump sum commutation and a reduction in retirement pay signed the commutation election form and the DFRDB Authority subsequently confirmed the election to commute and advised members the reduction in retirement was reduced from that date in accordance with the intent of the DFRDB Act 1973.[26]

2.27 Mr Wade added that during ADF Resettlement Seminars 'the DFRDB seminar presentations were conducted by experienced Counselling Officers' and they 'conducted the presentations using a standardized, pre-prepared 'overhead projector' slideshow and later a 'powerpoint' format to ensure consistency of information across all seminars'. He noted that video footage reviewed by the Ombudsman recorded in 1984 and 1989 confirmed that DFRDB members were advised of the correct application of the life expectancy factor 'as described in the original DFRDB Authority circular provided to Defence in 1973'.[27]

Did everyone receive incorrect information?

2.28 While some submitters contended that all DFRDB members received the incorrect advice,[28] this was not the evidence provided to the committee or the Ombudsman. The Ombudsman noted that '[s]ome members [chose to

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23 Mr Michael Tehan, *Submission 59*, p. 2.

24 Vietnam Veterans Association of Australia, *Submission 49*, p. 1.

25 Mr Jim Nicholls, *Submission 56*, p. 2.

26 Mr Colin Wade, *Submission 60*, p. [5].

27 Mr Colin Wade, *Submission 60*, p. [5].

28 Mr Ken Stone, *Proof Committee Hansard*, 20 May 2021, p. 3.

commute] on the basis of the incorrect advice, while others did so based on a correct understanding of the scheme'.[29]

2.29 While noting that many ADF members were misinformed about the operation of commutation, the Defence Force Welfare Association (DFWA) stated that '[i]t is also clear that many ADF members were correctly informed of the effects of commutation and specifically that the reduction to the pension was for life. Whether the ADF Members acted on correct or incorrect advice, most Members elected to commute. A small percentage decided not to commute'.[30]

2.30 The committee received a submission which indicated that the submitter:

> elected to commute my DFRDB pension on leaving the services, in the full knowledge that in doing so my pension (payment) would be reduced for my lifetime and in the event of my demise my then surviving wife would receive 5/8 of my pension (calculated on the basis that I had not commuted)'.[31]

2.31 This submitter added that 'I always made a point of advising both senior officers and NCOs who were retiring or about to retire of the conditions of DFRDB including the permanent reduction of pension should they commute and the benefits of a "deferred pension" which was not well known at the time'.[32] While acknowledging the findings of the Ombudsman's inquiry that there are people who were given incorrect information, the submitter added that 'these same persons appear very reluctant to admit or agree that many were properly informed and indeed make false claims to back their assertions that **ALL 55,000 DFRDB RECIPIENTS WERE MISLED**'.[33]

2.32 The submitter told the committee that they attended a resettlement seminar in late 1984 over 2 days, attended by around 100 personnel where 'quite a discussion ensued regarding the life long pension reduction'.[34]

2.33 This submitter further noted that '[t]here are Facebook sites specifically on the DFRDB commutation dispute which actively discourages, removes and in my case threaten those who claim to have known about the life long reduction in pension because it weakens their claims of rorts, criminal behaviour, false and

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[29] Commonwealth Ombudsman, Investigation into the administration of the Defence Force Retirement and Death Benefits (DFRDB) Scheme, Report No. 06 of 2019, December 2019, Foreword.

[30] DFWA, *Submission 54*, p. 7. See also Mr Win Fowles, *Proof Committee Hansard*, 20 May 2021, p. 13.

[31] Name withheld, *Submission 21*, p. 1.

[32] Name withheld, *Submission 21*, p. 1.

[33] Name withheld, *Submission 21*, p. 1. Emphasis in original.

[34] Name withheld, *Submission 21*, p. 2.

misleading information they claim was promulgated or published by relevant Government Authorities'.[35]

2.34 This submitter concluded that:

> I am totally of the view that those who are seeking compensation, restitution of the payment at the conclusion of their Notional Life Expectancy are opportunists taking advantage of a perceived lack of information at the time of their discharge, be it real or imagined. Would I like my pension restored at reaching my NLE, the answer is YES. But I accepted the conditions prevailing at my time of discharge and I will not lie, claim rorts, misrepresentation or whatever in order to do so.[36]

2.35 Mr Wade also attended presentations by representatives of the DFRDBA to ADF personnel on the DFRDB scheme at ADF resettlement seminars. He told the committee that throughout his career he was not aware that ADF personnel in pay and discharge sections were providing misleading information and had he or the other service representatives been aware then corrective action would have been taken.[37]

2.36 Mr Wade noted the numerous examples of incorrect information disseminated to ADF personnel and agreed that the failure of Defence to ensure only accurate information was provided to DFRDB members constituted defective administration by Defence. He added that:

> However, while the misleading information was provided in good faith, no ADF personnel were authorised to interpret documents and advice provided to DFRDB members by the DFRDB Authority on the DFRDB scheme or the commutation provisions within the DFRDB Act 1973.[38]

2.37 Further, '[w]hile amounting to defective administration by Defence, the provision of unauthorized and misleading information, does not affect the legitimacy of the DFRDB legislation'.[39]

2.38 Defence highlighted that the Ombudsman found 'there had been a mixed message over the years' in relation to the provision of information on commutation:

> Sometimes the message was correct and clearly identified what commutation meant for members, but, unfortunately, on other occasions, that wasn't the case. A number of publications within the Defence context over the years had put forward some wrong information, and that's what

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35 Name withheld, *Submission 21*, pp. 1-2.

36 Name withheld, *Submission 21*, p. 2. Emphasis in original.

37 Mr Colin Wade, *Submission 60*, pp. 6-7.

38 Mr Colin Wade, *Submission 60*, p. 6.

39 Mr Colin Wade, *Submission 60*, p. 8.

> the Ombudsman had identified through the inquiry that they had conducted.[40]

Commonwealth Ombudsman findings

Information provided by DFRDBA/CSC

2.39 The Ombudsman's report contains a detailed description of the DFRDBA/CSC operational guidelines, brochures, forms and letters from 1973.[41]

2.40 In 1973, the DFRDBA issued a circular to all Defence service agencies explaining how the scheme would operate. This circular clearly explained the permanence of the commutation reduction:

> Although a life expectancy factor is used, full retirement pay is not restored should the member live beyond normal life expectancy. By the same token, should the member die before attaining the expected age, no attempt is made to recover the amount of the lump sum outstanding form the dependents or the estate.[42]

2.41 The original 1973 form for commutation required members to sign the following acknowledgement:

> I realise that under the provisions of Section 24 future retirement pay payments will be reduced as a consequence of this election on and from the date the election is received by the Authority.[43]

2.42 In 1978 the form was accompanied by explanatory notes which stated 'Commutation is a conversion of a portion of future retirement pay payments to a one time lump sum. Once the conversion is made the portion commuted cannot be restored during the member's lifetime'.[44]

2.43 The Ombudsman noted that 'forms were often accompanied by a print out of the commutation calculation and the future rate of retirement pay'.[45]

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[40] Mr David Nockels, First Assistant Secretary, People, Policy and Culture, Department of Defence, *Proof Committee Hansard*, 20 May 2021, p. 21.

[41] Commonwealth Ombudsman, Investigation into the administration of the Defence Force Retirement and Death Benefits (DFRDB) Scheme, Report No. 06 of 2019, December 2019, pp. 24-25.

[42] Commonwealth Ombudsman, Investigation into the administration of the Defence Force Retirement and Death Benefits (DFRDB) Scheme, Report No. 06 of 2019, December 2019, p. 25.

[43] Commonwealth Ombudsman, Investigation into the administration of the Defence Force Retirement and Death Benefits (DFRDB) Scheme, Report No. 06 of 2019, December 2019, p. 26. This was also pointed out by Mr Wade, *Submission 60*, p. [4].

[44] Commonwealth Ombudsman, Investigation into the administration of the Defence Force Retirement and Death Benefits (DFRDB) Scheme, Report No. 06 of 2019, December 2019, p. 27. This was also pointed out by Mr Wade, *Submission 60*, p. [4].

[45] Commonwealth Ombudsman, Investigation into the administration of the Defence Force Retirement and Death Benefits (DFRDB) Scheme, Report No. 06 of 2019, December 2019, p. 27.

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2.44 The Ombudsman found that [t]he information provided by the DFRDB Authority (now CSC) was at all times correct. However:

> while correct, the information was not sufficiently clear to correct the misunderstanding that many members had from their interactions with Defence. With the benefit of hindsight, I can now see how this information could have been clearer, as is the case with CSC's current documents.[46]

2.45 The Campaign was critical that the Ombudsman Report found no defective administration in relation to the DFRDBA (now CSC). Mr Stone argued that the Ombudsman 'was blind to the DFRDBA administrative failures'.[47]

2.46 The information provided has subsequently been improved on a number of occasions since 2004.[48] The current advice available from the CSC booklet, *A summary of the Defence Force Retirement and Death Benefits Scheme*, notes: 'Commutation of a benefit results in a permanent reduction in your retirement benefit based on your life expectancy…If you choose to claim a commutation lump sum, this will permanently reduce your pension…'.[49]

2.47 CSC noted that it participated in the Ombudsman's investigation 'to the fullest extent possible…even though CSC did not exist for the vast majority of the period in question'. CSC provided:

> 'a large quantity of historical documents' dating back some 40 years to the Ombudsman. The Ombudsman found that CSC was 'responsive and co-operative' in providing 'significant amounts of information going back many decades'.[50]

2.48 CSC also noted that 'people could obtain information and confirm their understanding prior to making an election to commute'.[51]

2.49 Ms Alana Scheiffers, General Counsel, CSC, elaborated on the actions taken following the Ombudsman's report:

> The recommendations from the inquiry firstly related to updating communications, so those communications have all been reviewed and updated per the recommendation. We have reported back to the Ombudsman and advised the Ombudsman that all of those recommendations have been implemented. There was also a recommendation around communicating with a specific cohort of

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46 Commonwealth Ombudsman, Investigation into the administration of the Defence Force Retirement and Death Benefits (DFRDB) Scheme, Report No. 06 of 2019, December 2019, Foreword.

47 *Proof Committee Hansard*, 20 May 2021, p. 2.

48 Commonwealth Ombudsman, Investigation into the administration of the Defence Force Retirement and Death Benefits (DFRDB) Scheme, Report No. 06 of 2019, December 2019, p. 55.

49 CSC, *A summary of the Defence Force Retirement and Death Benefits Scheme*, 2016, p. 14.

50 CSC, *Submission 50*, p. [2].

51 CSC, *Submission 50*, p. [3].

> members. I can't recall exactly off the top of my head but it was a certain time frame prior to retirement. So we have communicated with that cohort of members as required and continue to answer any questions. A part of the recommendations, a minor one, was to make sure that we referred to Defence's apology, which we did on our website.[52]

2.50 In relation to the specific cohort, the Ombudsman recommended that 'commutation election forms and standard letters (sent to members in advance of their retirement and immediately after commutation) should clearly explain commutation will result in a permanent reduction to retirement pay'. In addition the CSC should identify 'whether there are any members who have discharged and have already received the existing standard letter, but who are still in time to either commute, or ask CSC to reverse their commutation election. CSC should write to this cohort to explain that commutation will result in a permanent reduction to retirement pay'.[53]

2.51 On notice, the CSC confirmed that it had communicated with 47 individuals as a result of the Ombudsman's recommendation.[54]

2.52 Responding to questions from the committee, Ms Schieffers outlined the way the CSC communicates with members:

> There are two methods of communication we would have with our members. Firstly, for those who are currently contributors, those who are still serving, which is approximately 900 members, they receive annual statements from us each year. With respect to pensioners, we communicate with them on a regular basis to advise them of updates to their pension payments with respect to the CPI increases that happen six-monthly.[55]

2.53 On notice, the CSC confirmed that they have contact details for all members as they 'are all current DFRDB pensioners who receive regular communication from CSC'.[56]

2.54 Given the allegations in relation to the CSC, particularly those of intent to sustain reductions in pension, it is also important to note the role of the CSC:

> CSC does not make or change policy in regard to any of the super schemes that we administer, including the DFRDB scheme.
>
> Policy and legislative change is formulated and dictated by the Government of the day. CSC simply puts in place any changes and

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52 *Proof Committee Hansard*, 20 May 2021, p. 20.

53 Commonwealth Ombudsman, Investigation into the administration of the Defence Force Retirement and Death Benefits (DFRDB) Scheme, Report No. 06 of 2019, December 2019, p. 56.

54 CSC, Answers to questions on notice from public hearing 20 May 2021, received 26 May 2021, p. 1.

55 *Proof Committee Hansard*, 20 May 2021, p. 20.

56 CSC, Answers to questions on notice from public hearing 20 May 2021, received 26 May 2021, p. 1.

> administers the schemes according to the policies or legislation made by the Government.[57]

Information provided by Defence

2.55 The Ombudsman found 'numerous examples of incorrect written and verbal information being disseminated within Defence from commencement of the scheme in 1973 onwards'. He noted that '[t]his information helped create and reinforce a relatively widespread misunderstanding among DFRDB members that the retirement pay reduction due to commutation would cease on reaching the life expectancy factor age'.[58]

2.56 The Ombudsman's investigation focused on the accuracy of the information provided to DFRDB members and it recognised that:

> Many DFRDB members, likely numbering in the thousands, were provided incorrect information by Defence personnel who were responsible for providing advice about the workings of the scheme. Those DFRDB members were led to believe, incorrectly, that their commuted pensions would increase once they reached their life expectancy factor age. The absence of clear guidelines and instructions to staff led to this incorrect information being provided, which resulted in a misunderstanding of the basic design of the scheme.[59]

2.57 The Ombudsman concluded that '[i]n my view, this amounted to defective administration by Defence' and recommended that the Secretary of the Department of Defence and the Chief of the Defence Force apologise for the defective administration that occurred and for the disappointment members have experienced. The apology letter can be found at Appendix D to the Ombudsman's report.[60] It is also available from the Defence website.[61]

2.58 On notice, Defence advised that 'four individuals contacted the Department of Defence via the DFRDB investigation email address to request a posted copy of the apology letter. One individual called requesting a verbal apology, and a response was provided by Defence'. In addition:

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[57] CSC Annual Members' Meeting, Tuesday 16 March 2021, Questions and Answers, 15 April 2021, p. 15.

[58] Commonwealth Ombudsman, Investigation into the administration of the Defence Force Retirement and Death Benefits (DFRDB) Scheme, Report No. 06 of 2019, December 2019, p. 22.

[59] Commonwealth Ombudsman, Investigation into the administration of the Defence Force Retirement and Death Benefits (DFRDB) Scheme, Report No. 06 of 2019, December 2019, Foreword.

[60] Commonwealth Ombudsman, Investigation into the administration of the Defence Force Retirement and Death Benefits (DFRDB) Scheme, Report No. 06 of 2019, December 2019, Foreword.

[61] See https://www.defence.gov.au/PayandConditions/ADF/Super-DFRDB-review.asp accessed 8 April 2021.

> Since May 2019 there have been 115 contacts via 1800DEFENCE and the Defence Customer service email inbox regarding DFRDB. This includes both enquiries that were general in nature and enquiries that were requesting specific information to support submissions to the Ombudsman. Of this five enquiries were seeking further information or seeking an appeal in relation to the Ombudsman's review. All queries were responded to by Defence.[62]

2.59 Defence indicated that from the early 2000s onwards it has provided the correct information to DFRDB members.[63]

Claims of financial detriment

2.60 Many DFRDB members who wrote in to the committee believe that based on the information provided to them, their decision to commute has resulted in financial detriment, which they want remedied.[64] For example, the Campaign stated:

> The compulsory Retirement Pay reduction continued beyond Superannuant NLE points with Veteran Superannuants being unaware this would continue Life-Term. This was at the financial detriment of the 55,000 Veteran Superannuants that accepted the Commutation, and **without superannuants knowing the actual conditions of repayment as automatically applied to their Superannuation by the Commonwealth's DFRDB agent**.[65]

2.61 The Campaign added:

> Our campaign contends the Commonwealth is depriving DFRDB Superannuants of over $100 MILLION annually from ongoing Retirement Pay reductions – despite Superannuants having fully repaid their Commutation Lump Sum on reaching their Life Expectancy point. This estimate is simply an assumed average reduction, across the cohort, of some $2,000 per person.[66]

2.62 The Campaign summarised their position:

> **The Veteran Submissions** [to the Ombudsman's investigation]…**at no stage, claimed financial detriment in comparison to those that did not commute, yet this was the comparison made by the Ombudsman.**
>
> The contention by Veteran Superannuants was, ALWAYS: **that as individuals they suffered severe financial detriment through the life-**

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62 Defence, Answers to questions on notice, received 4 June 2021, Question 1.

63 Defence, *Submission 39*, p. 4.

64 Commander Anthony Parkin (Rtd), *Submission 1*, p. 2; Mr Ian Bawden, *Submission 5*, p. 2; Mr Anthony Ryan, *Submission 7*, p. 1.

65 DFRDB COMMUTATION CAMPAIGN, *Submission 22*, p. 7. Emphasis in original.

66 DFRDB COMMUTATION CAMPAIGN, *Submission 22*, pp. 7-8. Emphasis in original.

> **term impost of Retirement Pay Reductions, beyond what they would have, had they not commuted.**[67]

2.63 Another submitter argued:

> Every Member who chose to commute will suffer financial detriment when they reach their perceived Life Expectancy under [t]he scheme. Once this age is reached all money provided to the member as a result of [commutation] would have been paid back to the government in full. The continuation of these payments until the death of the member is to their …financial detriment. There is no reason [ex]cept to be a [source] of financial revenue to the government for these payments to continue past the accepted life expectancy.[68]

Commonwealth Ombudsman investigation

2.64 The Ombudsman considered what should occur to remedy the defective administration.

Engaging actuarial expertise

2.65 The Ombudsman engaged two expert actuaries, the Australian Government Actuary (AGA) and KPMG, to independently model a number of scenarios, ie. the financial results of commuting and not commuting, in order to determine 'whether those who were given misleading information were likely to have suffered overall financial loss as a result of their choice'.[69]

2.66 Some submissions questioned this modelling. For example, Mr Stone, the Campaign, asserted:

> The Ombudsman's inquiry accepted just 12 cases of the 55,000 data sets available from CSC. He used this speculatively and inappropriately to create a case whereby spurious financial modelling determined that none of the 55,000 superannuants suffered any financial detriment by accepting a commutation despite they are still paying the same amount as the first year they started reimbursing the Commonwealth. Yet, annually, still their retirement pay suffers reduction at the same rate of benefit as its first year benefit. Would any superannuant knowingly accept an open-ended debt that would grossly outweigh its benefit? I think not.[70]

2.67 The ADFRA also questioned the modelling stating that 'those who responded to the Ombudsman's investigation were not a valid sample of the total DFRDB recipient population'.[71]

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67 DFRDB COMMUTATION CAMPAIGN, *Submission 22*, p. 19. Emphasis in original.

68 Name withheld, *Submission 27*, p. [1].

69 Commonwealth Ombudsman, Investigation into the administration of the Defence Force Retirement and Death Benefits (DFRDB) Scheme, Report No. 06 of 2019, December 2019, Foreword.

70 *Proof Committee Hansard*, 20 May 2021, p. 2.

71 ADFRA, *Submission 36.2*, p. 1.

2.68 The Ombudsman explained how the modelling was undertaken:

> The modelling provided by both AGA and KPMG was factual, based on real-life scenarios with all assumptions chosen by our Office. Although we had regard to the actuaries analysis provided as part of their reports, the Office undertook its own independent analysis of the modelling results.[72]

2.69 The actuaries were asked to assume two investment scenarios for each case. The first scenario was based on the lump sum being invested in the purchase of a home (as based on interview this was likely to have been the most common use of the lump sum). The second scenario was based on the lump sum being placed in a term deposit. The actuaries were asked to use historical home loan and term deposit rates.[73]

2.70 The Ombudsman clarified that their modelling did not compare the hypothetical outcome, ie. if the law had permitted retirement pay to increase on reaching life expectancy factor age:

> While DFRDB members would undoubtedly be better off financially under this approach, it is not a suitable point of comparison. This is because, while disappointment and unmet expectations are legitimate causes for concern, particularly where they are the consequence of defective administration, they are unlikely to be financially compensable, in court proceedings, as a person was never entitled to this financial outcome.[74]

2.71 It was further explained:

> The modelling we commissioned is, in our view, a more accurate way of determining the likelihood of a person experiencing an actual loss (as opposed to financial disappointment) as the result of deciding to commute when compared to not commuting. It takes into account, using conservative assumptions, the economic benefits of both options.[75]

2.72 At the hearing Mr Manthorpe indicated his confidence 'in both the independence and the professional credibility of the actuaries who worked with us on this issue…'.[76]

2.73 Providing further detail about the approach, Mr Manthorpe stated:

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[72] Commonwealth Ombudsman, Investigation into the administration of the Defence Force Retirement and Death Benefits (DFRDB) Scheme, Report No. 06 of 2019, December 2019, p. 3. Note: Both firms were provided with relevant data from 12 de-identified real life cases and asked to model the two outcomes from the two options available under the DFRDB Act.

[73] Commonwealth Ombudsman, Investigation into the administration of the Defence Force Retirement and Death Benefits (DFRDB) Scheme, Report No. 06 of 2019, December 2019, p. 35.

[74] Commonwealth Ombudsman, Investigation into the administration of the Defence Force Retirement and Death Benefits (DFRDB) Scheme, Report No. 06 of 2019, December 2019, pp. 34-35.

[75] Commonwealth Ombudsman, Investigation into the administration of the Defence Force Retirement and Death Benefits (DFRDB) Scheme, Report No. 06 of 2019, December 2019, p. 35.

[76] *Proof Committee Hansard*, 20 May 2021, p. 26.

> We looked at everybody's stories. As you know, we had thousands of people approach us, and we looked at, and considered, every single submission that was made to us. In terms of their actuarial modelling—and I think that's what you're getting at—we worked with the actuaries to identify 12 cases. I know I did use the word 'samples' a little while ago, but probably a better way to put it is that there were 12 cases that we thought provided a broadly representative and realistic set of circumstances to model whether people were or were not financially disadvantaged by the choice to commute. …[The list] was informed by people leaving the military at different times, leaving the military at different ages, or leaving the military having achieved different levels of rank and, therefore, salary. That then gave us the basis upon which to give the actuaries a set of cases to model to see how that played out over time.[77]

2.74 It was emphasised that they did not study 50,000 cases and '[i]ndeed, no actuary would; they would always choose a sample, or some cases or whatever to do a piece of modelling'.[78]

2.75 Mr Manthorpe further explained the approach taken to the modelling and the findings:

> We haven't gone and investigated 50,000 individual cases. We took a sample of cases that informed the actuarial modelling, and that sample was based on trying to get a range of scenarios—different ages, different ranks, different times at which they entered and left the military—to get a broad spectrum of possibilities to test whether the commutation option that they took was better or worse in the long run than not taking commutation. If that modelling had demonstrated that they were better off not taking commutation, if they'd been misled about what commutation meant and that had influenced them to take commutation, then you might have a widespread incidence of a case for compensation or some kind of reparation, but in the end that's not what the modelling demonstrated.[79]

2.76 The approach and results of the AGA and KPMG modelling are available from the Ombudsman's website.[80]

Commonwealth Ombudsman findings

2.77 The Ombudsman found that:

> In all of the scenarios we modelled, using conservative assumptions about how retiring members might have used the lump sum, commutation has resulted in a beneficial overall financial outcome for DFRDB members to date. This is particularly true for DFRDB members who retired in the years before 2010. While some of those who discharged in recent years may be able to make the case that at some time in the future they could be

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77 *Proof Committee Hansard*, 20 May 2021, p. 28.

78 Mr Michael Manthorpe, *Proof Committee Hansard*, 20 May 2021, p. 30.

79 *Proof Committee Hansard*, 20 May 2021, p. 26.

80 See https://www.ombudsman.gov.au/How-we-can-help/australian-defence-force/dfrdb accessed 8 April 2021.

> financially worse off having commuted, I am satisfied these decisions to commute were made after CSC improved its publications to explicitly advise that the commutation reduction is permanent.[81]

2.78 Defence indicated that the modelling undertaken by the Ombudsman 'demonstrated having early access to capital provided by commutation was generally beneficial to DFRDB members relative to the alternative of not commuting'.[82]

2.79 The Ombudsman concluded:

> I am satisfied the decision to commute is not likely to have, of itself, caused financial loss, relative to the only other option that was available at law. I have therefore concluded that it is not appropriate to recommend compensation in a broad sense.[83]

2.80 The Ombudsman pointed out that 'missing out on a benefit to which a person is not actually entitled under the law does not necessarily mean that the person has suffered financial detriment'.[84]

2.81 Summarising the findings, Mr Manthorpe told the committee:

> It is undoubtedly the case that the members concerned did not get what they were told they'd get. They got less than what they were told they'd get, but they got what they were entitled to, and what they were entitled to under the commutation option was, based on the modelling, highly likely to be better in the long run than the other option that was available.[85]

Consideration of compensation

2.82 The Ombudsman noted that 'there was abundant evidence of financial disappointment, frustration and unmet expectation' which was based 'on financial disappointment from not receiving the entitlement to which they believe they were entitled'.[86] However, the Ombudsman recognised that '[f]inancial disappointment and unrealised expectations are not compensable'…'This is because the person must suffer financial detriment as a

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81 Commonwealth Ombudsman, Investigation into the administration of the Defence Force Retirement and Death Benefits (DFRDB) Scheme, Report No. 06 of 2019, December 2019, Foreword.

82 Defence, *Submission 39*, p. 4.

83 Commonwealth Ombudsman, Investigation into the administration of the Defence Force Retirement and Death Benefits (DFRDB) Scheme, Report No. 06 of 2019, December 2019, Foreword.

84 Commonwealth Ombudsman, Investigation into the administration of the Defence Force Retirement and Death Benefits (DFRDB) Scheme, Report No. 06 of 2019, December 2019, Foreword.

85 *Proof Committee Hansard*, 20 May 2021, p. 26.

86 Commonwealth Ombudsman, Investigation into the administration of the Defence Force Retirement and Death Benefits (DFRDB) Scheme, Report No. 06 of 2019, December 2019, p. 34.

result of a decision they made relying on the incorrect advice. Further, it must have been reasonable to rely on the incorrect advice, and they must have taken reasonable steps to minimise the loss'.[87]

2.83 The Ombudsman considered whether some form of financial reparation or ex gratia payment was necessary but decided not to do so because:

> First, on the basis of the modelling, to do so would unreasonably place the cohort who commuted in an even stronger financial position than those who correctly understood the operation of the scheme and decided not to commute, which in the long run appears to have been the less beneficial choice for most people. Similarly, it would provide an unjustified windfall at taxpayers' expense for those who did understand the scheme and chose to commute.
>
> Second, to do so would presume to contradict the intent of the Parliament that passed the legislation establishing the DFRDB scheme decades ago. It would of course be possible for the current Parliament and the current Government to consider whether the policy issue in question ought be re-opened in light of the analysis in this report.[88]

2.84 At the hearing, Mr Manthorpe summarised why he did not recommend compensation:

> …I stopped short of recommending that the government pay compensation or some form of reparation as, in my view, to do so would have: created new inequities between different groups; potentially produced an unjustified windfall for those who properly understood the scheme, at taxpayers' expense; and presumed to set aside what parliament had intended in the first place.[89]

2.85 Mr Manthorpe further stated:

> I would reiterate that, on a personal level, I have every sympathy with people who were misled about what they were going to get. Defence shouldn't have done that, and that's why, in my report, I recommended to the department, the CDF and the secretary that, at the very least, they apologise. Then the next question was: is there something else that should be done here? For the reasons I outlined in my report and have touched on already, I couldn't think of an additional remedy that would do anything other than put me in the position of suggesting that the rules of the scheme that were put in legislation 50 years ago needed to, in effect, be rewritten.[90]

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87 Commonwealth Ombudsman, Investigation into the administration of the Defence Force Retirement and Death Benefits (DFRDB) Scheme, Report No. 06 of 2019, December 2019, p. 33.

88 Commonwealth Ombudsman, Investigation into the administration of the Defence Force Retirement and Death Benefits (DFRDB) Scheme, Report No. 06 of 2019, December 2019, Foreword.

89 *Proof Committee Hansard*, 20 May 2021, p. 25.

90 *Proof Committee Hansard*, 20 May 2021, p. 27.

CDDA scheme option

2.86 It was however acknowledged that outlying cases of which the Ombudsman was not aware could not be ruled out and therefore the Scheme for Compensation for Detriment caused by Defective Administration (CDDA scheme) was seen as suitable for the consideration of any such cases. A list of considerations which would need to be satisfied as part of any such claim were also developed.[91]

2.87 The CDDA scheme, a policy owned by the Department of Finance,[92] is 'a discretionary mechanism available to non-corporate Commonwealth entities. It allows an entity to pay compensation when a person or organisation has suffered detriment as a result of the entity's defective administration, when there is no legal requirement to make a payment'. '[T]he non-corporate Commonwealth entity which is the subject of a CDDA Scheme claim is the entity responsible for considering and making a decision on that claim'.[93]

2.88 The CDDA scheme is managed by the Directorate of Special Financial Claims within Defence.[94] Defence advised that '[c]urrently no claims have been successful as claimants have been unable to demonstrate they have incurred a financial detriment due to this issue'.[95] Defence provided more detail on the claims to date:

> As at 12 May 2021, Defence had received 38 claims under the scheme. Thirty-six of them were assessed and were unsuccessful. Why the difference between the 38 and the 36? Two of the people who had put forward claims then had discussion and correspondence with the department and decided to not go ahead with their claims.[96]

2.89 Defence also reported that there have been 'telephone and email enquiries from a handful of others who did not choose to make a claim'.[97] On notice, Defence indicated that '[n]one of the claimants, to our knowledge, engaged a lawyer or other representative to assist them with their claim'.[98]

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91 Commonwealth Ombudsman, Investigation into the administration of the Defence Force Retirement and Death Benefits (DFRDB) Scheme, Report No. 06 of 2019, December 2019, Foreword.

92 Mr David Nockels, Department of Defence, *Proof Committee Hansard*, 20 May 2021, p. 16.

93 See https://www.finance.gov.au/individuals/act-grace-payments-waiver-debts-commonwealth-compensation-detriment-caused-defective-administration-cdda/scheme-compensation-detriment-caused-defective-administration-rmg-409 accessed 8 April 2021.

94 See https://www.defence.gov.au/Legal/Directorates/dsfc.asp accessed 8 April 2021.

95 Defence, *Submission 39*, p. 2 of covering letter.

96 Mr David Nockels, Department of Defence, *Proof Committee Hansard*, 20 May 2021, p. 16.

97 Defence, *Submission 39*, p. 5.

98 Defence, answer to question on notice, received 4 June 2021, question 10.

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2.90 While acknowledging the defective administration in the information supplied to members before 2004, Defence added that:

> However, there were cases where it was apparent or acknowledged that the member did know in advance of their election that the pension would not be restored to the pre-commutation amount when they reached the life expectancy factor age.[99]

2.91 Defence reported that:

> Generally, the claimants did not dispute they were better off having commuted than had they not commuted. Their complaint about the DFRDB scheme and the Ombudsman's conclusion was that the scheme was not as generous as they were led to believe it would be.[100]

2.92 Defence took the committee through how the CDDA scheme works and how applications are assessed:

> The first aspect that we look at is the question of whether there has been defective administration. In this case, Defence accepted the report of the Ombudsman as evidence the defective administration had occurred and that the members who commuted may have been subject to that defective administration. So the first aspect was considered to have been satisfied.
>
> The second aspect is the detriment aspect. The Ombudsman determined that, following the modelling that was completed by the Australian Government Actuary and by KPMG on behalf of the Ombudsman for the purposes of the report, in all of the circumstances that they looked at the members were financially better off having commuted than they would have been had they taken the alternative, which was not to commute and retain the full pension. The Ombudsman offered the opportunity to members who considered that their circumstances differed to come to the CDDA scheme and show how their circumstances were different. Of the 38 claims that Defence looked at, two of the claimants chose to withdraw their claim, acknowledging that their circumstances were not substantially different from those that the modelling was based on. Of the remaining 36, the decision-maker was not satisfied that the claimants' circumstances substantially differed.[101]

2.93 On notice, Defence provided additional detail regarding the criteria used to assess a claim:

> The claims were assessed against the criteria under the Compensation for Detriment caused by Defence Administration (CDDA) scheme (Resource Management Guide No. 409, May 2017), which requires that there has been defective administration causing direct financial loss.[102]

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99 Defence, *Submission 39*, p. 5.

100 Defence, *Submission 39*, p. 5.

101 Ms Donna Webster, Department of Defence, *Proof Committee Hansard*, 20 May 2021, p. 17.

102 Defence, answer to question on notice, received 4 June 2021, question 4.

2.94 Defence added that '[i]n all cases, Defence accepted there was defective administration in the form of incorrect or ambiguous advice about commutation under the Defence Force Retirement and Death Benefits (DFRDB) scheme'. Further, in relation to why claims were not successful:

> The Ombudsman did not find any model cases that showed financial loss resulting from defective administration. Defence invited claimants to explain how their situation differed from those modelled. All claimants asserted their loss was the Commonwealth's failure to restore the DFRDB pension to the pre-commutation amount, fully indexed, when they reached the life expectancy age, because that is what they had understood would happen. None of the claimants were able to establish that they had suffered actual financial loss.[103]

2.95 Defence summarised that for 'compensation to be payable under the CDDA scheme, claimants must be able to show that they have sustained detriment of some kind. The distinction between financial detriment and financial disappointment is addressed in the CDDA guidelines':

> …A claimant does not suffer financial detriment merely because they were correctly not granted a benefit after being advised that they would receive that benefit…[104]

2.96 When asked about whether a CDDA decision can be reviewed, Defence reported that there is an internal review option which 'two of the members who made a claim sought to take up'. They provided additional material which was reviewed 'but it did not change the decision-maker's determination that the members' circumstances didn't substantially differ from that which was presented in the modelling'.[105]

2.97 Defence noted that a second review option available is to request that the Commonwealth Ombudsman review the decision made by Defence 'to look at the way that Defence looked at the claims and to make any suggestions, where Defence may have considered matters erroneously.' However Defence reported that '[n]one of the claimants have taken up that second review option to date'.[106]

2.98 The Campaign noted the CDDA option 'where a case of Financial detriment could be sustained' but indicated that '[n]o compensation has been made to any claimant to our knowledge'.[107] It added that they believe it is 'a direct

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[103] Defence, answer to question on notice, received 4 June 2021, question 4.

[104] Defence, *Submission 39*, p. 6.

[105] Ms Donna Webster, Department of Defence, *Proof Committee Hansard*, 20 May 2021, p. 17.

[106] Ms Donna Webster, Department of Defence, *Proof Committee Hansard*, 20 May 2021, p. 17.

[107] DFRDB COMMUTATION CAMPAIGN, *Submission 22*, p. 4.

outcome of the inappropriate financial modelling sanctioned by the Ombudsman that is counter to the claims of our case'.[108]

Defence engagement following the ombudsman's report

2.99 When asked how Defence engaged with DFRDB members following the Ombudsman's report, Mr David Nockels, First Assistant Secretary, People, Policy and Culture, Department of Defence, advised the committee that:

> One of the recommendations from the review by the Ombudsman was for the department, through the secretary and the Chief of the Defence Force, to issue an apology. That's how we engaged with DFRDB members post the review. That apology was embedded in the Ombudsman's review and findings; it's an annex to that. We also posted that on the Defence website and, within that, also gave options for people to contact Defence, if they so desired, to have a written apology letter go directly to them. That was the way we engaged with members post the review.[109]

2.100 Defence advised that it 'did not contact any veteran groups after the [Ombudsman's] investigation was complete. However, following the release of the Commonwealth Ombudsman's report, the Ombudsman advised Defence that copies of the report were sent out to individuals upon request, including to some ex-service organisations'.[110]

2.101 Mr Nockels told the committee that DFRDB members have continued to write to the department and the minister on these matters and this correspondence is responded to through the regular processes.[111]

Views of the Commonwealth Ombudsman's report

2.102 Mr Wade supported the analysis and findings of the Ombudsman's report stating that it 'provided a comprehensive and accurate analysis of the administration of the scheme in accordance with the DFRDB Act 1973 and the accuracy of information provided to DFRDB members by the DFRDB Authority and compliments the Terms of Reference for the Senate Inquiry'.[112]

2.103 Mr Wade added:

> The Ombudsman Report clearly demonstrated that there was no evidence of fraud, lies, coercion, deceit, deception, or maladministration by Defence

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[108] DFRDB COMMUTATION CAMPAIGN, *Submission 22*, p. 20. See also issues raised by DFWA, Answers to questions on notice from public hearing held in Canberra 20 May 2021, received 14 June 2021.

[109] *Proof Committee Hansard*, 20 ay 2021, p. 18.

[110] Defence, answers to questions on notice, received 4 June 2021, Question 2.

[111] *Proof Committee Hansard*, 20 May 2021, p. 18.

[112] Mr Colin Wade, *Submission 60*, p.[7].

> and the DFRDB Authority in the administration of the DFRDB scheme commutation provisions in accordance with the DFRDB Act 1973.[113]

2.104 Mr Wade also appreciated that 'some DFRDB members will never accept the Commonwealth Ombudsman and the AAT determination that: "a member who elects to commute has their retirement pay permanently reduced according to the statutory formula set out in s24(3)(b) of the DFRDB Act"'.[114]

2.105 Most submissions, however, expressed a general dissatisfaction about the process and findings of the investigation undertaken by the Ombudsman. For example, the Australian Army Training Team Vietnam Association (WA Branch) Inc stated that:

> In the Commonwealth Ombudsman's Report which was clearly flawed, there were findings that military members were misinformed but the Ombudsman made no recommendations for recompense or reversion to 100% of your military pension once reaching your Notional Retirement Age. Subsequent questions to the Ombudsman for methodology and evidence of his findings were ignored. In other words it was another ploy by the government to deceive military superannuants with no outcome.[115]

2.106 Mr John Snell provided his view:

> I have read the Ombudsman's consideration of these facts and note that he has taken a very legalistic view of the matter but has largely ignored the misapprehension that has resulted from the information promulgated by officials at the time. He appears happy for the reduced payment to continue for the remaining years of my life but he does not debate that I (and others like me) have repaid all of the advance through reduced fortnightly payments.[116]

2.107 Mr Peter Larard provided his view of the Ombudsman's report:

> I submitted to The Ombudsman some years ago on this matter in which I included critical observation that many of the questions circularised, to which the Ombudsman sought answers, were worded and structured indicating strongly that at least the Ombudsman staff who designed the questions had never intended The Ombudsman to find in favour of there being any problem! My opinion at the time was, and is now, that the designed purpose of The Ombudsman's inquiry was to dismiss the matter![117]

2.108 Others such as Mr Charles Myhill argued that the Ombudsman 'did not understand the military chain of command, placed undue emphasis on

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[113] Mr Colin Wade, *Submission 60*, p.[8].

[114] Mr Colin Wade, *Submission 60*, p.[8].

[115] Australian Army Training Team Vietnam Association (WA Branch) Inc, *Submission 17*, p. 2. See also Name withheld, *Submission 48*, p. 3; Mr Jim Nicholls, *Submission 56*, p. 2; Mr Terry Dillon, *Submission 57*, p. [1].

[116] Mr John Snell, *Submission 14*, p. 1. See also Mr Kenneth Park, *Submission 9*, p. 1.

[117] Mr Peter Larard, *Submission 20*, p. 2.

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brochures issued by CSC and ignored the misinformation provided by all levels of the military command structure. I was a solder trained to follow orders no matter in what form they were issued, this is discipline in its purest form'.[118]

2.109 The Campaign submitted that the Ombudsman 'failed to recognise' the submissions made to the inquiry by veterans in relation to the advice they received and 'instead accepted DFRDBA-CSC information, this being from the very organisation he was investigating for Mal-Administration'. In addition:

> The Ombudsman then went against his own Terms of Reference and accepted the spurious financial modelling, based on data of just 12 cases out of those of the **55,000** veteran superannuants, who ill-advisedly accepted a commutation.[119]

2.110 The Campaign felt that the Ombudsman's report was 'poorly presented and spuriously biased, and failed to factually address the issues'. Specifically that while acknowledging Defence failed in its administration that no reparations were recommended.[120]

2.111 Mr Clive Connor called the Ombudsman's report a 'farce and should be withdrawn by the Minister'.[121]

2.112 The DFWA submitted that the Ombudsman self-generated his own Terms of Reference which:

> in the opinion of most veterans were very narrow. Thus viewed by the veterans' community, the outcome was equally narrow. Many thought that yet another opportunity for a wider objective view was lost. And the perfunctory apologies by the Chief of the Defence Force, the Department of Defence Secretary and the Commonwealth Superannuation Corporation (CSC) did nothing to remedy the firm conclusion within the Ombudsman's report that there had been "defective administration" both of the implementation process of the DFRDB Scheme and the way it was subsequently operated.[122]

2.113 The Ombudsman emphasised in his report that he 'cannot be directed to undertaken an investigation, to arrive at a certain conclusion or on the scope of an investigation'.[123]

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[118] Mr Charles Myhill, *Submission 29*, p. [2].

[119] DFRDB COMMUTATION CAMPAIGN, *Submission 22*, pp. 4, 17. Emphasis in original.

[120] DFRDB COMMUTATION CAMPAIGN, *Submission 22*, p. 4.

[121] Mr Clive Connor, *Submission 23*, p. 2.

[122] DFWA, *Submission 54*, p. 9.

[123] Commonwealth Ombudsman, Investigation into the administration of the Defence Force Retirement and Death Benefits (DFRDB) Scheme, Report No. 06 of 2019, December 2019, p. 1.

2.114 The Ombudsman told the committee that following the publication of their report they received correspondence from some members 'criticising the scope of our investigation and expressing dissatisfaction that our report did not recommend that compensation be paid'. In addition '[s]ome members requested a review of our Office's report findings and asked us to reopen the issues considered. We considered whether to review the investigation and the report and decided not to do so'.[124]

2.115 The Ombudsman concluded:

> While we acknowledge the frustration and distress conveyed to our Office by many members throughout the investigation, as stated in our report, our assessment was, and still remains that DFRDB members received what they were entitled to, even if it fell short of what they were misinformed they would receive. Further, the actuarial modelling illustrates that members were generally better off choosing the commutation option, compared to the other option that was available at law.[125]

Further response from the Ombudsman

2.116 At the hearing, the Ombudsman responded to four criticisms of his report contained in submissions to the inquiry. First, in relation to allegations that the report was 'biased', Mr Manthorpe stated:

> I reject that assertion. I and my office considered the evidence that was put to us, fairly and in good faith, consistent with our legislative remit and our professional integrity. I brought an entirely open mind to the issues and was subject to no improper influence. The conclusions in the report were entirely my own.[126]

2.117 Second, while some submissions alleged the approach to be 'selective', Mr Manthorpe responded:

> To the contrary: we engaged comprehensively with the issues that were within our remit and indeed went further by providing an avenue whereby issues outside our remit could be aired.[127]

2.118 Third, in relation to consultations with Defence and CSC, but not with affected members, regarding the scope of the inquiry:

> There is nothing unusual about this. Whenever we undertake a major investigation of an issue in an agency we afford them an opportunity to comment on the scope of the investigation to ensure that it is logistically practical, well planned and soundly based. This process had no bearing on the core issues we considered. Moreover, we considered the issues raised

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124 Commonwealth Ombudsman, *Submission 52*, p. [5].

125 Commonwealth Ombudsman, *Submission 52*, p. [5].

126 *Proof Committee Hansard*, 20 May 2021, p. 25.

127 *Proof Committee Hansard*, 20 May 2021, p. 25.

> in every submission that was put to us by scheme members, and we shaped our investigation and report accordingly.[128]

2.119 Finally, the criticism in some submissions questioning why the actuaries did not model a scenario whereby retirement pay reverted to the non-commutation rate at their life-expectancy-factor age. Mr Manthorpe responded:

> To that, I'd say that all investigations of this kind are iterative. They're a journey of discovery. Ultimately, we chose not to model this scenario. We came to the view that there had indeed been defective administration in the form of giving inaccurate information to members. It followed that what we needed to model was whether this defective administration was likely to have caused financial detriment—that is, we needed modelling that showed whether members were likely to have suffered actual financial loss as a result of choosing commutation, on incorrect advice, over the only other option that was available. To model the third option would have been to model what was and still is a legal and policy illusion that has no grounding in the legislation that this parliament passed nearly 50 years ago.[129]

2.120 Mr Manthorpe also addressed the criticism that the inquiry was paid for by Defence:

> I think somewhere, in some of the submissions, people assert that the inquiry wasn't properly independent because Defence paid for it. Let me address that point: yes, Defence paid for it, but somebody had to pay for it, and it was always going to be the taxpayers. It was quite a big inquiry, as you can see from the scale of submissions and so on. When we were asked to take it on, I said, 'Well, I'll take it on and look at the matters of administration, but someone's got to foot the bill.' That was a conversation I had with Defence, but I don't think that bears on the independence that I and my colleagues brought to bear. So they provided the funding.[130]

Responding to requests to review the investigation

2.121 Noting that he was asked to reopen the investigation, Mr Manthorpe explained in more detail to the committee why he decided not to do this:

> Essentially, it was because, when I looked at the further advice that people gave to me—I understand their disappointment with my report. What can I say? I looked at this issue in good faith and I came to the judgements that I came to. When requests came in to look again, to reopen the investigation and so on, I and my team looked at those requests and, for all of the requesting, I couldn't see—within the scope of the powers I have and the role I have as the Ombudsman, which is to look at matters of administration and make such recommendations as I see fit—a way back

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128 *Proof Committee Hansard*, 20 May 2021, p. 25.

129 *Proof Committee Hansard*, 20 May 2021, pp. 25-26.

130 *Proof Committee Hansard*, 20 May 2021, p. 29.

into the issues that was going to change the fundamentals of what I had concluded. So, in that context, I declined to do what they requested.[131]

[131] *Proof Committee Hansard*, 20 May 2021, p. 27.

Chapter 3
Design of the DFRDB scheme

3.1 A number of issues around the design of the DFRDB scheme were raised with the committee, including the views that: it did not live up to the commitment made to ADF personnel; it was not what was recommended by the Jess Committee; the permanently reduced pension as a result of commutation is unfair; the expectation of life factor tables used are seen as out of date; and indexation arrangements have issues, including the link to CPI, historical adjustments and the interaction with commutation. Submitters also questioned the parliamentary scrutiny of the bill setting up the scheme.

3.2 It should be noted that although DFRDB scheme design issues were raised with the Commonwealth Ombudsman, he clarified that 'those matters were outside the scope of my functions'. However, his report included a summary of them 'in recognition of the strength and volume in which those views were expressed'.[1] Mr Manthorpe discussed this aspect with the committee:

> …I think that some of the submitters made submissions to me, and are making submissions to you, that go to the policy design of the scheme: the rates of indexation, the age factors and whether the pension should have gone back up to the non-commutation rate when someone reached life expectancy. All those things are, in effect, wired into the legislation and, therefore, the policy that informed the legislation of the scheme. I appreciate that some of the submitters don't believe that those settings are adequate, but those are matters of policy; they're not matters of administration.[2]

Dissatisfaction with the design of the scheme

Promises made

3.3 It was put to the committee that the DFRDB scheme was put forward to the ADF as a beneficial scheme. For example, Mr Clinton McKenzie noted:

> The DFRDB scheme was not a 'soft promise' to ADF members and prospective ADF members. The DFRDB was an unequivocal commitment and actively promoted as a concrete benefit of ADF service…
>
> …
>
> Although I cannot remember the precise terms of much of the information provided to me about the DFRDB scheme before I enlisted, I do recall the 'upshot as if it were yesterday: "In return for at least 20 years of ADF service and compulsory deductions from your pay, you will be entitled to

1 *Proof Committee Hansard*, 20 May 2021, p, 25.

2 *Proof Committee Hansard*, 20 May 2021, p. 27.

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> comfortable retirement pay which, when you die, will accrue to your surviving spouse or orphans to keep them comfortable".[3]

3.4 Another submitter recalled that as a junior officer he understood that one of the purposes of the DFRDB scheme was 'to retain members in the ADF because of the attractiveness to receive a pension (no matter how small) after 20 years or more service'.[4]

Not the scheme recommended by the Jess Committee

3.5 Some submitters were of the view that the design of the DFRDB scheme is not what the Jess Committee recommended[5] and that the current design of the scheme emerged because of action taken by Commonwealth departments.

3.6 The Australian Defence Force Retirees Association (ADFRA) contended that the Jess Committee recommendations were not correctly translated into legislation; Treasury and Defence reduced the benefits through their representation on the legislation drafting committees; the legislation was not properly scrutinised; and parliament did not understand the outcomes of the legislation which was exploited by Treasury and Defence.[6]

3.7 Mr Herb Ellerbock, Secretary, ADFRA, told the committee:

> Most of the Jess committee's recommendations were opposed by Treasury, because the recommended provisions were deemed to be more generous than those provided in the Commonwealth Superannuation Scheme for public servants. Treasury's view was supported by the Department of Defence and upheld by the McMahon government, which effectively shelved the Jess committee report…
>
> As is evident in Hansard, service representation was excluded from the committee which drafted the DFRDB Act, and, in the absence of that representation, the drafting committee was able to incorporate in the DFRDB Act the first of an ongoing series of inconspicuous measures which significantly reduced the defined benefits set down by the Jess committee and adopted by the Whitlam government.[7]

3.8 The Defence Force Welfare Association (DFWA) argued that legislators need to correct the administration defects surrounding commutation as the failure to do so 'seems contrary not only to the spirit and intent of the 1973 Jess Committee Report leading to DFRDB but also to the parliamentary debate that

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3 Mr Clinton McKenzie, *Submission 30*, p. 3.

4 Name withheld, *Submission 48*, p. 2.

5 See for example Mr J.A Treadwell, *Submission 79*, pp. 5, 11.

6 ADFRA, *Submission 36*, p. 2. See also Commander Graham J Darcy RAN (Rtd), *Submission 12*, pp. 1-2. Note these claims are contained in a YouTube video by Mr Herb Ellerbock, Secretary, Australian Defence Force Retirees Association.

7 *Proof Committee Hansard*, 20 May 2021, p. 6.

passed the DFRDB Act, and to the information that was subsequently distributed to ADF members'.[8]

3.9 When asked about the Jess Committee report, Mr David Nockels, First Assistant Secretary, People, Policy and Culture, Defence, responded:

> I wouldn't comment directly on that, other than to say that I think that the scheme as it is now is what we have and have had. There have obviously been adjustments over time to that scheme, but that is the scheme with which we work. I personally wasn't around at the time of the Jess review, so I can't make comment on what ended up happening with the scheme versus what the Jess review was suggesting and whether there were interpretations or slight changes and nuancing around that. But the scheme is what the scheme is, and that's what we work with. We have done so for many years, including with adjustments to that scheme over the years.[9]

3.10 The Ombudsman also responded to a question on this issue:

> I know that some of the submissions we've got and some of the submissions you've got from aggrieved members essentially say that the legislation somehow didn't reflect the intent of a previous committee; there was a committee called the Jess committee way back before the legislation was passed. I understand those concerns. I understand people may feel that. But at the end of the day the legislation was passed by the parliament as it was constituted in the 1970s, and that's where we went…[10]

Drafting and Parliamentary scrutiny

3.11 Some submitters also argued that there was not sufficient parliamentary scrutiny of the legislation and parliament did not understand what it was voting on.[11]

3.12 Submitters, including Commander Darcy stated that the legislation became law with 'only cursory Parliamentary consideration'.[12]

3.13 The ADFRA also stressed that:

> 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.[13]

3.14 Mr Ellerbock, ADFRA, contended that:

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8 DFWA, *Submission 54*, p. 2. See also name withheld, *Submission 37*, p. 2.

9 Mr David Nockels, *Proof Committee Hansard*, 20 May 2021, p. 18.

10 *Proof Committee Hansard*, 20 May 2021, p. 29.

11 See for example, Name withheld, *Submission 32*, p. 3.

12 Commander Graham J Darcy RAN (Rtd), *Submission 12*, pp. 1-2. Note these claims are contained in a YouTube video by Mr Herb Ellerbock, Secretary, Australian Defence Force Retirees Association.

13 ADFRA, *Submission 36*, p. 2.

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> By not properly scrutinising the legislation, which affects many of us for more than 50 years of our lives, past parliaments have allowed bureaucrats to subvert the intent of the Jess committee and reduce the real value of our benefits by as much as 40 per cent. We look to this committee to recommend the restoration of our benefits.[14]

Permanently reduced pension

3.15 The permanent reduction to the pension and the information provided was the subject of Chapter 2. The DFWA was of the view that 'the principle of a reduced DFRDB superannuation pension is an appropriate one following a veteran electing to commute part of it. However, in the opinion of many there is more than a degree of unfairness about a legislated outcome that requires those veterans who live longer to effectively subsidise those who die earlier. The result is that the reduction in pension due to commutation is greater than it would have been if the pension reduction were based on "*the member's life expectancy at the date of commutation*", as claimed'.[15]

3.16 DFWA argued:

> There is little question that, due to the longer period of reduced pensions received by veterans, the Commonwealth 'pockets' far more than the commuted monies that were originally advanced. DFWA does not believe that this could have been the intent of the architects of the DFRDB Act 1973. It belies belief that the Legislators of the time designed a system to deliberately deny veterans a beneficial outcome by seeking to recover more than any amounts commuted. Evidence of this is illustrated by the use of 1960-62 Life Tables and not 1970-72 Life Tables available for the 1973 Act.[16]

3.17 The RSL noted that the '[c]ontinuation of the (reduced) post commutation pension beyond the period when the commutation amount has been repaid' is a source of dissatisfaction for members.[17] The was supported by Mr Clinton McKenzie who stated:

> The permanent reduction in the annual rate of commuted retirement pay beyond a member's 'Schedule 3 nominal life expectancy' has – along with matters like indexation – become a legitimate focal point of grievances – and, consequently, a focus of the response of governments and the Ombudsman.[18]

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14 *Proof Committee Hansard*, 20 May 2021, pp. 7-8.

15 DFWA, *Submission 54*, p. 3. Emphasis in the original.

16 DFWA, *Submission 54*, p. 3.

17 RSL, *Submission 53*, p. 2 of Annex A.

18 Mr Clinton McKenzie, *Submission 30*, p. 2.

3.18 Mr David Plummer contended that the permanently reduced pension 'is not what the architects of the scheme conceived or what the Parliament intended when the scheme was approved'.[19]

3.19 However, Mr Colin Wade noted that:

> There was never any intent in the legislation for retirement pay to be treat[ed] as a loan and the commutation payment reduction restored, should the member live beyond life expectancy and there is no justification for the government to effect change and amend the DFRDB Act 1973.[20]

3.20 Mr Wade confirmed that the intent of the DFRDB Legislation 'was to enable DFRDB members to retire from the ADF at a relatively young age and commute part of their retirement pay entitlements and receive a reduced retirement pay thereafter'. He added that [t]he DFRDB scheme provide[s] very generous, defined benefit superannuation entitlements for members and dependent spouses and families as intended in the legislation'.[21]

3.21 Defence noted that when the DFRDB Act 1973 was legislated, 'the commutation provisions were mirrored off the DFRB scheme'.[22] Defence also advised that:

> The permanent lifetime reduction to a DFRDB pension as a result of commutation is consistent with the arrangements in the other civilian and military superannuation schemes. In CSS, the Public Superannuation Scheme (PSS) and MSBS if a member chooses to take part of the benefit as a lump sum, the amount of their lifetime pension is permanently reduced from what it would have been had the member not taken a lump sum. The factors used to convert pensions into lump sums (or vice versa) in the CSS, PSS and MSBS have not been amended or reviewed since the schemes commenced and are considered as permanent design feature of the schemes.[23]

Commonwealth ombudsman investigation findings

3.22 The Ombudsman noted that some submitters to his investigation 'asserted that a permanent reduction is inconsistent with the Jess Report recommendation of a 'proportionate' reduction, and that therefore the Jess Report should take precedence'.[24]

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19 Mr David Plummer, *Submission 31*, p. [3].

20 Mr Colin Wade, *Submission 60*, p. [7].

21 Mr Colin Wade, *Submission 60*, p. [7].

22 Defence, *Submission 39*, p. 6.

23 Defence, *Submission 39*, p. 8.

24 Commonwealth Ombudsman, Investigation into the administration of the Defence Force Retirement and Death Benefits (DFRDB) Scheme, Report No. 06 of 2019, December 2019, p. 11.

3.23 The Ombudsman noted that '[t]here is nothing in 24(3)(b) which creates a fixed time frame or end date for the reduction. Nor is there any other provision, in the DFRDB Act or any other legislation, which would cease the reduction'.[25]

3.24 The Ombudsman added that 'in our view the legal meaning is plain and not capable of any other interpretations. Placing limits on the benefits to be provided is not inconsistent with the purpose of the DFRDB Act, which must necessarily contain some limits on entitlements. What individual parliamentarians understood is not relevant. The DFRDB Act, as passed by parliament, requires a permanent reduction'.[26]

3.25 The Ombudsman also referred to the view of the Administrative Appeals Tribunal which considered 24(3) and 'found neither ambiguity nor obscurity in the provision'.[27]

3.26 However, a couple of submitters put forward cases attempting to argue there is uncertainty with some interpretations of the legislation.[28]

The use of expectation of life factor tables

3.27 Defence noted that Schedule 3 of the DFRDB Act 1973 provides for the 'Expectation of Life Factor'. This is 'an element of the commutation calculation, which is undertaken to determine a DFRDB member's lump sum and resultant pension benefit'. Defence noted that this is interchangeably known as Life Expectancy Factor or Life Expectancy Tables.[29]

3.28 If a member elects to commute, paragraph 24(3)(b) of the DFRDB Act contains a statutory process of calculating the resulting reduction to retirement pay:

> the commutation lump sum is divided by the person's 'expectation of life factor' to produce the annual reduction for commutation. The expectation of life factor is worked out according to their age and gender using a table in Schedule 3.[30]

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[25] Commonwealth Ombudsman, Investigation into the administration of the Defence Force Retirement and Death Benefits (DFRDB) Scheme, Report No. 06 of 2019, December 2019, p. 11.

[26] Commonwealth Ombudsman, Investigation into the administration of the Defence Force Retirement and Death Benefits (DFRDB) Scheme, Report No. 06 of 2019, December 2019, p. 12.

[27] Commonwealth Ombudsman, Investigation into the administration of the Defence Force Retirement and Death Benefits (DFRDB) Scheme, Report No. 06 of 2019, December 2019, p. 12. See also Mr Michael Manthorpe, Commonwealth Ombudsman, *Proof Committee Hansard*, 20 May 2021, p. 29.

[28] See Mr Clinton McKenzie, *Submission 30.1*, pp. [1-7]; Mr Bill Arden, *Submission 62*, pp. 1-5; Mr J. A Treadwell, *Submission 79*, p. 9.

[29] Defence , *Submission 39*, p. 7.

[30] Commonwealth Ombudsman, Investigation into the administration of the Defence Force Retirement and Death Benefits (DFRDB) Scheme, Report No. 06 of 2019, December 2019, p. 11.

3.29 Submitters pointed to the life expectancy tables in Schedule 3 of the DFRDB Act arguing they are inappropriate or out of date. For example, one submitter argued '…the latest Australian Bureau of Statistics (ABS) suggest that I could live for a further 7 years beyond the DFRDB life expectancy estimates'. This submitter also argued that '[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 fortnightly pension'.[31]

3.30 Mr Steven Kersnovske told the committee that '[c]learly the Life Expectancy Factor Tables were outdated from the start, never giving the opportunity for a true or fair service pension calculation to be achieved'.[32]

3.31 The Campaign referred to 'obsolete Life Expectancy data' alleging they were 'predicated to be in the Commonwealth's favour'.[33]

3.32 The DFWA saw the continued use of the life expectancy tables in the DFRDB Act as the 'root cause to the unfairness'. They stated that '[t]here is a clear 'wrong' in using such out-of-date Life Tables that few can even recall that they exist beyond a reminder from the Commonwealth Superannuation Corporation to those ADF members the subject of the **Defence Force Retirement & Death Benefits Act 1973** that year-by-passing year they continue to be silently disadvantage[d] by having their superannuation pension unfairly reduced'.[34]

3.33 The DFWA added that:

> The Ombudsman's report glossed over a key concern, namely that life tables more than half a century old continued to be used, even though many veterans and ex-service organisations made submissions on the matter. The 1960s life tables force veterans to accept a lower lifetime military superannuation pension than would "life expectancy on discharge" as it still advertised by the CSC.[35]

3.34 The RSL also pointed to the 'use of dated life expectancy tables which effectively shorten the commutation repayment period and hence reduce the residual pension'.[36]

3.35 Mr Peter Thornton alleged financial detriment as a result of the use of the tables in Schedule 3. Mr Thornton contends that 'the DFRDB Authority did not, ever, advise the Government or the Parliament of the day that the data

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31 Name withheld, *Submission 18*, p. 4.

32 Mr Steven Kersnovske, *Submission 47*, p. 2. See also Mr J.A Treadwell, *Submission 79*, p. 9; Mr Frank Aldred, *Submission 80*, p. 1.

33 DFRDB COMMUTATION CAMPAIGN, *Submission 22*, p. 11.

34 DFWA, *Submission 54*, p. 4. Emphasis in original.

35 DFWA, *Submission 54*, p. 9.

36 RSL, *Submission 53*, p. 2 of Annex A.

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contained within Schedule 3 was out of date and irrelevant; thereby perpetuating a nonfeasance by failing to exercise its Statutory and Fiduciary responsibilities'.[37] He argued that 'Parliament did not intend that the life expectancy data contained within Schedule 3 would remain as a "fixed" divisor in perpetuity' and submitted:

> Had the Parliament intended to have a "fixed" divisor, then surely it would have explicitly stated so in the wording at s24(3).[38]

3.36 In summary, Mr Thornton contended that 'based on the historical record, [he] remains of the firm opinion that the Parliament would have readily changed the life tables had it been properly briefed and advised to do so by the responsible Statutory authority – the DFRDB Authority'. He goes on to assert that the financial detriment comes from defective administration 'but not that of the Department of Defence…but instead that of the DFRDB Authority' who 'failed to properly advise the Government and Parliament of the day that the life expectancy tables became quickly out of date'. Mr Thornton maintains that:

> benefit recipients of the DFRDB scheme who separated from the ADF on or after 1975 have all sustained a financial detriment in the rate of the residual Retirement Pay, no matter if a member had commuted or not, because the contract entered into with the Commonwealth to purchase future benefits, as advertised, was breached with respect to the calculations pertaining to Commutation and life expectancy.[39]

3.37 Defence advised that [s]hould a member live for more that the Life Expectancy Factor years used in the calculation of their lump sum, the pension is not adjusted accordingly. No part of the lump sum is recovered from a deceased member's estate, should the recipient die before reaching the Life Expectancy Factor years used'.[40]

3.38 Defence noted that the AGA advised Defence 'that when the DFRDB scheme was introduced, the use of the 1960-1962 Australian Life Tables as a commutation factor was favourable to members relative to the alternative pension'.[41]

3.39 Defence confirmed that the expectation of life factor tables are part of the Act and so to change them would require legislative change[42] and there would be increased costs for the Commonwealth.[43] CSC also noted that '[a]s the DFRDB

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37 Mr Peter Thornton, *Submission 45*, p. 3.

38 Mr Peter Thornton, *Submission 45*, p. 2.

39 Mr Peter Thornton, *Submission 45*, p. 9. Emphasis in the original.

40 Defence, *Submission 39*, p. 7.

41 Defence, *Submission 39*, p. 7.

42 Mr David Nockels, *Proof Committee Hansard*, 20 May 2021, p. 19.

43 Defence, *Submission 39*, p. 7.

Scheme operates under legislation, any changes would have to be made by amending legislation passed by Federal Parliament'.[44]

Commonwealth Ombudsman investigation findings

3.40 The Ombudsman noted that the expectation of life factor is better described as a 'commutation divisor' as it is 'the divisor for the purposes of calculating a reduction to a person's retirement pay following commutation. It reported that 'these figures have been the same since the DFRDB Act commenced in 1973' and that members submitted that this is unfair given the increase in life expectancy since 1962.[45]

3.41 The Ombudsman noted that using later life expectancy figures was open to the government and parliament of the day, however:

> This was not the path chosen. This suggest that the scheme drafters never envisaged use of current tables, but rather, preferred a static commutation factor. With retrospect, if it had been formally named a 'commutation divisor' rather than a 'life expectancy' factor, it is possible that misunderstanding that ensued could have been avoided.[46]

Definition issues

3.42 The Campaign noted that the term commutation is not defined in the DFRDB Act.[47]

Commonwealth Ombudsman investigation findings

3.43 This issue was also raised with the Ombudsman. However, the Ombudsman did not view the lack of a definition of commutation in the DFRDB Act as a concern because 'not all terms used in legislation need to be specifically defined. Where terms are not defined in an Act, and some ambiguity arises, courts will look to whether there may be a common law definition, or their ordinary meaning is applied'. It was also pointed out that a definition is not required because the Act sets out the steps involved in commutation.[48]

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44 CSC, *Submission 50*, p. [2].

45 Commonwealth Ombudsman, Investigation into the administration of the Defence Force Retirement and Death Benefits (DFRDB) Scheme, Report No. 06 of 2019, December 2019, p. 51.

46 Commonwealth Ombudsman, Investigation into the administration of the Defence Force Retirement and Death Benefits (DFRDB) Scheme, Report No. 06 of 2019, December 2019, p. 52.

47 DFRDB COMMUTATION CAMPAIGN, *Submission 22*, pp. 3, 12. See also Mr Rodney Cox, *Submission 51*, p. 3.

48 Commonwealth Ombudsman, Investigation into the administration of the Defence Force Retirement and Death Benefits (DFRDB) Scheme, Report No. 06 of 2019, December 2019, pp. 12-13.

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Indexation

Defence

3.44 Defence indicated that since the introduction of the DFRDB scheme there have been a number of reviews to consider the most appropriate method of indexation for DFRDB members. The Defence submission details these reviews finishing with the most recent legislative change in 2014 where DFRDB and DFRB pensions for those over 55 are now indexed in the same way as age and service pensions.[49]

3.45 Many submitters raised dissatisfaction with the indexation arrangements[50] of the DFRDB scheme. These were concerns that: the indexation benchmarks are unfair or inadequate; previous indexation adjustments should be revisited; and about the interaction between commutation and indexation.

Concerns about the formula

3.46 A submitter pointed to the history of indexation starting with the report of the Jess Committee which noted:

> 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…and the proposal that adjustment be related to the Consumer Price Index. The Committee rejects the latter suggestion because it considers that the index does not fairly represent changes in general community standards.[51]

3.47 This submitter noted that'[d]espite the Jess Committee Report, the government of the day enacted the Defence Force (Retirement and Death Benefits Amendments) Act 1977 which related all adjustments to the CPI'.[52]

3.48 Mr Ellerbock, ADFRA, also noted:

> Regarding indexation, the Jess committee recommended that retired pay and invalid pay be adjusted annually so that relativity with average weekly earnings is maintained. The committee had rejected the consumer price index because, in its view, that index did not fairly represent changes in general community standards. But, because the method of pension updating in other Commonwealth pension schemes was then being

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[49] Defence, *Submission 39*, p.9.

[50] The annual or semi annual increase in the pension paid. It is applied in January and July each year.

[51] Joint Select Committee on Defence Forces Retirement Benefits Legislation, Report, 18 May 1972, p. 34.

[52] Name withheld, *Submission 18*, p. 2.

> revised, automatic adjustment was not incorporated in the original DFRDB Act…[53]

3.49 Mr Ellerbock added that the 1977 bill incorporated a 'double-edged benefit reduction measure':

> Firstly, it linked adjustments directly to the consumer price index, which had already been rejected by the Jess committee in 1972 and was found to be unsuitable by the Pollard review in 1973. Secondly, it excluded from the application of the CPI increases a part of the DFRDB benefits determined by a notional life expectancy factor. Furthermore, on the death of the recipient member that exclusion from indexation flows on to the benefits of the member's spouse and dependent children.[54]

3.50 Mr William Harrison stated that 'I also believed that my Super entitlements would be adjusted by/to the rate of inflation…not the Consumer Price Index…'.[55] Mr Clinton McKenzie noted that '[a]fter discharge from the ADF I watched as the 'buying power' of my DFRDB retirement pay eroded inexorably'…No independent, qualified expert says the CPI is an accurate measure of the real cost of living''.[56]

3.51 A submitter noted:

> …the continued use of the CPI for adjustments after the introduction of Monetary Policy generated a predictable reduction of DFRDB Pension value. This was [a] foreseeable outcome and should have been addressed by the DFRDB Authority. A new method of indexation was determined when the CPI adjustments proved inadequate to maintain living standards to adjust Old Age Pensions however DFRDB pensions continue on CPI adjustments and consequently declined in value for many years.[57]

3.52 The RSL noted a 'failure to maintain relativity with the Australian standard of living, through appropriate indexation'.[58] Another submitter argued that:

> The current methodology for the indexation rate of the pension only has the effect of making the financial matters worse. Current indexation is not keeping pace with the real cost of living increases we experience today.[59]

3.53 Mr Clive Conner submitted that:

> It was well known in 1973 that CPI was not a fair indication of the increases in cost of living, yet the Government persisted with this until 2014 when the Fair Indexation Bill was passed…[60]

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53 *Proof Committee Hansard*, 20 May 2021, p. 7.

54 *Proof Committee Hansard*, 20 May 2021, p. 7.

55 Mr William Harrison, *Submission 4*, p. 2.

56 Mr Clinton McKenzie, *Submission 30*, p. [5].

57 Name withheld, *Submission 33*, p. 3.

58 RSL, *Submission 53*, p. 2 of Annex A.

59 Name withheld, *Submission 42*, p. 2.

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3.54 Mr Ellerbock argued that the 2014 amendments 'did nothing to remedy the effects of unfair indexation from 1976 to 2014' and the DFRDB Act 'continues to unfairly index the benefits of recipients aged under 55 and it retains the formula which excludes from indexation a substantial part of our benefits'.[61]

3.55 The DFWA noted that the Defence Force Retirement Benefits Fair Indexation Act of 2014 'recognised at least one significant deficiency in that the pensions of DFRB/DFRDB superannuants over 55 would be indexed in the same way as age and service pensions'. Meaning that:

> the pensions would be indexed to the better of the Consumer Price Index (CPI), the Male Total Average Weekly Earnings (MTAWE), and the Pensioner and Beneficiaries Living Cost Index (PBLCI). After all, while the CPI had been once an accepted index to maintain a pension's value relative to national wages, it had lost its relevance in wage fixing. CPI had become an economic tool to measure inflation rather than living costs. It was not an index to ensure the purchasing power of superannuants was maintained, being the intent of the original enabling legislation to the Scheme.[62]

3.56 The DFWA added that:

> Until the passing of the Defence Force Retirements Benefits Fair Indexation Act, DFRB/DFRDB pensions stood out as being more harshly treated than almost every other long-term Commonwealth payment subject to regular indexing to maintain its value. Unfortunately, the Act by any fairness measure didn't go far enough. It somehow deliberately excluded the under 55 DFRDB retirees and those in receipt of DFRDB invalidity superannuation pensions.[63]

3.57 Mr Keith McIntosh set out his view in relation to indexation and called to have more choice:

> …Having the income stream pegged to the CPI indexation as it has evolved has seen a slow decline in value of this asset. It has gone from 8% in 1990 to 0% 2021. A rough way to compare this is, had I spent my entire working life in the ADF and retired on the rank I was when I actually retired with the seniority, I would be on a higher retirement income that I am now and this is having worked for 27 years in civilian street earning far more and salary sacrificing more to my civilian superannuation, than the same rank with 47 years in the ADF. How does that work. I am eligible to have a Centre link old age pension top up, something is definitely wrong here. I feel the DFRDB was not a good very good investment.[64]

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60 Mr Clive Connor, *Submission 23*, p. 2. See also Mr Charles Myhill, *Submission 29*, p. [1].

61 *Proof Committee Hansard*, 20 May 2021, p. 7.

62 DFWA, *Submission 54*, p. 2.

63 DFWA, *Submission 54*, p. 2.

64 Mr Keith McIntosh, *Submission 11*, p. 1.

3.58 Another submitter called on the government to ensure relativity is maintained for the retired soldier to the serving soldier.[65]

3.59 Mr Bert Hoebee urged the committee to also look at what he considers to be unfair indexation for MSBS recipients.[66]

3.60 In relation to indexation, Defence advised that:

> When automatic indexation was introduced in 1976 it was applied only to the 'notional rate of retirement pay' to reflect the employer funded part of the pension. The non-indexed portion of a pension reflects the employee funded (member contributions) part of the pension. This broadly replicates the indexation arrangements of the CSS and was consistent with the recommendations of the 1973 Pollard Review and the 1974 Melville & Pollard Review.[67]

Concerns about previous indexation adjustments

3.61 Submitters referred to previous legislated changes to indexation. A submitter recommended 'that the benefits deducted over the three years 1986 to 1989 be restored'. In addition this submitter argued that '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 until 2014'.[68]

3.62 That submitter argued that:

> 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.[69]

3.63 Another wrote that '[t]here is evidence that…DFRDB pensions, were not always CPI adjusted as per the legislation but discounted by 2% when inflation was high'.[70]

3.64 A submitter argued:

> The importance of legislation should be to maintain fair and equitable pension indexation to retain pension value. In particular, the arbitrary Government decisions to discount the CPI indexation when inflation was high and the Government introduction of Monetary Policy, (that allowed

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65 Name withheld, *Submission 2*, p. 4.

66 Mr Bert Hoebee, *Submission 77*, p. 1.

67 Defence, *Submission 39*, p. 10.

68 Name withheld, *Submission 18* p. 3.

69 Name withheld, *Submission 18*, p. 2.

70 Name withheld, *Submission 33*, p. 3.

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> interest rate[s] to be manipulat[ed] by the Reserve Bank), resulted in DFRDB pensions losing value.[71]

3.65 In looking at the question of the occasions when the full CPI indexation of the DFRDB and DFRB pensions was not paid, the Parliamentary Library noted in 2008:

> *The Superannuation and Other Benefits Legislation Amendment Act 1986* amended the legislation governing the operation of both the DFRDB and DFRB from the payday of 23 October 1986 to discount the 1986 pension increase by 2 per cent from 9.2 per cent to 7.2 per cent. This policy continued until 20 October 1989 (that is, the full CPI increases were not passed on to DFRDB pensioners). There was no later increase in the DFRDB pension to make up for this period of discounting.[72]

3.66 The Parliamentary Library noted that:

> These actions were undertaken as a budget measure in response to the unusually high rates of inflation of the period combined with a shortfall in government revenue. The rates of increase in CSS pensions were also discounted in the same way during this period.[73]

Interaction of indexation with commutation

3.67 Defence explained the interaction of indexation with commutation:

> If a member does not elect to commute or commutes less than four times the pension then indexation is only applied to the 'notional rate of retirement pay'. The 'notional rate of retirement pay' is the rate of pension that would be payable if the member had commuted four times the pension (which was the maximum amount that could be commuted at the time indexation arrangements were introduced).
>
> If a member does not elect to commute or commutes less than four times the pension there will be a non-indexed portion of the pension. If a member commutes four times or greater (maximum five times) the residual pension is fully indexed.[74]

3.68 Submitters raised the interaction of commutation and indexation. The Campaign submitted that there is inequitable indexation of commuted and uncommuted retirement pay:

> In respect to Commutation, the provisions of the DFRDB Authority were: that under INDEXATION policy, **the quantum to be indexed annually would only apply to the Retired Pay after Commutation**, irrespective of whether the Superannuant had Commuted or had Not Commuted.

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71 Name withheld, *Submission 33*, p. 4.

72 Leslie Nielson, Parliamentary Library, Research Paper no, 16, 2007-08, 'Military superannuation myths and reality', pp. 9-10.

73 Leslie Nielson, Parliamentary Library, Research Paper no, 16, 2007-08, 'Military superannuation myths and reality', p. 10.

74 Defence, *Submission 39*, p. 10.

> However, those that commuted are believed to be receiving disproportionate indexation, as would have applied, had they not commuted, consequently, superannuants that commuted are suffering further substantial financial detriment, to Retirement Pay.[75]

3.69 The Campaign added:

> The Exclusive Detailing of Commutation Policy from Veteran Superannuants by the DFRDBA, and the FALSE INFORMATION, as propagated officially by Defence, inter alia, countless (55,000) Veteran Superannuants were misled into accepting a Commutation. We therefore contend **that all DFRDB Superannuants, so duped and recognised as having received a Commutation, that, as at the time of reaching their Notional Life Expectancy point, be regarded as not having received a Commutation**.[76]

3.70 The Campaign put the view that 'regardless of whether a Veteran Superannuant Commutes, or does not Commute, their Retirement Pay should be exactly the same in both cases'.[77]

3.71 Mr Peter Larard stated:

> There is wide belief now that, for those who commuted, only a portion of the reduced pension is actually used for annual CPI (or other) pension indexation. Indeed! If so, how can there be any justification for basing indexation upon only a percentage of a reduced pension! There was certainly no knowledge advised or known of this matter, or any effect upon widows' Reversionary Pensions in 1974 or 1981.[78]

3.72 Mr Rodney Cox also submitted that 'Retirement Pay indexation, as applied to Commuted and Uncommuted Retirement Pay, places significant detriment on Retirement pay where I commuted, as opposed to, NOT commuting'.[79]

Commonwealth Ombudsman findings

3.73 The Ombudsman's report details the interaction between indexation and commutation. It was noted that '[i]n effect, the DFRDB Act operates to divide a person's annual retirement pay into two portions – one which is indexed and one which is not. The amount of these portions are connected to the amount the person can commute'. It was also noted that 'the indexed portion of retirement pay has remained at the amount of retirement pay which would be payable annually if a person had decided to commute four times the annual retirement pay entitlement, even though since 1983 a person can commute more than four times'. The Ombudsman summarised that:

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75 DFRDB COMMUTATION CAMPAIGN, *Submission 22*, p. 9. Emphasis in original.

76 DFRDB COMMUTATION CAMPAIGN, *Submission 22*, p. 10. Emphasis in original.

77 DFRDB COMMUTATION CAMPAIGN, *Submission 22*, p. 13.

78 Mr Pater Larard, *Submission 20*, p. 2.

79 Mr Rodney Cox, *Submission 51*, p. 3. Emphasis in original.

> In effect, a person who elected to commute more than four times their annual retirement pay is exchanging a portion of their indexed retirement pay....This means that a person who commuted more than four times their annual retirement pay would be left with an annual pension less than the maximum available indexed retirement pay.'[80]

3.74 Therefore in relation to indexation:

> For people who did not commute, or who commuted an amount less than or equal to four times their annual retirement pay, they are receiving the full indexed retirement pay…However, where a person commutes more than four times their annual retirement pay, they are receiving less than the full indexed retirement pay. In this case, indexation is only applied to the actual pension paid. Therefore the indexation factor is applied to that lower amount.'[81]

3.75 It was further explained that:

> For people who commute up to four times the amount of their retirement pay, the difference between what they receive and what they would have received if they had not commuted (the 'commutation reduction amount') is fixed—it remains the same dollar amount from year to year throughout their life, unaffected by indexation.
>
> However, a person who commutes more than four times the amount of their retirement pay has a smaller amount of indexable retirement pay (as a result of the initial reduction). This means the difference between their retirement pay and the retirement pay they would have received if they had not commuted will grow over time in accordance with the indexation factor.[82]

3.76 The Ombudsman noted that the modelling undertaken by the AGA and KPMG took into account the indexation described in the DFRDB Act.[83]

3.77 While noting the complexity of indexation in the DFRDB Act, the Ombudsman was satisfied that indexation was properly applied to DFRDB pensions by the administrators. However, it noted that the information provided by CSC:

> did not advise the longer term consequences of electing to commute more than four times a person's retirement pay. In particular, this information could have made clearer that doing so has the effect of commuting a portion of a member's indexed retirement pay, which would in turn lower

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[80] Commonwealth Ombudsman, Investigation into the administration of the Defence Force Retirement and Death Benefits (DFRDB) Scheme, Report No. 06 of 2019, December 2019, pp. 46-47.

[81] Commonwealth Ombudsman, Investigation into the administration of the Defence Force Retirement and Death Benefits (DFRDB) Scheme, Report No. 06 of 2019, December 2019, p. 47.

[82] Commonwealth Ombudsman, Investigation into the administration of the Defence Force Retirement and Death Benefits (DFRDB) Scheme, Report No. 06 of 2019, December 2019, p. 50.

[83] Commonwealth Ombudsman, Investigation into the administration of the Defence Force Retirement and Death Benefits (DFRDB) Scheme, Report No. 06 of 2019, December 2019, p. 47.

> the amount by which their remaining annual retirement pay would grow through indexation.[84]

3.78 Further, in relation to the information provided by CSC:

> The provisions for indexation in the DFRDB Act are extremely complex which is not uncommon across Commonwealth law. This is why it is good administrative practice for agencies administering those complex laws to explain them in a way lay people can understand.[85]

3.79 It was added:

> While we acknowledge that the impact of indexation is unlikely to be the primary motivator to the decision to commute or not, it is still important that people have all relevant information in front of them when making a decision. The more complex a legislative scheme, the more critical it is that administrators of the scheme provide plain language explanations of how it operates.[86]

3.80 In relation to the views expressed that indexation arrangements should be changed, the Ombudsman noted that:

> Indexation arrangements more generally have been the subject of numerous government reviews and inquiries. There is no reason to believe that each of these issues are not the intended policy outcome following deliberate and considered government policy decisions.[87]

3.81 When asked about the scheme and indexation, Defence and CSC emphasised that it is their role to administer the scheme in accordance with the legislation and that the legislation itself is a matter for government.[88]

Other issues

Administration

3.82 Mr Brian Dirou expressed the view that the 'creation of an omnibus authority to manage multiple differing pension schemes has generated administrative shortcomings re the DFRDB pension scheme'. He outlined a number of these and suggested a 'dedicated website for DFRDB members could be created embracing a Summary of the Defence Force Retirement and Death Benefits

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[84] Commonwealth Ombudsman, Investigation into the administration of the Defence Force Retirement and Death Benefits (DFRDB) Scheme, Report No. 06 of 2019, December 2019, p. 50.

[85] Commonwealth Ombudsman, Investigation into the administration of the Defence Force Retirement and Death Benefits (DFRDB) Scheme, Report No. 06 of 2019, December 2019, p. 50.

[86] Commonwealth Ombudsman, Investigation into the administration of the Defence Force Retirement and Death Benefits (DFRDB) Scheme, Report No. 06 of 2019, December 2019, p. 50.

[87] Commonwealth Ombudsman, Investigation into the administration of the Defence Force Retirement and Death Benefits (DFRDB) Scheme, Report No. 06 of 2019, December 2019, p. 52.

[88] Mr David Nockels, Defence and Ms Alan Scheiffers, CSC, *Proof Committee Hansard*, 20 May 2021, pp. 18-19.

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Scheme and access to itemised detail of member DFRDB account history, to minimise need to navigate bureaucracy'.[89]

[89] Mr Brian Dirou, *Submission 46*, pp. 1, 3.

Chapter 4
Suggested changes and potential costs

4.1 This chapter summarises the suggestions made to the committee to address the design of the scheme including the issues focused around commutation and indexation as well as the potential costs.

What do submitters want to happen?

4.2 While there were differing views on exactly what should occur, overall, submitters called for the legislation to be changed to revise various aspects of the scheme arguing that:

- it was drafted contrary to the recommendations of the Jess Report;
- it was too complex and parliamentarians did not understand what they were voting on;
- the commutation arrangements are unfair and should be changed along with some form of compensation and backpay; and/or
- other design aspects of the scheme should be changed, eg. expectation of life factor tables should be updated and indexation adjusted.

4.3 The key suggestions are outlined below. Many of these suggestions were also put to the Ombudsman who noted 'it is clear from the submissions we received, that there is a high level of confusion and dissatisfaction with current policy settings as expressed through the statutory arrangements and many members are hoping for legislative reform'.[1]

Change the legislation to reflect the scheme outlined to them with reimbursement

4.4 A key wish of submitters is for the legislation to be amended to reflect what some were told about how commutation would work by Defence because they believe the current design of the scheme is unfair. They argue that the legislation should be changed to reflect that they accepted a lower pension rate to pay back the lump sum until a nominated life expectancy age and when the lump sum debt is cleared the pension should revert to the pre-commutation rate.[2]

4.5 Some argued this should involve reparations at least in part with most arguing that all monies in excess of reaching the expectation of life factor should be repaid.

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[1] Commonwealth Ombudsman, Investigation into the administration of the Defence Force Retirement and Death Benefits (DFRDB) Scheme, Report No. 06 of 2019, December 2019, p. 44.

[2] Mr Alan White, *Submission 6*, p. 1; Name withheld, *Submission 10*, p. 2.

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4.6 The DFRDB COMMUTATION CAMPAIGN (the Campaign) said that 'retrospective action in respect to the failure of both the DFRDBA and DEFENCE, through Mal-Administration, needs to be taken with appropriate reparations being made'. It added:

> We believe that all of those that accepted a Commutation did so under the false and inaccurate policy advice, as passed to them. Furthermore, very few would have accepted the Lump Sum benefit (provided under original Parliamentary guidance as a transition benefit post-Military Service) had they been aware of the Commutation policy of the DFRDBA.[3]

4.7 Mr Stone, Independent Advocate, the Campaign, emphasised that 'it's a matter of getting their own funds back that they were deceived into taking in the first place'.[4]

4.8 Accordingly, the Campaign argued that:

> …all those Veteran Superannuants induced to accept a Commutation, without the knowledge of the full financial impost commutation carried, under DFRDBA policy, should be unfettered from that policy, forthwith. Furthermore, that just-reparations should be paid to all affected Veteran Superannuants with a full return of all monies paid to the Commonwealth, in excess of the quantum received as a Lump Sum benefit, in opting for a Commutation.[5]

4.9 In summary the Campaign suggested that those who chose to commute 'be held to what their understanding of the matter was – that reductions in Retirement Pay would cease once they passed their National Life Expectancy Point…'.[6]

4.10 Mr Peter Larard also recommended reinstating retirement pay to the full amount, including backpay from the life expectancy date or at least 'some appropriately major recompense'.[7] Mr Charles Myhill indicated that he should be 'compensated for the overpayments I have made'.[8] Mr Paul McGregor also considered that there should be 'reimbursement of money paid since exceeding the notional life expectancy'.[9] Another submitter recommended 'that the Government acknowledge that the commutation arrangements are unfair and amend policy and legislation arrangements which would entitle me to my

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3 DFRDB COMMUTATION CAMPAIGN, *Submission 22*, p. 8. Emphasis in original.

4 *Proof Committee Hansard*, 20 May 2021, p. 3.

5 DFRDB COMMUTATION CAMPAIGN, *Submission 22*, p. 8.

6 DFRDB COMMUTATION CAMPAIGN, *Submission 22*, p. 16. See also Mr Steven Kersnovske, *Submission 47*, p. 3.

7 Mr Peter Larard, *Submission 20*, p. [2].

8 Mr Charles Myhill, *Submission 29*, p. 1.

9 Mr Paul McGregor, *Submission 41*, p. [2].

pre-commutation pension (appropriately indexed) upon reaching my life expectancy'.[10]

4.11 Another submitter recommended that the committee consider 'restoring full pension payments to those service personnel who as DFRDB members commuted a portion of their pension and reach or have reached the age at which they effectively 'repaid' their commutation amount'.[11]

4.12 The Australian Defence Force Retirees Association (ADFRA) is also seeking:

- legislative amendment to cease retirement pay and invalidity pay reduction after Notional Life Expectancy is reached';
- reimbursement of all retired pay and invalidity pay reductions after members reached their National Life Expectancy and
- restoration of the rate of all DFRDB Defined Benefits to a fair current value.[12]

4.13 However, the ADFRA stressed that they are 'not seeking the retrospective recovery of vast benefits already lost due to unfair indexation from the date of retirement to the present day'.[13]

4.14 Mr Michael Tehan suggested that '[a]ssuming the Committee agrees with the assertion that continuing payment of the pension at the reduced rate is unconscionable,…the rate of retirement pay is to be adjusted to the correct rate immediately; and, [m]embers are to be reimbursed a reasonable portion of the amount they have lost since the [c]ommutation value has been repaid'.[14]

4.15 The position was supported by others including Commander Graham J Darcy RAN (Rtd) who also recommended that the DFRDB Act be amended to 'remove the insidious wording which diminishes the benefits and restore those benefits to the levels which were set down by the Jess Committee and accepted by both Coalition and Labor Governments'.[15]

4.16 Mr David Plummer argued that '[a]s I believe that I have fully repaid my commuted amount, I should now be entitled to a total refund of the excessive payments deducted and my pension restored to my full pension entitlement, with restitution of full overpayment'. He added that the legislation should be amended to 'terminate retirement pay reduction, resulting from commutation,

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10 Name withheld, *Submission 18*, p. [6]

11 Name withheld, *Submission 35*, p. 5.

12 ADFRA, *Submission 36.2*, p. 3. See also Mr Herb Ellerbock, *Proof Committee Hansard*, 20 May 2021, p. 9.

13 ADFRA, *Submission 36.2*, p. 3. Emphasis in original.

14 Mr Michael Tehan, *Submission 59*, p. [2].

15 Commander Graham J Darcy RAN (Rtd), *Submission 12*, pp. 1-2.

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on the date on which the total retirement pay equates to the amount commuted, and restore pensions to full entitlement'.[16]

4.17 Another submitter argued that '[t]he Act requires amendment to ensure the full amount of retirement pay is restored once the contributor attains Life Expectancy – and the commutation amount has been repaid to the Commonwealth'.[17]

4.18 A further submitter argued that [t]he only remedial action that will reverse this absolutely inequitable situation is to remove that part of the legislation that stipulates that a reduction in pensions continues past the NLE age used to calculate the commutation in the first instance'.[18]

4.19 Mr Clive Connor also suggested repaying 'all recipients the amount of overpayment they have made with special taxation considerations and adjust their entitlement to full pre-commutation levels'.[19]

4.20 Noting the difficulties with 'so-called backpay', 'particularly as many DFRDB recipients are deceased', Mr Richard Usher suggested that 'from a given date – such as 1 July 2022 – DFRDB retirement pay, for those who have reached their life expectancy, and had 're-paid' the Commonwealth the full amount of their commutation, should increase to the correct value'.[20]

Potential costs

4.21 Looking at the cost of the remedies suggested by the Campaign, they responded:

> **How the Commonwealth should meet this cost is essentially for it to determine, however, we believe that the Commonwealth Superannuation Future's Fund has well sufficient resources, and these being specifically for superannuation purposes. Alternatively we suggest that as those Retirement Pay deductions have been credited to Consolidated Revenue, ongoing, and in some cases for decades, perhaps the Commonwealth could consider this is an appropriate source for their rightful payment.**[21]

4.22 The Campaign further suggested that 'if the funds previously outlaid by the Commonwealth, were now regarded as Military Transition Grants, that this would be consistent with general grant processes managed by the

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16 Mr David Plummer, *Submission 31*, pp. 4-5.

17 Name withheld, *Submission 32*, p. [3]. See also Mr Steven Kersnovske, *Submission 47*, p. 3.

18 Name withheld, *Submission 40*, p. [2].

19 Mr Clive Connor, *Submission 23*, p. 2.

20 Mr Richard Usher, *Submission 34*, p. 2.

21 DFRDB COMMUTATION CAMPAIGN, *Submission 22*, p. 16. Emphasis in original.

Commonwealth for a plethora of causes. **Furthermore, that this could bec[o]me a positive feature of future Military Transition arrangements**'.[22]

4.23 Mr Ellerbock, ADFRA, when asked about costs noted that 'every request for the appropriate information to allow me to do a fully detailed analysis of what you are just asking for now has been denied by the Commonwealth Superannuation Corporation—even to the point of quoting fine print in the Freedom of Information Act to prevent me from getting that information'. However, he indicated that he did have the personal details of some 650 members who commuted and on the basis of that information:

> Basically what I put in my submission is that the overpayment of DFRDB payments after life expectancy will run into hundreds of millions of dollars if it's allowed to go on. By the end of the 2020-21 financial year, some $40.7 million will have been overpaid in commutation. If it's allowed to run for the remainder of the period of this scheme, which will probably go out to 2060, that amount will be something in the order of $1.6 billion. That's an estimate based on the 650 members that I've got. That's the commutation estimate…[23]

4.24 ADFRA added that 'a small part of the annual earnings of the Future Fund, the primary purpose of which is to underwrite unfunded Commonwealth Defined Benefit schemes (of which DFRDB is one), would cover the cost of the outcomes we are seeking'.[24]

4.25 Mr Steven Kersnovske submitted that when the benefit of commutation has been repaid the benefit should revert to the full entitlement before the commutation was removed. He argued that [t]he small amount that each DFRDB recipient that decided to commute funds, stands to gain is insignificant and would have been no different to the amount they would receive should they not have commuted funds'.[25]

4.26 Mr Michael Tehan suggested that the cost to government of implementing the scheme described to them [where the rate of retirement pay is adjusted to the did not commute rate along with reimbursement since commutation repaid] 'will be offset by reduction in part pensions that many members draw from DVA or Centrelink when Income/Asset tests are applied to these adjustments and reimbursements'.[26]

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22 DRFDB COMMUTATION CAMPAIGN, *Submission 22*, p. 9. Emphasis in original.

23 *Proof Committee Hansard*, 20 May 2021, pp. 8-9.

24 ADFRA, *Submission 36.2*, p. 3.

25 Mr Steven Kersnovske, *Submission 47*, pp. 3-4.

26 Mr Michael Tehan, *Submission 59*, p. [2].

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Redesign the scheme

4.27 Several other design aspects were raised with the committee focussed on expectation of life factor tables and indexation.

Update expectation of life factor tables

4.28 The DFWA is seeking legislative change to address the life expectancy tables in the DFRDB Act:

> For almost six decades the Life Expectancy Tables in the 1973 DFRDB Act have unfairly remained the sole basis of calculating DFRDB pension outcomes to veterans of today'.[27]

4.29 The DFWA recommended that '[r]emedial action should reflect the understood intention that any pension reduction should be based on "*the members life expectancy at the date of commutation*"'.[28]

4.30 Mr Kel Ryan, President DFWA explained the proposal to the committee:

> Firstly, amend the DFRDB Act 1973 so that the applicable life expectancy is the one applying to a retiring DFRDB member on the date he or she elects to commute. The extant 1960-62 tables at schedule 3 are to be deleted. Secondly, create a simple program, or amend an existing program, in order to establish the correct DFRDB pension reduction for each existing and future DFRDB pensioner who commutes. All data elements—age, length of service and date of separation—already exist and are now used to calculate reductions. The only change would be to use the individual's correct life expectancy instead of the act's outdated 1960-62 life expectancy. Thirdly, adjust the DFRDB pensions, including reversionary pensions, of all living DFRDB pensioners in light of step 2….[29]

4.31 However, this suggestion by the DFWA was not supported by the Australian Defence Force Retirees Association arguing that the proposal would 'provide the least benefit for the majority who have retired the longest, and the greatest benefit, albeit still only small, for the 900 odd members who have not yet retired and the relative few most recently retired'.[30]

4.32 Mr Thornton also argued for a change to the tables in the DFRDB Act on the basis that the DFRDBA should have advised the government and Parliament

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27 DFWA, *Submission 54*, p. 2.

28 DFWA, *Submission 54*, p. 4. Emphasis in original. See also Mr Herb Ellerbock, *Proof Committee Hansard*, 20 May 2021, p. 12. Note: This was supported by The Royal Australian Armoured Corps Corporation, *Submission 63*, p. [2].

29 *Proof Committee Hansard*, 20 May 2021, p. 12. This proposal was supported by the RAAC Corporation Limited, *Submission 63*, p. 2; Name withheld, *Submission 75*, p. 1 and Mr Frank Aldred, *Submission 80*, p. 2.

30 ADFRA, *Submission 36.2*, p. 3.

that the data in schedule 3 was out of date and as a result financial detriment has been sustained by DFRDB members.[31]

4.33 It was also suggested to rename the tables to be a commutation divisor[32] as noted by the Ombudsman.[33]

Potential costs

4.34 The DFWA noted that the costs of their proposal [to update the life expectancy tables] requires actuarial study but that an effort was made in the DFWA paper 'Defence Force Retirement and Death Benefits Scheme – Commutation – A simple Solution' which estimates that the average annual increase in DFRDB pensions would be approximately 1.3 per cent.[34] At the hearing Mr Ryan further explained:

> Subject to actuarial confirmation, DFWA estimates that DFRDB pensions would rise by 1.3 per cent or, on average, about $400 per annum. The gross cost to the budget is estimated to be in the order of $20 million.[35]

4.35 Mr Ryan, DFWA, added:

> Even though the Commonwealth has profited greatly from living and deceased veterans because of the life expectancy issue, DFWA does not call for a lump sum back payment for any DFRDB pensioner. That would be fair to veterans without disadvantaging the taxpayer, but DFWA recognises the parlous state of Commonwealth finances due to the COVID-19 virus and is prepared, albeit reluctantly, to concede this issue. In this case, we recognise that pursuing lump sum repayments, however fair, would impose further bureaucratic and political delays on achieving an outcome for a veteran cohort that is dying off.[36]

Other suggestions

4.36 Mr Brian Dirou provided another suggestion in relation to lump sums:

> Considering commuted pensions have been calculated on nominal life expectancies that are being well exceeded in many cases, it would be reasonable to allow conversion to a lump sum after nominal life expectancy to enable pensioners funding availability to ensure adequate financial security for spouses/dependants. The Federal Government is allowing premature use of superannuation investment for other purposes, so why not DFRDB pensioners?[37]

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31 Mr Peter Thornton, *Submission 45*, p. 9.

32 Mr Clive Connor, *Submission 23*, p. 2.

33 Commonwealth Ombudsman, Investigation into the administration of the Defence Force Retirement and Death Benefits (DFRDB) Scheme, Report No. 06 of 2019, December 2019, p. 11.

34 DFWA, *Submission 54*, Enclosure 1.

35 *Proof Committee Hansard*, 20 May 2021, p. 12.

36 *Proof Committee Hansard*, 20 May 2021, pp. 12-13.

37 Mr Brian Dirou, *Submission 46*, p. 3. Emphasis in original.

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Indexation

4.37 The Campaign called for equality of treatment and argued:

> Where indexation is found not to have been consistent with the legislation, that equitable reparations should be made to each Veteran Superannuant, so affected, to fully restore their Retirement Pay reduction to an amount equivalent to that, that they should have received, had they not commuted. Also, that all losses from past reductions of Retirement Pay be paid in full and not taxed in a single year drawdown.[38]

4.38 Mr Herb Ellerbock, DFWA, told the committee:

> …the indexation issue remains a fraught one. The changes to indexation brought about in 2014 were very welcome, but they only applied to those aged 55 or greater as far as DFRDB pensioners were concerned. That indexation that applies to them is fair, and the government and, indeed, the parliament recognised that the former method of indexation, CPI alone, was unfair by definition, and that's why fair indexation was brought in. However, it was only brought in for those aged 55 or greater. Those aged under 55 still suffer from unfair indexation. And, similarly, for service people who are members of the following scheme, the Military Superannuation and Benefits Scheme, the employer portion of their scheme is only indexed to CPI, and the cost of that over the period of their time in service before they can receive a pension is very, very significant. It can be in the hundreds of thousands of dollars because of wrong indexation.[39]

4.39 Mr Ellerbock added:

> On a related issue, the people who, in our opinion, suffer most with wrong indexation are those on invalidity benefits. There are many thousands of DFRDB pensioners and others who are on invalidity benefits of one form or another. Their indexation is CPI at best, and they're the ones who suffer the most. It's difficult for us, as one of the speakers mentioned earlier, to extrapolate from that and say: 'Does this have mental health considerations—a propensity to suicide?' and these sorts of issues. But being treated as second-class citizens when you're already on an invalidity benefit, in our view, is something that the government should remedy and remedy very quickly.[40]

4.40 In summary Mr Ellberbock outlined the position of the DFWA in relation to indexation:

> We would like to see a recalculation of the base rates of entitlements, of benefits, based on fair indexation from the date of retirement to the present day, or certainly until 2014, when fair indexation was introduced. That is costly…[41]

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38 DFRDB COMMUTATION CAMPAIGN, *Submission 22*, p. 10.

39 *Proof Committee Hansard*, 20 May 2021, p. 14.

40 *Proof Committee Hansard*, 20 May 2021, pp. 14-15.

41 *Proof Committee Hansard*, 20 May 2021, p. 9.

4.41 The DFWA also submitted the 'inappropriateness of the CPI as the indexation measure for DFRDB pension adjustment has been recognised by the passing of the Defence Force Retirement Benefits Legislation Amendment (Fair Indexation) Act 2014'. It argued:

> Given the indexation was considered inappropriate for those over 55 years, DFWA considers that the time to redress the indexation wrong for the small and decreasing number of DFRDB recipients who are under 55 years of age is long overdue. Action should be initiated forthwith.[42]

4.42 Specifically the DFWA recommended:

> …the earliest possible amendment to the Fair Indexation Act so that all DFRDB pension recipients under 55 years and who were compulsorily discharged from the ADF on medical grounds could benefit from their pensions being indexed to the better movements in either the Consumer Price Index, the Male Total Average Weekly Earnings, and the Pensioner and Beneficiaries Living Cost Index.[43]

4.43 The RSL also noted that '[p]ensions indexed solely to CPI have lost value relative to present wage rates and living standards. Male Total Average Weekly Earnings (MTAWE) is seen as a more appropriate indexation basis'.[44]

4.44 Mr Kersnovske recommended that the partial indexation provisions be repealed. Also that the rates of all DFRDB Defined Benefits are restored to a Fair Current Value. That is, the rates those benefits would be now if;

- they had been adjusted per the 'fair' indexation method incorporated into the DFRDB Act; and
- the reduction of Retirement /Invalidity Benefits after commutation, had ceased on the date NLE is reached.[45]

4.45 Mr Paul McGregor called for a fair indexation method to be incorporated into the DFRDB Act.[46] Mr Clive Connor suggested that there is a need 'to recalculate for each recipient member the amount they had lost through unfair indexation and establish a new individual base line from the date the Legislation was passed'.[47] Mr Charles Myhill also suggested the Fair Indexation Bill 'should have resulted in a new individual base line that included the previous losses due to CPI'. He added that '[s]ince 2014 the Indexation arrangements are fair.[48]

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42 DFWA, *Submission 54*, p. 5.

43 DFWA, *Submission 54*, p. 5.

44 RSL, *Submission 53*, Attachment 1 of Annex A.

45 Mr Steven Kersnovske, *Submission 47*, p. 5.

46 Mr Paul McGregor, *Submission 41*, p. [2].

47 Mr Clive Connor, *Submission 23*, p. 2.

48 Mr Charles Myhill, *Submission 29*, pp. 1-2.

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4.46 Another submitter recommended '[r]edress, repay and backdate the Pension Adjustment approved in the Budget as part of the 2014 Fair Indexation Bill'.[49]

4.47 Mr David Plummer recommended to '[a]pply all indexation increases to the full retirement pension pay that would be payable had the member not commuted'.[50]

4.48 Another submitter suggested that '[t]he remedial action required is to recalculate DFRDB Pensions had the 2% discounting not occurred and implement an appropriate indexation system back dated to when Monetary Policy was introduced'.[51]

Potential costs

4.49 Regarding indexation Mr Herb Ellerbock, DFRA, told the committee, '[t]he indexation estimate, if it's allowed to go on until every member of this scheme is dead, will be somewhere between $11 billion and $12 billion'. He added that he has not costed the amount already lost to this point 'but I estimate that, on average, every member in the scheme now has lost in the order of 20 per cent of their defined benefits at this point in time'.[52]

4.50 Regarding the DFWA suggestion, in relation to cost, they submitted:

> As to cost, without any insight into the number of members involved in the under 55 cohort, a cost estimate could not be more than a subjective one. Intuitively, given the low numbers, the cost can only be a minimal one against a benefit that must be sizable.[53]

4.51 A submitter who wanted the legislation changed to reflect the incorrect information provided by Defence as well as implementation of a different indexing system, including the two per cent not passed on, submitted that '[t]he cost compared to recent Government initiatives like "Job Keeper" and "Job Seeker" would be miniscule'.[54]

Issues with these suggestions

4.52 The DFWA recognised that legislative action to retrospectively try to turn the scheme into what some DFRDB members understood as a result of the incorrect information provided by Defence would mean:

> The small number who did not commute would then have a valid argument that they should now be entitled to commute because the

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49 Name withheld, *Submission 25*, p. 4.

50 Mr David Plummer, *Submission 31*, p. 5.

51 Name withheld, *Submission 33*, p. [3].

52 *Proof Committee Hansard*, 20 May 2021, pp 8-9.

53 DFWA, *Submission 54*, p. 5.

54 Name withheld, *Submission 33*, p. 3.

> original conditions under which they made their decision had changed. They could claim financial detriment compared to others who did commute and are now to have their pensions increased.
>
> There would be a valid argument that the estates of ADF members who commuted, but died before reaching average life expectancy age, should pay off the outstanding amount. This would not be acceptable under any circumstances. Many of these estates would be held by ADF Members' widows/widowers who are now in receipt of [DFRDB] reversionary pensions based on 5/8 of what the members uncommuted pension would have been. This would not be accepted under any circumstances.[55]

4.53 The DFWA noted that there would be 4 classes of retirement pensioners:

- Those who commuted based on incorrect advice;
- Those who commuted based on correct advice;
- Those who did not commute based on correct advice; and
- Those who did not commute based on incorrect advice.[56]

4.54 The Ombudsman looked at these issues and pointed out in relation to reparations that this was not recommended because:

> …on the basis of the modelling, to do so would unreasonably place the cohort who commuted in an even stronger financial position than those who correctly understood the operation of the scheme and decided not to commute, which in the long run appears to have been the less beneficial choice for most people. Similarly, it would provide an unjustified windfall at taxpayers' expense for those who did not understand the scheme and chose to commute.
>
> Second, to do so would presume to contradict the intent of the Parliament that passed the legislation establishing the DFRDB scheme decades ago. It would of course be possible for the current Parliament and the current Government to consider whether the policy issues in question ought to be re-opened in light of the analysis in this report.[57]

4.55 In speaking about the potential for perverse outcomes to the committee Mr Manthorpe further explained:

> One is that there were people who understood how the scheme was intended to work. There was certainly a group of people, probably in their thousands, as my report says, who were misinformed. But there were other people who understood how it worked, so I found it difficult to make a recommendation that said the taxpayer should now go and give those people, who knew exactly what they'd signed up for, a further payment for something that happened decades ago. That's one issue that would have to be contemplated if there another scheme was put in place. I also thought

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55 DFWA, *Submission 54*, p. 7.

56 DFWA, *Submission 54*, pp. 7-8.

57 Commonwealth Ombudsman, Investigation into the administration of the Defence Force Retirement and Death Benefits (DFRDB) Scheme, Report No. 06 of 2019, December 2019, Foreward.

> about the group who understood how the scheme worked and chose the other option—that is to say, they chose the higher pension but not taking the lump sum up-front. They would, I think, be rightly aggrieved if the other group got a further payout, but they didn't get anything even though they understood the scheme properly and they've ended up, if the actuarial modelling is reliable, in a position that is genuinely worse off than the group that commuted.
>
> When I turned my mind to all of those factors I thought perhaps there's some sort of reparation payment you could made. I make recommendations to Defence all the time about reparation payments for people who've suffered abuse in the Defence Force. That's a well structured arrangement scheme. But in this case, again I was struggling to ascertain who would be in and who would be out. How would you determine that? What would be a reasonable payment? In the end, I concluded that these are all policy questions and, if the aggrieved people want to continue to campaign for what they care about, that is fine; it is entirely their right. But they're in the end policy questions that go to the design of the legislation, which was created decades ago.[58]

4.56 Defence noted that in relation to the issues being raised and the DFRDB legislation 'there have been a range of changes over the many years, a lot of it around indexation and in response to a variety of inquiries or reviews commissioned by government, most recently…in 2014'.[59]

4.57 Defence reported that in 2019 the Australian Government Actuary provided advice to Defence that:

> any changes to the scheme itself, including life expectancy factors, indexation, or commutation arrangements would have significant immediate costs for Government, both prospective and retrospective. The Actuary also cautioned against making changes to the legislation in isolation without considering the scheme in its entirety due to the potential for unintended consequences.[60]

4.58 Following on from this statement, at the hearing, Defence was asked whether any costings had been carried out. After confirming that no costings had been undertaken, Defence was asked to do so and on notice advised:

> Without formal tasking outlining specific policy changes to the Defence Force Retirement and Death Benefits (DFRDB) scheme, Defence is unable to request formal costings from the Australian Government Actuary (AGA).[61]

4.59 Defence added:

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58 *Proof Committee Hansard*, 20 May 2021, p. 28.

59 *Proof Committee Hansard*, 20 May 2021, p. 19.

60 Defence, *Submission 39*, covering letter, p. 2.

61 Defence, answer to question on notice, received 4 June 2021, question 3.

> In Defence's submission to the Senate Inquiry, Defence stated that any change made to DFRDB would likely be at significant cost to the Commonwealth. This statement was informed by the costs involved in the last legislative change to the DFRDB scheme; that being the 2014 change in indexation methodology for pension recipients over the age of 55. As outlined in the Explanatory Memorandum to the *Defence Force Retirement Benefits Legislation Amendment (Fair Indexation) Act 2014*, the impact on the underlying cash costs for the period 2014-15 to 2017-18 was budgeted to be $162.2m and the unfunded liability at 1 July 2014 was estimated to increase by $5.1b.[62]

Other design issues

4.60 A smaller number of other design issues were raised including: effects on spouse and dependant benefits[63]; taxation[64]; notional retirement age penalty[65]; officer penalties[66]; and interaction with Centrelink benefits[67].

Other suggestions

More assistance with CDDA scheme

4.61 The DFWA pointed to the CCDA scheme for those cases where financial detriment can be shown, adding that '[s]upport could be provided to affected DFRDB pensioners to both prepare a claim and to appeal any adverse decisions'. It recommended the following options be considered where a member pursues compensation through the CDDA scheme and wished to appeal the decision:

- Compensation should include any professional costs expended in preparation of the claim.
- Compensation should include legal and other professional costs if a claimant successfully appeals an adverse finding.
- Where the claimant's appeal is unsuccessful, the Commonwealth should not apply for costs to be awarded against the veteran.[68]

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62 Defence, answer to question on notice, received 4 June 2021, question 3.

63 Mr Clive Connor, *Submission 23*, p. 2; Mr Peter Larard, *Submission 20*, p. 2; Mr Peter Thornton, *Submission 45*, p. 8; RSL, *Submission 53*, Annex A, p. [4]; Mr J.A. Treadwell, *Submission 79*, p. 16.

64 Name withheld, *Submission 25*, pp. 1-3; Name withheld, *Submission 35*, p. 5; DFWA, *Submission 54*, p. 22; Name withheld, *Submission 48*, p. 4.

65 Name withheld, *Submission 25*, p. 3; Name withheld, *Submission 35*, p. 4; Name withheld, *Submission 48*, p. 3.

66 Mr Frank Aldred, *Submission 80*, p. 2; DFWA, *Submission 54*, p. 22.

67 Name withheld, *Submission 25*, p. 3; RSL, *Submission 53*, Annex A, p. [8]; Mr Arthur Drury, Submission 76, p. 3.

68 DFWA, *Submission 54*, p. 8.

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Improving understanding

4.62 Mr Les Bunn noted the complexity of the DFRDB scheme and suggested that this complexity 'makes it practically impossible for a typical member such as myself to seek and understand aspects of the scheme which are of importance personally'. He added that through his recent attempts to gain information, he was provided with a table of data 'which gave me zero help'. Noting this outcome he went on to say that such outcomes make suggestions on how to improve communication between DFRDB members and the CSC 'very difficult if not impossible to formulate'. Mr Bunn concluded by saying that 'in my case the solution is relatively simple – continue corresponding and questioning until satisfied'.[69]

Website deficiencies

4.63 Mr Brian Dirou also suggested a 'dedicated website for DFRDB members could be created embracing a Summary of the Defence Force Retirement and Death Benefits Scheme and access to itemised detail of member DFRDB account history, to minimize need to navigate bureaucracy'.[70] Specifically Mr Dirou reported that data to calculate the residual pension payable to a spouse and member contributions history are not available.[71]

Education

4.64 A submitter suggested that:

> [a] formal information/education program should be provided to all inductees to the Australian Defence Force to describe, outline and detail the features and benefits of the current Defence Superannuation Scheme/s be it DFRDB, MSBS or Military Superannuation. The programs should be included as part of the normal induction process for both recruits and officer cadets. In addition there should be an ongoing program of updates for all Service Personnel, and not merely confine such information to Resettlement seminars prior to separation/discharge.[72]

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69 Mr Les Bunn, *Submission 28*, p. [2].

70 Mr Brian Dirou, *Submission 46*, p. 3.

71 Mr Brian Dirou, *Submission 46*, p. 2.

72 Name withheld, *Submission 25*, p. 4.

Chapter 5
Conclusions and Recommendations

5.1 This chapter contains the committee's conclusions and recommendations.

Provision of information

5.2 The terms of reference asks the committee to focus on the information provided to DFRDB members. The committee believes this issue was comprehensively addressed through the investigation undertaken by the Commonwealth Ombudsman. The Ombudsman found many DFRDB members were provided with incorrect information by Defence which led them to believe that their commuted pensions would increase once they reached their life expectancy factor age.

5.3 There is no dispute that this occurred, it has been recognised as defective administration by Defence and an apology has been issued by the Secretary of the Department of Defence and the Chief of the Defence Force.

5.4 It is also clear that contrary to claims that all DFRDB members received incorrect information, this was not the case with the Ombudsman finding that Defence provided some correct as well as incorrect information to members on the long term impact of commutation. The committee also notes that it did receive submissions where the submitters indicated that they had full knowledge of the operation of the legislation and this was also found by the Ombudsman.

5.5 There were submitters who felt the DFRDBA/CSC were also to blame for not properly communicating the correct understanding of commutation to DFRDB members or that the information about how the scheme operates was somehow covered up. However, the committee notes that the Ombudsman found that the information provided by DFRDBA/CSC was at all times correct but not sufficiently clear to correct the misunderstandings that many members had as a result of their interactions with Defence. In addition, it is worth noting that it was and is always open to members to contact the DFRDB Authority/CSC to clarify issues and the Ombudsman found that Defence handbooks encouraged this.

5.6 As there appeared to be confusion about the role of the DFRDBA/CSC the committee emphasises that the CSC administers the scheme in accordance with the legislation as agreed by the parliament and the legislation itself is a matter for government. The CSC does not make or change policy in regard to any of the super schemes that it administers.

5.7 It also seems clear to the committee from the evidence and the statements to the committee and the Ombudsman that the vast majority of DFRDB members

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would have chosen to commute even if they had known about the reduction in retirement pay as they needed the capital to purchase a home or business after leaving the ADF.

5.8 The data in the Ombudsman's report shows that even after this issue was clarified the numbers choosing to commute remained high at or above 85 per cent. This appears to be at odds with the claim that very few DFRDB members would have accepted the lump sum benefit had they been aware of the reduced pension.

5.9 Following on from the finding that Defence provided incorrect information, the Ombudsman then investigated the question of whether members who relied on this advice suffered financial detriment. In summary, the Ombudsman did not recommend any compensation in a broad sense.

5.10 The committee also notes a number of submissions raised concerns about the complexity of the DFRDB scheme and the difficulty in navigating bureaucracy to access information on it.[1] Some submissions proposed a formal education program on military superannuation schemes for ADF recruits and officer cadets, and ongoing updates for ADF personnel[2], as well as a dedicated website for members.[3]

Financial detriment

5.11 Despite the findings of the Commonwealth Ombudsman, some DFRDB members remain strongly of the view that they have suffered financial detriment based on their understanding at the time, which is actually a misunderstanding of how the scheme operates. In other words, the financial detriment is perceived rather than actual as it compares their current financial situation to a scheme that does not exist in law, ie claiming an actual loss as opposed to a financial disappointment.

5.12 As noted by the Ombudsman 'missing out on a benefit to which a person is not actually entitled under the law does not necessarily mean that the person has suffered financial detriment'.[4]

5.13 While this outcome is no doubt disappointing, to the committee, the most important question, as it was for the Ombudsman, is whether some DFRDB members suffered actual (as opposed to a perceived) financial detriment as a result of choosing to commute, based on the wrong advice from Defence.

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1 Mr Les Bunn, *Submission 28*, p. [2].

2 Name withheld, *Submission 25*, p. 4.

3 Mr Brian Dirou, *Submission 46*, p. 2-3.

4 Commonwealth Ombudsman, Investigation into the administration of the Defence Force Retirement and Death Benefits (DFRDB) Scheme, Report No. 06 of 2019, December 2019, Foreword.

5.14 The Ombudsman engaged two expert actuaries (the Australian Government Actuary and KPMG) which found commutation has resulted in a beneficial overall financial outcome for DFRDB members to date. This was based on the real life scenarios they ran which used conservative assumptions. The Ombudsman also undertook its own independent analysis of the modelling results.

5.15 While some submitters questioned the findings of the Ombudsman's investigation and the modelling undertaken, the committee does not question the professionalism of the Ombudsman or the actuaries engaged. Indeed it appears that by engaging two actuaries and conducting its own analysis, the Ombudsman took great care to answer this most important question about actual financial detriment.

5.16 In addition, the Ombudsman went a step further, acknowledging there may be outlying cases with circumstances they were not aware of at the time of the investigation. To address this possibility there is a process for DFRDB members to apply for compensation through the Compensation for Detriment caused by Defective Administration (CDDA) scheme.

5.17 The committee notes that in the case of financial loss, the overarching principle used by the CDDA scheme to determine the appropriate level of compensation is to restore the claimant to the position they would have been in had the defective administration not occurred. However, the committee considers that where financial detriment as a result of defective administration can be shown that there is a case for the government to consider modest reparations or an ex-gratia style payment to recognise this.

5.18 The committee notes that currently, no CDDA claims by DFDRB scheme members have been successful. Therefore, more support may be required to assist DFRDB members to access the CDDA scheme and appeal any adverse decisions.[5]

5.19 Further, the committee considers that for DFRDB members who were unsuccessful in their claims and any appeals under the CDDA scheme, some form of reparation payment may be appropriate as a fall back. This is broadly consistent with an option considered by the Ombudsman and discussed by him in the inquiry public hearing. This could operate along the lines of existing government reparation payment schemes, including for those who have suffered abuse in the Australian Defence Force.[6]

5.20 These payments would also recognise the government's moral obligation to address the confusion and distress suffered by DFRDB members as a result of

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[5] DFWA, *Submission 54*, p. 8.

[6] *Proof Committee Hansard*, 20 May 2021, p. 28. See https://www.dva.gov.au/health-and-treatment/injury-or-health-treatments/support-if-you-were-abused accessed 21 June 2021

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defective administration. This could involve a streamlined and simplified application process for complainants.

Recommendation 1

5.21 The committee recommends that the Australian Government consider ways to improve members' understanding of DFRDB and other military superannuation schemes. This could include additional information and education for ADF recruits and officer cadets, and ongoing updates for ADF personnel. It could also comprise a dedicated website or webpage for members, including a summary of the scheme and information on a member's contributions history and any residual pension payable.

Recommendation 2

5.22 The committee recommends that the Australian Government consider more assistance for DFRDB members to make claims under the CDDA scheme and appeal any adverse decisions or a separate reparation payments scheme for DFRDB members who are unsuccessful under the CDDA scheme to recognise the government's moral obligation to address any confusion and distress caused by defective administration. Where a CDDA claim was successful, compensation could include any professional costs expended in preparation of the claim, and legal and other professional costs if a claimant successfully appealed an adverse finding. Further, where the claimant's CDDA appeal was unsuccessful, the Commonwealth should consider not applying for costs to be awarded against the claimant.

5.23 Given the criticism of the Ombudsman report in submissions, it is worth emphasising that the focus for the Ombudsman was, consistent with his remit, on the administration of the scheme and not the policy and design issues raised with him (see below). The committee also understands the Ombudsman could only look at financial detriment in relation to the DFRDB scheme in existence, not the scheme promoted to DFRDB members that does not exist in legislation.

Parliamentary Scrutiny

5.24 The Ombudsman and the committee received evidence questioning whether parliament understood what it was voting for and arguing that it should have been passing legislation that reflected all the findings of the Jess report.

5.25 The committee does not question whether parliament understood what they were voting for when they passed the DFRDB Act. The parliament deals with complex legislation all the time. The committee also notes that in relation to the Jess report, it is up to government to accept, reject or modify the recommendations in committee reports when bringing forward legislation.

Design of the scheme

5.26 In essence the issues raised with the committee centre on the design of the DFRDB scheme. DFRDB members believe that the scheme currently in legislation is either not what was recommended to government at the time the legislation was put in place or that regardless of that, it is unfair in a number of areas including the permanent reduction to retirement pay, use of life expectancy factor tables and indexation.

5.27 There was no consensus in the suggestions to the committee on a way forward on these issues. However, it is the case that the suggestions would all require the legislation to be amended as they all deal with policy settings determined by government.

5.28 Changing the legislation is an option open to the government of the day. However, the Ombudsman cautioned that the government should have regard to the potential impact on other members, namely those who did not commute or those who transferred to other schemes. There are a number of issues with this option which would:

- place the cohort who chose to commute in an even stronger position than those who decided not to commute;
- provide an unjustified windfall at taxpayer's expense for those who did understand the scheme and chose to commute; and
- presume to contradict the intent of the parliament.

5.29 As pointed out by the Ombudsman, if further changes are made to the DFRDB scheme, this may cause unfairness to members who decided not to commute. It may also cause unfairness to other current and former ADF members, for example, those who chose to move to the MSBS scheme in the early 1990s based on the understanding that the scheme was closing and would not be significantly reformed. Changes may also affect people in other military or civilian schemes who would also call for the same options, treatment and reimbursement.

Senator Kimberley Kitching
Chair

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Appendix 1
Submissions and answers to questions on notice

1 Cmdr Anthony Parkin (Rtd)
2 *Name Withheld*
3 Mr Neville Madden
4 Mr William Harrison
5 Mr Ian Bawden
6 Mr Alan White
7 Mr Anthony Ryan
8 Mr William Krause
9 Mr Kenneth Park
10 *Name Withheld*
11 Mr Keith Mackintosh
12 Commander Graham J Darcy RAN (Rtd)
13 Mr Clive Dennett
14 Mr John Snell
15 Mr Graham Morris
16 Mr Bruce Campbell
17 AATTV Association WA Branch
18 *Name Withheld*
19 W G Ritchie AM RAN (Rtd)
20 Mr Peter Larard
21 *Name Withheld*
22 DFRDB COMMUTATION CAMPAIGN
- 22.1 Supplementary to submission 22
- 22.2 Supplementary to submission 22

23 Mr Clive Connor
24 Mr Robert Richards
25 *Name Withheld*
26 *Name Withheld*
27 *Name Withheld*
28 Mr Leslie Bunn
29 Mr Charles Myhill
30 Mr Clinton McKenzie
- 30.1 Supplementary to submission 30

31 Mr David Plummer
32 *Name Withheld*
33 *Name Withheld*
34 Mr Richard Usher OAM
35 *Name Withheld*

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36 Australian Defence Force Retirees Association (ADFRA) Inc.
- 36.1 Supplementary to submission 36
- 36.2 Supplementary to submission 36
- 36.3 Supplementary to submission 36
- 36.4 Supplementary to submission 36

37 *Name Withheld*
38 Defence Force Welfare Association (WA Branch) Inc
39 Department of Defence
40 *Name Withheld*
41 Mr Paul McGregor
42 *Name Withheld*
43 *Name Withheld*
44 *Name Withheld*
45 Mr Peter Thornton
46 Mr Brian Dirou
47 Mr Steve Kersnovske
48 *Name Withheld*
49 Vietnam Veterans' Association of Australia
50 Commonwealth Superannuation Corporation
51 Mr Rodney Cox
52 Commonwealth Ombudsman
53 Returned & Services League of Australia
54 Defence Force Welfare Association
55 Mr Martin Smith
56 Mr Jim Nicholls
57 Mr Terry Dillon OAM
58 *Name Withheld*
59 Mr Michael Tehan
60 Mr Colin Wade
61 Mr Tom Williams
62 Mr Bill Arden
63 Royal Australian Armoured Corps Corporation
64 *Confidential*
65 *Confidential*
66 *Confidential*
67 *Confidential*
68 *Confidential*
69 *Confidential*
70 *Confidential*
71 *Confidential*
72 *Confidential*
73 Mr Greg Decker
74 Mr Phillip Boobyer

75 *Name Withheld*
76 Mr Arthur Drury
77 Mr Bert Hoebee
78 Ms Petronella Campbell
- 78.1 Supplementary to submission 78

79 Mr J.A. Treadwell AFC OAM
- 79.1 Supplementary to submission 79
- 79.2 Supplementary to submission 79

80 Mr Frank Aldred
81 Mr Mick Dunn
82 Mr Terry Ward

Answers to Question on Notice

1 Commonwealth Superannuation Corporation - Answers to questions on notice from public hearing held in Canberra 20 May 2021 (received 26 May 2021)
2 Department of Defence - Answers to questions on notice from public hearing held in Canberra 20 May 2021 (received 4 June 2021)
3 Defence Force Welfare Association - Answers to questions on notice from public hearing held in Canberra 20 May 2021 (received 14 June 2021)

Appendix 2
Public hearing and witnesses

Thursday, 20 May 2021
Committee Room 2S1
and via videoconference
Parliament House
Canberra

DFRDB COMMUTATION CAMPAIGN

- Mr Ken Stone, Independent Advocate

Australian Defence Force Retirees Association Inc.

- Mr Herb Ellerbock, Secretary

Defence Force Welfare Association

- Mr Kel Ryan, National President
- Mr Win Fowles, Vice President, QLD Branch

Department of Defence

- Mr David Nockels, First Assistant Secretary, People, Policy and Culture
- Ms Donna Webster, Acting Director Employment Law and Discretionary Claims

Commonwealth Superannuation Corporation

- Ms Alana Scheiffers, General Counsel

Office of the Commonwealth Ombudsman

- Mr Michael Manthorpe, Commonwealth Ombudsman
- Mr David Fintan, Senior Assistant Ombudsman

Australian Government
Defence

Ministerial Brief for Action

GR26-000002

FOR: Minister for Defence Personnel

INFO: Deputy Prime Minister

Action by: As soon as Possible

Reason for Action Date: This is overdue for submission for the Prime Minister's consideration prior to the tabling deadline on 16 June 2026.

THROUGH: A/CDF SEC

CC: ASSOCSEC, DEPSEC GOV, FASMECC, CPERS, CFO

SENATE STANDING COMMITTEE ON FINANCE AND PUBLIC ADMINISTRATION - INQUIRY INTO THE OPERATION AND APPROPRIATENESS OF THE SUPERANNUATION AND PENSION SCHEMES FOR CURRENT AND FORMER MEMBERS OF THE AUSTRALIAN DEFENCE FORCE- GOVERNMENT RESPONSE

Key Issues:

On 19 March 2026, the Finance and Public Administration References Committee (the Committee) tabled its report (Attachment A) on the inquiry into the operation and appropriateness of the superannuation and pension schemes for current and former members of the ADF.

The Committee made four recommendations. The published report included additional comments from Senator Jacqui Lambie who made 10 additional recommendations, some of which were consistent with the committee's recommendations. A proposed Government Response is enclosed for your consideration (Attachment B).

Recommendations: **Decision**

That you:

1. **approve** the proposed Government Response (Attachment B) to the inquiry into the operation and appropriateness of the superannuation and pension schemes for current and former members of the ADF. — **Approved/Not approved** as amended
2. **sign** the draft letter to the Prime Minister seeking his approval to table the Government Response (Attachment C). — **Signed/Not signed**
3. **sign** the tabling letter to the President of the Senate (Attachment D) once the Prime Minister has approved the Government Response. — **Signed/Not signed**

Media Considerations:

Defence anticipates that this matter may generate some media interest as it relates to veteran benefits. Members of the Defence Forces Retirement and Death Benefits (DFRDB) scheme have campaigned on long standing issues pertaining to the scheme, which could result in media interest following the tabling of the government response.

Signature:

s22 [redacted]

The Hon Matt Keogh MP

4 June 2026

Minister comments:

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The Senate

Finance and Public Administration References Committee

Operation and appropriateness of the superannuation and pension schemes for current and former members of the Australian Defence Force (ADF)

March 2026

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Deputy Chair

Senator Karen Grogan	ALP, SA

Members

Senator Claire Chandler (from 3 March 2026)	LP, TAS
Senator Jessica Collins	LP, NSW
Senator Richard Dowling	ALP, TAS
Senator the Hon Jane Hume (to 3 March 2026)	LP, VIC
Senator Barbara Pocock	AG, SA

Participating Senator

Senator Jacqui Lambie	JLN, TAS

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Abbreviations

AAT	Administrative Appeals Tribunal
ADF	Australian Defence Force
ADF Cover	Australian Defence Force Cover Scheme
ADF Super	Australian Defence Force Superannuation Scheme
ADFRA	Australian Defence Force Retirees Association
APRA	Australian Prudential Regulation Authority
ART	Administrative Review Tribunal
ASIC	Australian Securities and Investments Commission
AWE	Average Weekly Earnings
CDDA Scheme	Scheme for Compensation for Detriment caused by Defective Administration
committee	Senate Finance and Public Administration References Committee
CPI	Consumer Price Index
CSC	Commonwealth Superannuation Corporation
DFRB	Defence Forces Retirement Benefits Scheme
DFRDB	Defence Force Retirement and Death Benefits Scheme
DFWA	Defence Force Welfare Association
DVA	Department of Veterans' Affairs
FADT Committee	Senate Foreign Affairs, Defence and Trade References Committee
Jess Committee	Joint Select Committee on Defence Forces Retirement Benefits Legislation
MSBS	Military Superannuation and Benefits Scheme
VFAC	Veteran Family Advocate Commissioner

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List of recommendations

Recommendation 1

2.98 The committee recommends that the Australian Government consider whether the current settings of Defence Force Retirement and Death Benefits pensions are fair and equitable for all members.

Recommendation 2

3.35 The committee recommends the Australian Government consider reviewing indexation methodology for all defined benefit military pension schemes, with a view to achieving consistency and equity.

Recommendation 3

4.123 The committee recommends that the Australian Government consider whether current definitions are adequate, particularly those of 'spouse' and 'mutually dependent', to accommodate couples living apart due to experience of PTSD, other service-related mental illnesses, and domestic and family violence.

Recommendation 4

4.127 The committee recommends that the Australian Government consider allowing Military Superannuation and Benefits Scheme members to roll over their Employee Benefit to another superannuation fund of their choice.

Chapter 1
Introduction

Referral

1.1 In the 47th Parliament, the Senate referred an inquiry into the operation and appropriateness of the superannuation and pensions schemes for current and former members of the Australian Defence Force (ADF) to the Finance and Public Administration References Committee (the committee) for report by 5 August 2025.[1]

1.2 In the 48th Parliament, the Senate agreed that the inquiry be re-adopted for inquiry and report by 30 October 2025 with its terms of reference unchanged.[2]

1.3 The terms of reference are to inquire into the operation and appropriateness of the superannuation and pensions schemes for current and former members of the ADF, with particular reference to:

(a) whether the legislative framework governing superannuation and pension schemes for current and former members of the ADF is fit for purpose;
(b) whether the Military Superannuation and Benefits Scheme (MSBS) enables veterans to preserve savings to deliver income for a dignified retirement in an equitable and sustainable way;
(c) the structure and governance of the Commonwealth Superannuation Corporation (CSC), including an examination of its services to current and former members of the ADF and the identification of strategies to address complaints and improve service delivery;
(d) whether CSC account holders have the same rights and protections as other Australians in relation to their superannuation, including the ability to withdraw funds, receive appropriate returns, change superannuation providers and receive transparent information about return on investments;
(e) mechanisms for veterans to have their discharge reclassified from administrative to medical, particularly in cases involving psychological injuries, and whether current appeal processes and discretion practices by the Department of Defence and the CSC adequately protect veterans' entitlements and recognition of service-related mental health issues;
(f) the operation and effectiveness of the MSBS, Defence Force Retirement and Death Benefits Scheme, Defence Forces Retirement and Benefits Scheme, Australian Defence Force Superannuation Scheme and Australian Defence

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1 *Journals of the Senate*, No. 151, 11 February 2025, pp. 4795–4796.

2 *Journals of the Senate*, No. 9, 26 August 2025, p. 295.

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Force Cover Scheme and whether these schemes are operating in the best interests of current and former members of the ADF;

(g) targeted initiatives and education for current and former members of the ADF to preserve superannuation savings, improve understanding of superannuation and increase participation in these schemes; and

(h) any other related matters.[3]

1.4 In re-referring the inquiry, the Senate resolved that the committee have the power to consider and use the correspondence and evidence received for the inquiry as part of the 47th Parliament.[4]

1.5 On 27 October 2025, the Senate agreed to extend the presentation of the final report to 12 December 2025.[5]

1.6 On 30 October 2025, the Senate agreed to a further extension of the final report to 19 March 2026.[6]

Background

1.7 Superannuation and pension schemes for current and former members of the ADF have undergone many iterations since the introduction of the Defence Forces Retirement Benefits (DFRB) scheme in 1948. This section outlines the purpose and intent of the schemes and provides an overview of the issues raised both in this inquiry and previous reviews.

1.8 As with their civilian equivalents, military pension and superannuation schemes aim to support individuals financially in retirement.

1.9 However, military pension and superannuation schemes also aim to take into consideration the 'unique nature of military service'.[7] This includes a significant risk of death and disability, the difficulties ADF members face when transitioning to civilian life, and the likelihood that career ADF members will retire earlier than is standard practice in the rest of the Australian workforce.[8]

1.10 There have been five different Australian military pension and superannuation schemes since 1948:

- the Defence Forces Retirement Benefits Scheme (DFRB);

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3 *Journals of the Senate*, No. 9, 26 August 2025, p. 295.

4 *Journals of the Senate*, No. 9, 26 August 2025, p. 295.

5 *Journals of the Senate*, No. 16, 27 October, p. 516.

6 *Journals of the Senate*, No. 19, 30 October, p. 620.

7 Department of Defence, *Report of the Review of Military Superannuation Arrangements*, December 2007, p. 4; Department of Defence, *Submission 5 (47th Parliament)*, p. 6.

8 Department of Defence, *Report of the Review of Military Superannuation Arrangements*, December 2007, p. 4; Department of Defence, *Submission 5 (47th Parliament)*, p. 6.

- the Defence Force Retirement and Death Benefits Scheme (DFRDB);
- the Military Superannuation and Benefits Scheme (MSBS);
- the Australian Defence Force Superannuation Scheme (ADF Super); and
- the Australian Defence Force Cover Scheme (ADF Cover).

1.11 These five schemes have been a mixture of:

- defined benefit schemes, where retirement pay is calculated based on predetermined formulas;
- accumulation schemes, where retirement pay is based on employee and employer contributions and interest earned from the investment of these contributions; and
- hybrid schemes, which include both defined benefit and accumulation aspects.

Defence Forces Retirement Benefits Scheme (DFRB)

1.12 The DFRB scheme was established in 1948 by the *Defence Forces Retirement Benefits Act 1948*. It is a defined benefit scheme that provides a pension calculated based on rank and length of service to members who retired after reaching retirement age.[9]

1.13 The DFRB included provisions for commutation, which allowed retiring members, at the discretion of the DFRB Board, to be paid up to one third of their pension entitlement as a lump sum up front.[10]

1.14 On 2 September 1970, the Joint Select Committee on Defence Forces Retirement Benefits Legislation (the Jess Committee) was established 'to inquire into and report upon the [DFRB] legislation …'.[11] Its final report in May 1972 highlighted concern among parliamentarians regarding:

> … the very high contribution rates that were being required of certain pre-1959 entrants to the scheme, the delays in completion of the statutory actuarial reviews and the ever growing complexity of the legislation.[12]

1.15 The Jess Committee made 20 recommendations, including:

- the establishment of a new military superannuation scheme to replace the DFRB;
- that the new scheme be administered by the Department of Defence, with the Minister for Defence as the responsible Minister;

---

9 Department of Defence, *Submission 5 (47th Parliament)*, p. 6.

10 Joint Select Committee on Defence Forces Retirement Benefits Legislation, *Report*, 18 May 1972, p. 30. The Joint Committee was chaired by Mr John Jess CBE MP and is generally referred to as the Jess Committee.

11 Joint Committee on DFRB Legislation, *Report*, 18 May 1972, p. 6.

12 Joint Committee on DFRB Legislation, *Report*, 18 May 1972, p. 7.

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- that all ADF members on continuous full time duty for 12 months or more be eligible and required to join the new scheme;
- that all DFRB members be transferred to the new scheme;
- that the Commonwealth guarantee the benefits provided and meet all costs not covered by members' contributions;
- that the assets of the DFRB Fund be transferred to the Consolidated Revenue Fund.[13]

1.16 The DFRB was closed to new contributors on 30 September 1972. Members contributing at the time of the DFRB's closure were automatically transferred to the newly established DFRDB scheme. As at 31 December 2024, there were still 1334 pensioners receiving benefits under the DFRB.[14]

Defence Force Retirement and Death Benefits Scheme (DFRDB)

1.17 The DFRDB was established by the *Defence Force Retirement and Benefits Act 1973* (DFRDB Act) and commenced on 1 October 1972.[15] The new DFRDB scheme incorporated most of the 20 recommendations made by the Jess Committee.[16]

1.18 The DFRDB is a defined benefit superannuation scheme that provides benefits to eligible members after 20 years of service irrespective of whether they have reached retirement age, or after 15 years of service if they have reached the retirement age for their rank.[17] The benefit is based on a percentage of the member's final salary. The percentage increases for every year of service after the age of eligibility, reaching a maximum after 40 years of service. For example, members who retire after 20 years of service are eligible for a benefit of 35 per cent of their final salary, while those retiring after 40 years are eligible for 76.5 per cent.[18] Benefits are paid for the lifetime of the member. The DFRDB also has death and invalidity benefits built into the scheme.[19]

1.19 Like its predecessor, the DFRDB includes provisions for commutation, but with different arrangements to the DFRB scheme. The DFRDB allows retiring members to commute up to five times their annual pension entitlement and does

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13 Joint Committee on DFRB Legislation, *Report*, 18 May 1972, pp. 1–5.

14 Commonwealth Superannuation Corporation (CSC), *Submission 4 (47th Parliament)*, [p. 2].

15 The DFRDB legislation received Royal Assent on 19 June 1973 with provisions to commence retrospectively from 1 October 1972.

16 Department of Defence, *Submission 5 (47th Parliament)*, p. 6.

17 Department of Defence, *Submission 5 (47th Parliament)*, p. 2.

18 Department of Defence, Defence Force Retirement and Death Benefits (DFRDB) scheme,

19 Department of Defence, *Submission 5 (47th Parliament)*, p. 2.

not require them to seek approval to take up this option.[20] DFRDB members who commute part of their pension have their annual pension thereafter permanently reduced by an amount calculated according to a formula set out in the DFRDB Act.[21]

1.20 In May 1989, the Australian Government announced a review of the DFRDB. The review identified significant issues with the scheme that could not be rectified through legislative amendment, and so recommended that the DFRDB be closed and replaced by a new scheme.[22]

1.21 The DFRDB closed to new members on 30 September 1991. As at 31 December 2024, the DFRDB had 441 contributing members and 48 861 pensioners that were still under the scheme.[23]

Military Superannuation and Benefits Scheme (MSBS)

1.22 The MSBS was established on 1 October 1991 to replace the DFRDB.[24] DFRDB members had the option to transfer to the MSBS until 30 September 1992.

1.23 The MSBS is a hybrid superannuation scheme combining accumulation from member contributions and defined benefits from employer contributions.[25] Employer contributions are determined when the member leaves the ADF and are calculated based on a percentage of the member's salary and eligible period of accrued service.[26] The MSBS also has death and invalidity benefits built into the scheme.

1.24 On 27 February 2007, the Australian Government announced an independent review of military superannuation.[27] The review found that 'while the MSBS compares reasonably well with most overseas military schemes and with other Australian schemes for "uniformed bodies", it still falls well short of best practice contemporary superannuation'.[28]

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20 The original maximum commutation amount for DFRDB members was four times the members' annual pension entitlement. From June 1983, this was gradually increased over a 20-year period to five times the members' annual pension entitlement.

21 *Defence Force Retirement and Death Benefits Act 1973,* ss. 24(3) and Schedule 3.

22 Department of Defence, *Submission 5 (47th Parliament)*, p. 7.

23 CSC, *Submission 4 (47th Parliament)*, [p. 2].

24 Department of Defence, *Submission 5 (47th Parliament)*, p. 7.

25 CSC, *Submission 4 (47th Parliament)*, [p. 3].

26 Department of Defence, *Submission 5 (47th Parliament)*, p. 2

27 Department of Defence, *Report of the Review of Military Superannuation Arrangements*, December 2007, p. iv; Department of Defence, *Submission 5 (47th Parliament)*, p. 7.

28 Department of Defence, *Report of the Review of Military Superannuation Arrangements*, December 2007, p. ix.

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1.25 The review recommended the establishment of a new 'taxed, funded, defined contribution scheme' comprising:

- an accumulation retirement plan based on generous employer contributions and voluntary personal contributions; and
- death and disability benefits.[29]

1.26 The MSBS closed to new members on 30 June 2016. As at 31 December 2024, the MSBS had 149 021 members, 33 527 pensioners and $14.65 billion in funds under management.[30]

Australian Defence Force Superannuation and Cover Schemes (ADF Super and ADF Cover)

1.27 ADF Super and ADF Cover commenced concurrently on 1 July 2016 to replace the MSBS.[31]

1.28 ADF Super is an accumulation plan that is currently the default fund for new members of the ADF if they do not elect a different superannuation fund or have an existing fund.[32] ADF Super members have the option to move between superannuation funds.[33]

1.29 ADF Super has an employer contribution of 16.4 per cent, exceeding the mandated Superannuation Guarantee, which is 12 per cent as at 1 July 2025.[34]

1.30 MSBS members that are currently serving have the option to move from the MSBS to ADF Super or a fund of their choice, but cannot switch back to the MSBS if they elect to change funds.[35] MSBS members that elect to change superannuation funds receive financial disclaimers highlighting the consequences of the decision and are directed to contact CSC to discuss their individual circumstances.[36]

1.31 As at 31 December 2024, ADF Super has 39 058 members and $2.45 billion funds under management.[37]

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29 Department of Defence, *Report of the Review of Military Superannuation Arrangements*, December 2007, p. ix.

30 CSC, *Submission 4 (47th Parliament)*, [p. 1].

31 Department of Defence, *Submission 5 (47th Parliament)*, p. 7.

32 Department of Defence, *Submission 5 (47th Parliament)*, p. 1.

33 Department of Defence, *Submission 5 (47th Parliament)*, p. 3.

34 Department of Defence, *Submission 5 (47th Parliament)*, p. 7.

35 Department of Defence, *Submission 5 (47th Parliament)*, pp. 5–7.

36 Department of Defence, *Submission 5 (47th Parliament)*, p. 5.

37 CSC, *Submission 4 (47th Parliament)*, [p. 2].

1.32 ADF Cover provides death and invalidity benefits to ADF members under the age of 60 that are not already covered by the MSBS or DFRDB schemes, irrespective of whether they are an ADF Super member. ADF Cover provides a defined benefit calculated based on the provisions of the *Australian Defence Force Cover Act 2015*.[38]

1.33 As at 31 December 2024, there were 2506 ADF Cover pension recipients.[39]

Governance of military superannuation and pension schemes

1.34 The Department of Defence (Defence) and the Commonwealth Superannuation Corporation (CSC) share responsibility for the administration of military superannuation and pension schemes. Policy responsibility rests with Defence, whereas CSC's role is 'essentially limited to administering the superannuation schemes as set out in the Acts (and associated regulations and rules) as applicable to those schemes'.[40]

1.35 Defence and CSC have a Memorandum of Understanding in place that sets out the service standards Defence expects of CSC in providing funding for CSC to administer the schemes.[41]

1.36 The MSBS and ADF Super are regulated by the Australian Securities and Investments Commission (ASIC) and Australian Prudential Regulation Authority (APRA) in the same way as other member contribution schemes. By contrast, the DFRB, DFRDB, and ADF Cover are exempt public sector superannuation schemes that are regulated and supervised by the Commonwealth Government, in the same way as other public sector defined benefit schemes.[42] CSC is the trustee and administrator for the regulated schemes, and the administrator for the exempt schemes.[43]

1.37 The Department of Veterans' Affairs (DVA) does not administer superannuation or pension schemes. However, the payments members receive from military superannuation and pension schemes can impact the other forms of income support DVA provides to veterans, such as incapacity payments or the Special Rate Disability Pension.[44]

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38 CSC, *Submission 4 (47th Parliament)*, [p. 2].

39 CSC, *Submission 4 (47th Parliament)*, [p. 2].

40 CSC, *Submission 4 (47th Parliament)*, [p. 1].

41 CSC, *Submission 4 (47th Parliament)*, [pp. 3–4]; Department of Defence, *Submission 5 (47th Parliament)*, pp. 3–4.

42 CSC, *Submission 4 (47th Parliament)*, [p. 1]; Australian Prudential Regulation Authority, *Submission 53*, pp. 1–3.

43 CSC, *Submission 4 (47th Parliament)*, [p. 1].

44 Department of Veterans' Affairs, *Submission 7 (47th Parliament)*, p. 7.

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Previous reviews and inquiries

1.38 Military superannuation and pension schemes have consistently been touched upon in reviews and inquiries regarding:

- military superannuation and pension schemes specifically;
- superannuation or pension schemes more broadly; and
- issues relating to the ADF and veterans.

1.39 Since the introduction of the DFRB scheme, the following reviews and inquiries have focused on or discussed military superannuation and pension schemes:

- the 1972 Joint Select Committee on Defence Forces Retirement Benefits Legislation (the Jess Committee);
- the 1973 inquiry into superannuation pension updating (the Pollard inquiry);
- the 1974 review of the Treasurer's proposals for a new superannuation scheme for Australian Government Employees (the Melville and Pollard Review);
- the 1990 Report of the DFRDB scheme review committee (the Cole Review);
- the 2001 Senate Select Committee on Superannuation and Financial Services;
- the 2002 Senate Select Committee on Superannuation;
- the 2007 Review into Military Superannuation Arrangements (the Podger Review);
- the 2008 Review of Pension Indexation Arrangements in Australian Government Civilian and Military Superannuation Schemes (the Matthews Review);
- the 2011 Review of Military Compensation Arrangements;
- the 2019 Commonwealth Ombudsman investigation into the administration of the DFRDB scheme;
- the 2021 Senate Foreign Affairs, Defence and Trade References Committee inquiry into the accuracy of information provided to DFRDB members;
- the 2023 Australian Government Actuary review of long-term costs of military superannuation schemes; and
- the 2024 Royal Commission into Defence and Veteran Suicide.

1.40 The two most recent reviews specifically relevant to this report are the Commonwealth Ombudsman's (the Ombudsman) 2019 investigation and the Senate Foreign Affairs, Defence and Trade References Committee's (FADT committee) 2021 inquiry, both of which focused on the DFRDB scheme.

Investigation by the Commonwealth Ombudsman

1.41 On 5 April 2019 the Minister for Veterans' Affairs and Defence Personnel wrote to the Ombudsman asking that an inquiry into the DFRDB scheme be undertaken. After considering the request, on 10 April 2019, the Ombudsman

wrote to the minister and advised that an investigation would be commenced under the own motion powers in the *Ombudsman Act 1976*.[45]

1.42 The scope of the Ombudsman's investigation was limited to:

> … the administration of the DFRDB Scheme, and particularly the issue of commutation. The primary focus of the investigation [was] the accuracy of the information provided to DFRDB members.[46]

1.43 The Ombudsman found 'historical deficiencies by Defence which [warranted] remedial action'.[47] These deficiencies included incorrect information being provided to DFRDB members about their retirement benefits, which misled many DRFDB members to believe that the reduction in their retirement pay due to commutation would cease once they reached a legislated life expectancy age.[48]

1.44 The Ombudsman stated that, while Defence's actions amounted to defective administration, modelling showed that commutation is generally to the benefit of DFRDB members compared to the alternative of not commuting.[49]

1.45 Consequently, the Ombudsman concluded that a separate compensation scheme for individuals who commuted would not be appropriate, even if incorrect or insufficient information provided caused an individual to commute where they otherwise would not have.[50]

1.46 While the Ombudsman did not find any errors by CSC, the report did identify 'actions that may further improve communication about the long term effects of commutation retirement pay'.[51]

1.47 The Ombudsman made three recommendations:

- that the Secretary of Defence and Chief of Defence Force should issue an unreserved apology to DFRDB members;
- that CSC improve its commutation election forms and standard letters to clearly explain that commutation will result in a permanent reduction to retirement pay; and

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45 Commonwealth Ombudsman, *Investigation into the administration of the Defence Force Retirement and Death Benefits (DFRDB) Scheme* (Investigation into the DFRDB Scheme), Report No. 06 of 2019, December 2019, p. 1.

46 Commonwealth Ombudsman, Investigation into the DFRDB Scheme, December 2019, p. 1.

47 Commonwealth Ombudsman, Investigation into the DFRDB Scheme, December 2019, p. 54.

48 Commonwealth Ombudsman, Investigation into the DFRDB Scheme, December 2019, p. 54.

49 Commonwealth Ombudsman, Investigation into the DFRDB Scheme, December 2019, p. 54.

50 Commonwealth Ombudsman, Investigation into the DFRDB Scheme, December 2019, p. 54.

51 Commonwealth Ombudsman, Investigation into the DFRDB Scheme, December 2019, p. 54.

- that CSC amend its DFRDB About Your Scheme and Retirement Benefits publications to clearly explain the possibility of longer-term indexation related consequences of commutation.[52]

1.48 On 3 December 2019, the Secretary of Defence and Chief of Defence Force apologised to DFRDB members 'for providing incorrect advice to some DFRDB members and for the confusion and emotional impact that it may have caused'.[53]

1.49 CSC accepted the Ombudsman's recommendations.[54]

1.50 In response to the Ombudsman's report, the Australian Government stated that it had no plans to make changes to the DFRDB scheme.[55]

1.51 In October 2022 the Ombudsman indicated that it considered the report's recommendations to have been implemented.[56]

Senate Foreign Affairs, Defence and Trade References Committee inquiry

1.52 On 2 July 2021, the FADT committee tabled its report for an inquiry into the accuracy of information provided to DFRDB members.[57]

1.53 The FADT committee's report focused on:

- information provided to DFRDB members in relation to commutation;
- issues with the scheme's design; and
- suggested changes to the scheme and potential costs of such changes.[58]

1.54 The FADT committee concurred with the findings of the Ombudsman that:

- Defence had provided incorrect information regarding the DFRDB scheme to many, but not all, DFRDB members;
- the information provided by the DFRDB Authority and CSC was at all times correct, but not sufficiently clear to correct misunderstandings caused by incorrect information provided by Defence;
- the vast majority of DFRDB members would have chosen to commute even if they had known about the reduction in retirement pay; and

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52 Commonwealth Ombudsman, Investigation into the DFRDB Scheme, December 2019, p. 54–56.

53 Commonwealth Ombudsman, Investigation into the DFRDB Scheme, December 2019, p. 67.

54 Commonwealth Ombudsman, Investigation into the DFRDB Scheme, December 2019, p. 69.

55 The Hon Darren Chester MP, Minister for Veterans' Affairs and Minister for Defence Personnel, 'Statement – Independent inquiry report into DFRDB scheme', *Media Release*, 11 December 2019.

56 Commonwealth Ombudsman, *Did They Do What They Said They Would? Volume 2*, October 2022, pp. 33–34.

57 *Journals of the Senate*, No. 107, 3 August 2021, p. 3808.

58 Senate Foreign Affairs, Defence and Trade References Committee (FADT committee), *Accuracy of information provided to Defence Force Retirement and Death Benefits (DFRDB) members*, July 2021, p. 9.

- some DFRDB members suffered a perceived, rather than actual, financial detriment.[59]

1.55 The FADT committee also highlighted the Ombudsman's acknowledgement that there may be some instances where DFRDB members experienced financial loss due to erroneous or incomplete advice from Defence, and noted that no claims through the Scheme for Compensation for Detriment caused by Defective Administration (CDDA scheme) by DFRDB members had been successful.[60]

1.56 It made two recommendations:

- that the Australian Government consider ways to improve members' understanding of the DFRDB and other military superannuation schemes; and
- that the Australian Government consider:
  - more assistance for DFRDB members to make claims under the CDDA scheme and appeal any adverse decisions;
  - a separate reparation payments scheme for DFRDB members who are unsuccessful under the CDDA scheme to recognise the government's moral obligation to address any confusion and distress caused by defective administration; and
  - possibilities for compensation for successful and unsuccessful CDDA scheme claims and appeals.[61]

1.57 The Australian Government supported the recommendation to improve members' understanding of military superannuation schemes and partially supported the recommendation regarding CDDA scheme claims.[62]

1.58 The government did not support a separate reparation payments scheme for DFRDB members whose claims under the CDDA scheme are unsuccessful, arguing that it would create perverse outcomes for different groups of DFRDB members.[63]

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59 FADT committee, *Accuracy of information provided to DFRDB members*, July 2021, pp. 71–73.

60 The Scheme for Compensation for Detriment caused by Defective Administration provides a mechanism for non-corporate Commonwealth entities to compensate people who have experienced detriment as a result of the entity's defective administration; FADT committee, *Accuracy of information provided to DFRDB members*, July 2021, p. 73.

61 FADT committee, *Accuracy of information provided to DFRDB members*, July 2021, p. 73–76.

62 Australian Government Response to the Senate Foreign Affairs, Defence and Trade References Committee: *Inquiry into the accuracy of information provided to Defence Force Retirement and Death Benefits (DFRDB) members*, tabled 2 December 2021, pp. 1–2.

63 Australian Government Response to the Senate Foreign Affairs, Defence and Trade References Committee: *Inquiry into the accuracy of information provided to Defence Force Retirement and Death Benefits (DFRDB) members*, tabled 2 December 2021, p. 2.

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1.59 It did support other recommendations regarding the CDDA scheme, but stated that:

> … both the Commonwealth Ombudsman and the Committee report indicate that it is unlikely that a member has suffered a financial detriment and therefore the likelihood of any member being successful appears to be limited … There is a balance to be struck … between giving [claimants] the assistance they need to put their best case forward, and also managing their expectations. This is necessary to ensure that claimants are not given unrealistic expectations about their prospects for success.[64]

1.60 In relation to the design of the DFRDB scheme more generally, the FADT committee emphasised that any changes flagged by the committee would require legislation to be amended.[65]

1.61 The FADT committee agreed with the Ombudsman's view that changes to the DFRDB scheme may cause unfairness to members who decided not to commute or to other current and former ADF members, such as those who chose to transfer from the DFRDB scheme to the MSBS scheme.[66]

Conduct of the inquiry

1.62 In the 47th Parliament, the committee advertised the inquiry on its website and wrote to organisations and individuals inviting submissions by 5 August 2025. The committee received and published 17 submissions.

1.63 In the 48th Parliament, the committee advertised the re-referred inquiry on its website and invited submissions by 18 September 2025. The committee received and published a further 80 submissions.

1.64 Submissions received in the 47th and 48th Parliaments are listed at Appendix 1.[67]

1.65 The committee held one public hearing in Canberra, Australian Capital Territory, on 19 February 2026.

1.66 A list of witnesses who appeared at the hearing is at Appendix 2.

Structure of this report

1.67 The report comprises four chapters, as follows:

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64 Australian Government Response to the Senate Foreign Affairs, Defence and Trade References Committee: *Inquiry into the accuracy of information provided to Defence Force Retirement and Death Benefits (DFRDB) members*, tabled 2 December 2021, pp. 2–3.

65 FADT committee, *Accuracy of information provided to DFRDB members*, July 2021, p. 75.

66 FADT committee, *Accuracy of information provided to DFRDB members*, July 2021, p. 75.

67 Submissions published during the 47th Parliament and 48th Parliament can be viewed on the committee website.

- Chapter 1 introduces the inquiry, outlines its administration and conduct, and provides a background on the topic of military superannuation and pension schemes;
- Chapter 2 focuses on the issue of partial commutation of DFRDB pensions and other related matters;
- Chapter 3 explores indexation of defined benefit pensions, including:
  - the DFRB scheme;
  - the DFRDB scheme; and
  - the defined benefit component of the MSBS scheme; and
- Chapter 4 discusses other key issues raised.

Acknowledgments

1.68 The committee thanks all individuals and organisations that contributed to the inquiry by making submissions and giving evidence at the public hearing. In particular, the committee would like to acknowledge the contributions of those individuals who shared their experiences. The committee appreciates the time and effort people have taken to share their stories, which are often very personal.

Note on references

1.69 As submissions to this inquiry were received across the 47th and 48th Parliaments, submissions received in the 47th Parliament are noted as such in footnotes. Those received in the 48th Parliament note the submission number only.

1.70 All references to webpages cited in footnotes are current as at the time of tabling.

Chapter 2
Commutation and related matters

2.1 This chapter explores the issue of commutation and other related matters, including the characteristics of the commutation system, findings and recommendations of previous inquiries into commutation, and current concerns regarding commutation as indicated in evidence received by the committee.

2.2 It first briefly outlines the nature of commutation provisions in the Defence Forces Retirement Benefits (DFRB) scheme and the Defence Force Retirement and Death Benefits (DFRDB) scheme. It then sets out evidence received by the committee in this inquiry, including regarding:

- permanently reduced pensions for DFRDB members that chose commutation;
- provision of misleading information to DFRDB members on the effects of commutation;
- the Scheme for Compensation for Detriment caused by Defective Administration; and
- remedial actions proposed by submitters and witnesses.

What is commutation?

2.3 As discussed in chapter 1, commutation is a feature of some Australian military superannuation schemes that allows retiring members to be paid part of their pension entitlement as a lump sum up front in exchange for reduced retirement pay.

2.4 Commutation was part of two now closed military superannuation schemes: the DFRB scheme and the DFRDB scheme. These schemes closed for new entrants on 30 September 1972 and 30 September 1991 respectively.[1]

2.5 According to the Commonwealth Superannuation Corporation (CSC), as at 31 December 2024, approximately 50 000 individuals currently receive retirement benefits under the two schemes, and 441 contributing members remain under the DFRDB scheme.[2]

Commutation under the Defence Forces Retirement Benefits scheme

2.6 The DFRB scheme allowed retiring members, at the discretion of the DFRB Board, to be paid up to one third of their pension entitlement as a lump sum up front in exchange for a reduced retirement pay.

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1 Commonwealth Superannuation Corporation (CSC), *Submission 4 (47th Parliament)*, [p. 2].

2 CSC, *Submission 4 (47th Parliament)*, [p. 2].

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2.7 The original intention of commutation was to assist veterans with resettlement and transition to civilian life.[3] Consequently, the DFRB Board would only approve commutation for specific purposes, such as the purchase of a house. The DFRB Board also had discretion not to allow commutation if a medical examination indicated a person was unlikely to reach life expectancy.[4]

Commutation under the Defence Force Retirement and Death Benefits scheme

2.8 The DFRDB scheme allows retiring members to commute up to five times their annual pension entitlement without requiring approval to do so.[5] DFRDB members who choose to commute have their annual pension thereafter permanently reduced by an amount calculated according to a formula set out in the *Defence Force Retirement and Death Benefits Act 1973* (DFRDB Act).[6]

2.9 While the DFRDB scheme closed to new members on 30 September 1991, members who chose to remain in the DFRDB scheme rather than transfer to the newly established Military Superannuation Benefits Scheme (MSBS) retain the option of commutation upon retirement if they have served the minimum service period.

Previous reviews and inquiries

2.10 As this report has previously outlined, commutation under the DFRDB scheme has been the subject of two recent reviews: a 2019 investigation by the Commonwealth Ombudsman (the Ombudsman) and a 2021 inquiry by the Senate Foreign Affairs, Defence and Trade References Committee (FADT committee).[7]

Evidence received on commutation

2.11 Submissions to this inquiry overwhelmingly described commutation as an ongoing issue affecting veterans that has not been adequately resolved following the Ombudsman's investigation and FADT committee's inquiry.

2.12 Three key themes relating to commutation raised in submissions were:

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3 Commonwealth Ombudsman, Investigation into the administration of the Defence Force Retirement and Death Benefits (DFRDB) Scheme (Investigation into the DFRDB Scheme), *Report No. 06 of 2019*, December 2019, p. 5.

4 Commonwealth Ombudsman, Investigation into the DFRDB Scheme, December 2019, p. 5.

5 The original maximum commutation amount for DFRDB members was four times the members' annual pension entitlement. From June 1983, this was gradually increased over a 20-year period to five times the members' annual pension entitlement.

6 *Defence Force Retirement and Death Benefits Act 1973*, ss. 24(3) and Schedule 3.

7 Commonwealth Ombudsman, Investigation into the DFRDB Scheme, December 2019; Senate Foreign Affairs, Defence and Trade References Committee (FADT committee), *Accuracy of information provided to Defence Force Retirement and Death Benefits (DFRDB) members*, July 2021.

- the permanent reduction in retirement pay;
- a lack of successful claims under the CDDA scheme; and
- calls for remedial action to be taken by government.

Permanently reduced pension

2.13 The permanently reduced pension for DFRDB members that elected to commute was the most cited commutation-related concern in submissions.

2.14 The committee received numerous submissions from veterans outlining the financial and emotional hardship and difficulties they have faced due to their reduced pensions.

2.15 For example, Mr Peter Grothen explained that 'for those who commuted, the financial impact compounds year after year', particularly due to the effects of inflation and difficulties associated with ageing.[8]

2.16 Mr Geoff Trowbridge noted that residual disadvantage often disproportionately affects former enlisted members:

> Those most adversely affected are the lower, non-commissioned ranks who were serving in the field, out of reach of any information provided and least capable of articulating their case for reparation. Most non-commissioned ranks were therefore situationally and informationally disadvantaged and left in a position of financial vulnerability. The lower the member's rank on retirement, the greater is their dependency on their commutation benefits.[9]

2.17 Several submitters also highlighted the earlier onset of health issues faced by veterans as a factor that compounds the impact of permanently reduced retirement pay.[10]

2.18 Submissions also detailed the specific aspects of the DFRDB scheme and its commutation provisions that have exacerbated these difficulties, including:

- provision of inaccurate information relating to commutation;
- use of outdated life expectancy figures in the commutation formula; and
- legislative interpretation in relation to commutation.

2.19 The following section will discuss these matters in turn.

Provision of misleading information

2.20 Many submitters expressed to the committee that they were not adequately informed by the relevant authorities their pension would be permanently reduced. Instead, submitters repeatedly argued that members were led to

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8 Mr Peter Grothen, *Submission 3*, [p. 2–3].

9 Mr Geoff Trowbridge, *Submission 48*, [p. 2].

10 For example, see Mr Gordon Wright, *Submission 15 (47th Parliament)*; Mr Michael Brown, *Submission 24*; and Mr Robert May, *Submission 33*.

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believe their pension would be fully restored once they reached their life expectancy age as set out in the DFRDB Act.

2.21 The Australian Defence Force Retirees Association (ADFRA) told the committee that inaccurate information about DFRDB commutation had been provided over many years:

> For decades, the truth about the DFRDB Scheme has been minimised, distorted and dismissed. Members were promised one thing, delivered another and misled about the difference. That is not perception; it is a documented fact. The Jess committee's intent was clear: a lifetime retirement benefit with real value maintained, commutation, an advanced lump sum with a proportionate offset based on life expectancy and a widow's annuity fixed at five-eighths of retired pay, discounting commutation. That was the deal. But it is not what the DFRDB Act delivered.[11]

2.22 Evidence provided to the committee repeatedly identified Defence, the DFRDB Authority, and CSC as having given incorrect or misleading information on the effects of commutation.[12]

2.23 The DFRDB Commutation Campaign contended that the DFRDB Authority did not advise that commutation resulted in a permanent pension reduction:

> … until c1993, and was never stated verbatim, in any DFRDB generated brochure, or known presentation made to any resettlement seminar or information presentation for DFRDB Contributors.[13]

2.24 Similarly, the Defence Force Welfare Association (DFWA) claimed that:

> There is ample evidence that in the same period CSC official publications, in information brochures designed for Members, provided vague and easily misunderstood information that could lead DFRDB Members that commutation was a loan.[14]

2.25 Mr Clive Dennett was one of many veterans that described the information they had been provided about commutation. He submitted:

> The only access I had to the DFRDB scheme, other than paying 5.5% of my income, was, as I approached my resignation, a document issued by the Department of Defence. This document clearly stated that my commutation payment would be recovered over the time period between my resignation date and my Notional Life Expectancy Date.[15]

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11 Mr Jim Hislop, President, Australian Defence Force Retirees Association, *Committee Hansard*, 19 February 2026, p. 7.

12 The DFRDB Authority was the statutory authority responsible for managing and administering the DFRDB scheme prior to Commonwealth Superannuation Corporation assuming responsibility in 2011.

13 DFRDB Commutation Campaign, *Submission 2 (47th Parliament)*, [p. 5].

14 Defence Force Welfare Association, *Submission 16 (47th Parliament)*, [p. 39].

15 Mr Clive Dennett, *Submission 26*, [p. 1].

2.26 Others also suggested incorrect information was provided to ADF members at resettlement seminars.[16]

2.27 Mr John Pollock described his experience of attending a resettlement seminar:

> Prior to discharge I attended a detailed resettlement seminar run by both Defence and DVA personnel. They advised attendees of their rights and benefits on discharge. They provided a handout which advised the most beneficial time to take your discharge for members. It comprised of a table where you selected your current age and length of service at that time. It then showed the best year to take your discharge. I met the criteria for my proposed discharge date, aged 45 and 25 years' service. They also explained the requirements for commuting part of your pension. Eg you have to pay back the advance of your DFRDB by your notional life expectancy, in my case 72 … At no stage during my service and resettlement seminars were we ever given paperwork stating that commutation repayments were for life.[17]

2.28 Similarly, Mr Greg Hynds stated:

> At the time of transition, I attended a Resettlement Seminar where the message was clear, consistent, and strongly encouraged: elect to commute part of your pension. This advice was echoed by my Unit Resettlement Officer. At no point was I advised—explicitly or otherwise—of the long-term financial impact of this decision. Contrary to my understanding, the reduction to my pension was not proportionate or temporary—it was permanent.[18]

2.29 This largely reflects the Ombudsman's conclusion that:

> Many DFRDB members, likely numbering in the thousands, were misled to believe that the commutation related reduction to their retirement pay would cease upon reaching life expectancy factor age.[19]

2.30 However, the Ombudsman specifically reached a finding of defective administration only in relation to Defence, and not in relation to the DFRDB Authority and CSC as the misleading information was found only in Defence publications.[20]

2.31 Some submitters indicated they would have made a different decision, if they had fully understood the permanent effects of commutation.

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16 For example, see Mr Craig Thomas, *Submission 5*; Mr Charles Mollison, *Submission 7*; Mr Brian Collins, *Submission 9*; Peter Martin, *Submission 14*; Mr Mario Simic, *Submission 30*; Mr Warren Schilling, *Submission 45*.

17 Mr John Pollock, *Submission 27*, [p. 1].

18 Mr Greg Hynds, *Submission 40*, [p. 1].

19 Commonwealth Ombudsman, Investigation into the DFRDB Scheme, December 2019, p. 54.

20 Commonwealth Ombudsman, Investigation into the DFRDB Scheme, December 2019, pp. 33 and 54–55.

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2.32 Mr Grothen described the experience of choosing to commute based on information from CSC as being 'duped' and stated that the benefit of full knowledge 'would likely have led to a different decision'.[21]

2.33 Similarly, Mr Peter Martin stated:

> Had I been informed of these conditions applied by the DFRDB Authority to the Lump Sum Benefit, I would probably not have applied for the commutation.[22]

2.34 Mr Gregory Decker, who chose to remain in the DFRDB scheme and elected to commute rather than transfer to the MSBS when it was established in 1991, explained:

> Now some 25 years later … I remain on the original reduce[d] calculated amount. Knowing this now I would never have elected DFRDB and or commutation, I would have elected MSBS even though little was known about it.[23]

2.35 In relation to commutation rates, the Ombudsman noted that while the number of DFRDB members choosing to commute dropped slightly in recent years, particularly since 2001, commutation rates have remained at or above 85 per cent.[24]

2.36 The Ombudsman also highlighted that even when commutation rates did decrease substantially in a single year in 2004, 86 per cent of eligible members still decided to commute. This was despite an Administrative Appeals Tribunal decision in 2001 that made it clear a reduction of pension entitlements is permanent following commutation, and there being explicit mention of this in a June 2004 retirement benefits information sheet.[25]

2.37 The Ombudsman concluded:

> In our view, it is likely many submitters would have commuted, even if they had received correct information about its permanent effect on retirement pay. However, there may be some submitters who, having less immediate need of a lump sum, may have otherwise decided not to commute their retirement pay.[26]

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21 Mr Peter Grothen, *Submission 3*, [p. 2].

22 Mr Peter Martin, *Submission 14*, [p. 2].

23 Mr Gregory Decker, *Submission 63*, p. 4.

24 Commonwealth Ombudsman, Investigation into the DFRDB Scheme, December 2019, p. 14.

25 Commonwealth Ombudsman, Investigation into the DFRDB Scheme, December 2019, p. 14–15.

26 Commonwealth Ombudsman, Investigation into the DFRDB Scheme, December 2019, p. 34.

Expectation of life factor

2.38 Many submissions to the inquiry highlighted the expectation of life factor used in the DFRDB Act's commutation formula as one of the key legislative issues affecting veterans who chose to commute.

2.39 The expectation of life factor is outlined in Schedule 3 of the DFRDB Act. It is used to calculate the amount by which a commuting individual's annual pension is permanently reduced based on their age when they choose to commute and their gender.[27]

2.40 The Commonwealth Ombudsman explained that, in simplest terms, the formula is as follows:

> Reduction = amount commuted ÷ expectation of life factor.[28]

2.41 The expectation of life figures used are based on the Australian Bureau of Statistics' 1960–1962 life expectancy table and have remained consistent since the DFRDB Act was first passed.[29]

2.42 Many submitters expressed that when choosing to commute, they believed the commutation lump sum was essentially a loan to be repaid through a reduced pension that would be fully repaid when they reached their expectation of life age.[30]

2.43 Mr Charles Mollison explained:

> I accepted the offer of a lump sum and the reduction in subsequent payments confident in the belief that, when the lump sum was repaid, my fortnightly payments would be restored to the proper level.[31]

2.44 Mr Andrew Macfarlane argued that, as the pension reduction is instead permanent, this in essence means 'a member who commutes can end up repaying more than the original lump sum, effectively adding interest'.[32]

2.45 Mr David Stacy characterised commuting veterans who exceed their life expectancy as being 'in effect … penalised for reaching a ripe old age'.[33]

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27 *Defence Force Retirement and Death Benefits Act 1973*, para. 24(3)(b) and Schedule 3.

28 Commonwealth Ombudsman, Investigation into the DFRDB Scheme, December 2019, p. 51.

29 Commonwealth Ombudsman, Investigation into the DFRDB Scheme, December 2019, p. 51.

30 See, for example, Mr Tom Williams, *Submission 11*; Mr Victor Edwards, *Submission 29*; and Mr Richard Usher OAM, *Submission 34*.

31 Mr Charles Mollison, *Submission 7*, [p. 1].

32 Mr Andrew Macfarlane, *Submission 4*, [p. 1].

33 Mr David Stacy, *Submission 13*, [p. 1].

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2.46 The DFWA contended that 'this means that the Commonwealth unjustly benefits because "repayments" of its commutation advance by DFRDB pensioners are exceeded significantly'.[34]

2.47 Submitters observed that this issue is exacerbated by the use of figures based on 1960–1962 life expectancy, as life expectancy has increased considerably since 1962, and a higher expectation of life factor would result in a decreased annual pension reduction.[35]

2.48 ADFRA stated that 'the outdated *Expectation of Life Factors* in *Schedule 3* maximize the reduction and produce different outcomes for members of different ages on retirement'.[36]

2.49 The DFWA highlighted that:

> For 40 years before the DFRDB Act in 1973, there was minimal increase [in life expectancy], in fact there was a decrease from 1962 to 1972. For the 40 years after 1972, there was a large increase. This large increase was not known and could not have been anticipated by Parliament or drafters of the Act.[37]

2.50 The DFWA added:

> If the government knew that similar differences would emerge with time, it is reasonable … to assume that parliament would have provided a mechanism for incorporating the differences.[38]

2.51 Some submitters explained that they had already exceeded their expectation of life factor and consequently may continue living on a reduced pension well into their later years.

2.52 For example, Mr Doug Conn stated:

> 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. In 2021 I reached my life expectancy. The table utilised are inappropriate. For example, the latest Australian Bureau of Statistics tables suggest I could live for a further 9 years beyond the DFRDB life expectancy estimation.[39]

2.53 Mr Trowbridge highlighted that:

> Approximately 80% of members who commuted have outlived their 1960-1962 life expectancy by an average of 10 years, making the ongoing

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34 Defence Force Welfare Association, *Submission 16 (47th Parliament)*, [p. 43].

35 Defence Force Welfare Association, *Submission 16 (47th Parliament)*, [p. 43].

36 Australian Defence Force Retirees Association, *Submission 1 (47th Parliament)*, p. 6.

37 Defence Force Welfare Association, *Submission 16 (47th Parliament)*, [p. 42].

38 Defence Force Welfare Association, *Submission 16 (47th Parliament)*, [p. 42].

39 Mr Doug Conn, *Submission 31*, p. 3.

> reduction of their benefits after receiving a commute lump sum, a totally disproportionate exchange.[40]

2.54 This was reflected by another submitter who stated:

> I paid off my commutation debt in (about) July 2013 and yet I am still receiving my DFRDB pension at the reduced rate as though I still owed the Commonwealth money – which I do not. The notional life expectancy tables used by the DFRDB Authority were grossly outdated (even in 1986) and, in any event, I am now 12 years past my expected death and expect that I shall live for a considerable number of years more.[41]

2.55 The Ombudsman noted that changes to the expectation of life factor was an option 'open to the government and parliament of the day' and that the lack of provisions for tables that automatically update over time 'suggests that the scheme drafters … preferred a static commutation factor'.[42]

2.56 The DFWA considered the Ombudsman's view to be 'unrealistic' as life expectancy had not changed considerably in the decades prior to the DFRDB Act being drafted, meaning there was little justification at the time for using variable life expectancy tables.[43]

Legislative interpretation

2.57 Some submissions argued that the interpretation of the DFRDB Act's text to require a permanent reduction in retirement pay has been misinterpreted, or that this interpretation goes against the Act's original legislative intent.

2.58 Paragraph 24(3)(b) of the DFRDB Act specifies that the reduction in retirement pay applies 'on and after the day on which the election takes effect'.[44]

2.59 Mr Ron Haack argued that 'interpreting *on and after* as meaning forever is patently absurd in the context of a retirement benefit scheme', as no other scheme 'requires participants to continue to repay an advance once that advance has been fully acquitted'. Mr Haack suggested that parliamentary debate on the DFRDB legislation indicated that commutation was, in effect, 'a loan of future benefit entitlement to be repaid over the life expectancy of the recipient without interest'.[45]

2.60 Conversely, the Ombudsman noted that:

> The words 'on and after' are used in legislation to indicate that a legislated outcome is to commence and continue. If the words 'on or after' are used

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40 Mr Geoff Trowbridge, *Submission 48*, [p. 3].

41 Name withheld, *Submission 55*, [p. 2].

42 Commonwealth Ombudsman, Investigation into the DFRDB Scheme, December 2019, p. 52.

43 Defence Force Welfare Association, *Submission 16 (47th Parliament)*, [p. 44].

44 *Defence Force Retirement and Death Benefits Act 1973*, para. 24(3)(b).

45 Mr Ron Haack, *Submission 39*, p. 3 (emphasis added).

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> without being qualified by a fixed time frame or end date the legislated outcome will continue forever, unless another legislated outcome displaces it.[46]

2.61 On this point, the Ombudsman concluded:

> … the legal meaning is plain and not capable of any other interpretation … The DFRDB Act, as passed by parliament, requires a permanent reduction.[47]

2.62 Similarly, in the 2001 case of *Reynolds and Defence Force Retirement and Death Benefits Authority*, the Administrative Appeals Tribunal found 'neither ambiguity nor obscurity' in the provision.[48]

2.63 Furthermore, in *McKenzie vs Commonwealth Superannuation Corporation*, the Federal Court found that 'the plain text of s 24(3)(b) is clear and unambiguous' and requires a permanent reduction.[49]

2.64 The DFRDB Commutation Campaign noted that commutation is not defined in the DFRDB Act.[50]

2.65 The Ombudsman did not view this as a concern as 'not all terms used in legislation need to be specifically defined'.[51]

2.66 The Ombudsman added that:

> The DFRDB Act's commutation provisions are not ambiguous from a legal point of view, even though its meaning may not be immediately apparent to a lay person. A definition of the word commutation is not required, because the DFRDB Act comprehensively sets out the steps involved in commutation, including eligibility, calculating the commutation and permanently reducing retirement pay using the formula in the statute.[52]

2.67 Some submissions to the inquiry contended that parliamentarians at the time did not fully understand the legislation they were voting on. For example, ADFRA alleged that parliamentarians were 'deceived' and 'misled' by Government Ministers in relation to the DFRDB Act and its subsequent amendment in 1977. ADFRA observed that the corresponding Bills lacked explanatory memoranda and deviated from the recommendations of the Joint

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46 Commonwealth Ombudsman, Investigation into the DFRDB Scheme, December 2019, p. 11.

47 Commonwealth Ombudsman, Investigation into the DFRDB Scheme, December 2019, p. 12.

48 Commonwealth Ombudsman, Investigation into the DFRDB Scheme, December 2019, p. 12.

49 *McKenzie vs Commonwealth Superannuation Corporation* (2023) FCA 396, [42]–[43].

50 DFRDB Commutation Campaign, *Submission 2 (47th Parliament)*, [p. 1]; DFRDB Commutation Campaign, *Supplementary to submission 21*, [p. 2].

51 Commonwealth Ombudsman, Investigation into the DFRDB Scheme, December 2019, p. 12.

52 Commonwealth Ombudsman, Investigation into the DFRDB Scheme, December 2019, p. 13.

Committee report, which recommended that retirement pay for commuting members be 'proportionately reduced'.[53]

2.68 ADFRA highlighted second reading speeches from parliamentarians expressing dissatisfaction in relation to the short amount of time for consideration and scrutiny of the original DFRDB bill.[54]

2.69 ADFRA told the committee that when the DFRDB Act was made, it 'diverged substantially in at least two respects from the fundamental Jess committee recommendations'. The first of these was a recommendation for a proportionate, rather than a permanent, reduction in the pension rate for those who chose commutation. The second was a recommendation that pensions be indexed to average weekly earnings, rather than CPI, to prevent erosion of pension value over time. Indexation of defined benefit pensions is discussed in detail in chapter 3.[55]

2.70 Regarding the possibility that parliament did not fully understand the bills it passed, the Ombudsman stated that 'what individual parliamentarians understood is not relevant. The DFRDB Act, as passed by parliament, requires a permanent reduction'.[56]

Scheme for Compensation for Detriment caused by Defective Administration

2.71 Several submissions highlighted a lack of successful claims under the Scheme for Compensation for Detriment caused by Defective Administration (CDDA scheme).

2.72 The CDDA scheme provides a mechanism for non-corporate Commonwealth entities to compensate people who have experienced detriment as a result of that entity's defective administration.[57] The non-corporate Commonwealth entity that is the subject of a CDDA scheme claim is responsible for considering and making a decision on that claim.

2.73 Examples of defective administration include, but are not limited to:

- non-compliance with existing administrative procedures;
- failure to institute appropriate administrative procedures;
- failure to give proper advice that was within the entity's power to give;

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53 Australian Defence Force Retirees Association, *Submission 1 (47th Parliament)*, p. 13.

54 Australian Defence Force Retirees Association, *Submission 1 (47th Parliament)*, pp. 15–16.

55 Mr Clinton McKenzie, Research Team Member, Australian Defence Force Retirees Association, *Committee Hansard*, 19 February 2026, p. 8.

56 Commonwealth Ombudsman, Investigation into the DFRDB Scheme, December 2019, p. 12.

57 Department of Finance, *Scheme for Compensation for Detriment caused by Defective Administration (CDDA Scheme)*, 13 May 2021.

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- failure to give proper advice that the entity was reasonably capable of obtaining; and
- giving advice that was, in all circumstances, incorrect or ambiguous.[58]

2.74 The applicant must also demonstrate the direct loss or detriment they have suffered due to the defective administration.

2.75 The FADT committee report in 2021 noted that no claims under the CDDA to that point had been successful, and that 'more support may be required to assist DFRDB members to access the CDDA scheme and appeal any adverse decisions'.[59]

2.76 The committee recommended:

> … that the Australian Government consider more assistance for DFRDB members to make claims under the CDDA scheme and appeal any adverse decisions or a separate reparation payments scheme for DFRDB members who are unsuccessful under the CDDA scheme to recognise the government's moral obligation to address any confusion and distress caused by defective administration. Where a CDDA claim was successful, compensation could include any professional costs expended in preparation of the claim, and legal and other professional costs if a claimant successfully appealed an adverse finding. Further, where the claimant's CDDA appeal was unsuccessful, the Commonwealth should consider not applying for costs to be awarded against the claimant.[60]

2.77 The Australian Government supported the range of recommendations relating to the CDDA scheme, but noted that:

> … both the Commonwealth Ombudsman and the Committee report indicate that it is unlikely a member has suffered a financial detriment and therefore the likelihood of any member being successful appears to be limited.[61]

2.78 Submissions to the inquiry indicate that DFRDB members have continued to be unsuccessful in their claims under the DFRDB scheme.

2.79 The DFWA stated that 'none of the 30–40 veterans who pursued a claim via the CDDA process has been successful'.[62] The DFWA also noted veterans'

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58 Department of Finance, *Scheme for Compensation for Detriment caused by Defective Administration (CDDA Scheme)*, 13 May 2021.

59 Senate Foreign Affairs, Defence and Trade References Committee (FADT committee), *Accuracy of information provided to Defence Force Retirement and Death Benefits (DFRDB) members*, July 2021, p. 73.

60 FADT committee, *Accuracy of information provided to DFRDB members*, July 2021, p. 74.

61 Australian Government Response to the Senate Foreign Affairs, Defence and Trade References Committee: *Inquiry into the accuracy of information provided to Defence Force Retirement and Death Benefits (DFRDB) members*, tabled 2 December 2021, p. 3.

62 Defence Force Welfare Association, *Submission 16*, p. 39.

dissatisfaction with the 'offering of the CDDA bureaucratic process to claim any financial redress'.[63]

2.80 Mr Gary Lang criticised the CDDA scheme's requirement to demonstrate financial detriment, noting this often requires comparison of financial disadvantage between those who did and who did not commute:

> Complainants are required to provide evidence that they are financially worse off. This does not factor in any of the human factors about why members chose to commute. Not to make money but to provide homes for their families as they transitioned to civilian life. We all understood that we need to pay back the commutation but were not expecting to have that continue past the calculated and promulgated life expectancy dates clearly outlined on our retirement paperwork.[64]

2.81 According to Mr Herb Ellerbock, the CDDA remains inaccessible to DFRDB members due to:

- burdensome evidentiary requirements placed on individual claimants;
- lack of independent review mechanisms; and
- excessive delays, as evidenced in my CDDA application, where the reviewed decision of denial was upheld by the original decision maker after 255 days.[65]

Remedial action sought

2.82 Evidence received by the committee outlined various forms of remedial action that could potentially resolve the various issues relating to commutation.

Change to permanent pension reduction

2.83 Submissions concerning commutation overwhelmingly favoured changes to the permanent pension reduction associated with commutation.[66]

2.84 Nearly all of these submissions advocated for pensions to be fully restored once an individual who chose to commute has reached their expectation of life factor.[67]

2.85 For example, Mr Bruce Macfarlane told the committee that:

> … the purchasing power of my DFRDB pension has reduced by almost 50 per cent since my retirement. I strongly implore you to consider changes to legislation that will amend the DFRDB Act to cease the reduction of benefits when members who commuted reach their schedule 3 life expectancy, and

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63 Defence Force Welfare Association, *Submission 16*, p. 39.

64 Mr Gary Lang, *Submission 28*, [p. 4].

65 Mr Herb Ellerbock, *Submission 57*, p. 2.

66 Australian Defence Force Retirees Association, *Submission 1 (47th Parliament)*, p. 21.

67 See, for example, Mr Robert May, *Submission 33*, [p. 15]; Mr Richard Usher OAM, *Submission 34*, [p. 2]; and Mr Geoff Trowbridge, *Submission 48*, [p. 1].

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> restore members' current rate of benefits to where they would be if their benefits had been fully indexed in accordance with movements in the average weekly earnings from 1976 until 1 July 2014.[68]

Updates to expectation of life factor

2.86 Many submissions expressed a desire for the expectation of life factors used to calculate the reduction to a commuting individual's pension to be updated to reflect life expectancy in recent decades.

2.87 The DFWA proposed that:

- the life expectancy of retirees at date of commutation should be used;
- the retirement pay of current retirees who commuted should be updated to reflect this change; and
- lump sum back payments should be made to correct underpayment for all living retirees.[69]

2.88 The DFWA argued that a change to use current life expectancy would be 'cost-neutral to the Commonwealth if correct tables are used' as:

> … half the population die before reaching the average age, and half the population die after the average life expectancy age. For the DFRDB retirees, those who live past the average LE age, effectively subsidise those who die before that age.[70]

Committee view and recommendations

2.89 The committee notes the substantial number of individuals and organisations that showed an interest in this inquiry, and thanks them for submissions and evidence provided at the public hearing.

2.90 The committee appreciates evidence provided on commutation, particularly by the individuals that took the time to share the effects of commutation on the retirement incomes of former service men and women.

2.91 The committee acknowledges the views expressed in evidence that many DFRDB members believe that the government should take action to remedy what they have described as inequities within the scheme.

2.92 In considering this matter, the committee has also drawn on and considered previous work undertaken on commutation by the Commonwealth Ombudsman in 2019, and the report of the Senate FADT Committee in 2021.[71]

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68 Mr Bruce Macfarlane, Private capacity, *Committee Hansard*, 19 February 2026, p. 38.

69 Defence Force Welfare Association, *Submission 16 (47th Parliament)*, [pp. 44–45].

70 Defence Force Welfare Association, *Submission 16 (47th Parliament)*, [p. 39].

71 Commonwealth Ombudsman, *Investigation into the administration of the Defence Force Retirement and Death Benefits (DFRDB) Scheme*, Report No. 06 of 2019, December 2019; Senate Foreign Affairs, Defence and Trade References Committee, *Accuracy of information provided to Defence Force*

2.93 Regarding work undertaken by the Commonwealth Ombudsman, the committee notes the conclusion that even though the scheme was 'administered in accordance with the law', some members 'were provided with misleading, and even incorrect advice about their rate of retirement pay by Defence'.[72]

2.94 The committee notes the government agreed and has complied with all recommendations of the Ombudsman's report, including for:

> Recommendation 1
>
> 1.1 The Secretary of Defence and Chief of Defence Force should issue an apology for the incorrect advice provided to some DFRDB members about the long term effects of commutation on retirement pay, and for the distress it caused.
>
> 1.2 The apology should be published on the Defence and CSC websites and be available to DFRDB members on request to Defence.[73]

2.95 The Ombudsman also did not identify any cases that would warrant compensation under the CCDA scheme, or where compensation would be appropriate.

2.96 The committee also has given consideration to the agreement of the Senate Foreign Affairs Defence and Trade References Committee with the Ombudsman's view that changes to the DFRDB scheme may cause unfairness to members who decided not to commute or to other current and former ADF members, such as those who chose to transfer from the DFRDB scheme to the MSBS scheme.

2.97 The committee recognises that many DFRDB members still consider the government should undertake remedial action to address perceived inequities. However, the committee concurs with the Ombudsman and FADT Committee conclusions that remediation would potentially create other unfair outcomes for those that did not commute or only partially commuted.

Recommendation 1

2.98 The committee recommends that the Australian Government consider whether the current settings of Defence Force Retirement and Death Benefits pensions are fair and equitable for all members.

Retirement and Death Benefits (DFRDB) members, July 2021. See chapter 1 and earlier in this chapter for more information on these inquiries.

72 Commonwealth Ombudsman, *Investigation into the administration of the Defence Force Retirement and Death Benefits (DFRDB) Scheme*, Report No. 06 of 2019, December 2019, p. 54.

73 Commonwealth Ombudsman, *Investigation into the administration of the Defence Force Retirement and Death Benefits (DFRDB) Scheme*, Report No. 06 of 2019, December 2019, p. 54.

Chapter 3
Indexation and related matters

3.1 This chapter will consider evidence received on issues related to indexation. The evidence in submissions and at the public hearing repeatedly noted that defined benefit pensions under the Defence Forces Retirement Benefits (DFRB) scheme, the Defence Force Retirement and Death Benefits (DFRDB) scheme, the Military Superannuation Benefits Scheme (MSBS) and the ADF Cover scheme have all been affected by being linked to the Consumer Price Index (CPI).

3.2 By contrast, indexation of the Age Pension and some other income support payments incorporate indexation according to Average Weekly Earnings (AWE).

3.3 This chapter will look at the following matters raised in evidence, including:

- the effects of CPI indexation;
- indexation of some, but not all, DFRB and DFRDB pensions to AWE;
- the absence of provision for retrospective compensation to DFRB and DFRDB members for the period in which their pensions were indexed only to CPI;
- indexation of only a portion of DFRDB pensions, even where members chose not to commute part of their pensions;
- inequities experienced by members whose pensions remain indexed to CPI.

Effects of CPI indexation

3.4 Submitters specifically cited the use of CPI as the basis for indexation, rather than AWE, as a key factor in eroding veterans' standard of living in retirement.

3.5 For example, Mr Arran Bartholomeusz outlined the disadvantage of CPI-based indexation:

> CPI adjustments often fail to keep pace with the actual cost of living, leading to a gradual erosion of the purchasing power of veterans' benefits over time. This disparity may result in a less dignified retirement for ADF members, undermining the intent of preserving savings for a secure future.[1]

3.6 Mr Geoff Trowbridge stated that CPI failed to maintain parity with AWE from 1991, and by 2013 the value of DFRDB benefits was eroded by 27 per cent.[2]

3.7 The Defence Force Welfare Association (DFWA) argued that:

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1 Mr Arran Bartholomeusz, *Submission 9 (47th Parliament)*, [p. 1].

2 Mr Geoff Trowbridge, *Submission 48*, [p. 4].

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> While CPI was appropriate when it was one of the major tools for wage determination, it has changed and now the CPI no longer reflects costs of living.[3]

3.8 The DFWA also highlighted that indexation for some other income support payments takes into account other cost of living measures in addition to CPI to better preserve purchasing power.[4]

3.9 The Australian Defence Force Retirees Association (ADFRA) compared CPI adjustments to the higher returns from accumulation superannuation funds. ADFRA highlighted that the 7-year rate of return for two other public sector superannuation schemes, the Commonwealth Superannuation Scheme and Public Sector Superannuation Scheme, exceeded 8 per cent per annum, compared to 2.1 per cent per annum for CPI over the same period.[5]

3.10 Regarding indexation for the MSBS specifically, Honorary Professor Andrew Podger AO, who chaired the 2007 Review into Military Superannuation Arrangements, noted that the 2007 review did not recommend any change to indexation of MSBS pensions due to 'the generosity of the MSBS arrangements for converting lump sums into indexed pensions'.[6]

3.11 Professor Podger also argued that 'the case for indexation of DFRDB and MSBS pensions to be based on wages rather than prices is … very weak'. He cited recent findings published by the Grattan Institute that consumption levels fall slightly over retirement years, whereas 'the age pension ensures that the social safety net still increases along with community incomes'.[7]

3.12 ADFRA explained the ongoing negative impact of reduced pensions on DFRDB recipients:

> DFRDB members made compulsory, uninvested contributions from their modest military salary and served in conditions that no public servant or parliamentarian is asked to endure, yet their retirement benefits have been eroded for decades by decisions they were never told about. These harms are not historical. They are current and affect thousands of veterans, many of whom are elderly and are struggling.[8]

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3 Defence Force Welfare Association, *Submission 16 (47th Parliament)*, [p. 47].

4 Defence Force Welfare Association, *Submission 16 (47th Parliament)*, [p. 47].

5 Australian Defence Force Retirees Association, *Submission 1 (47th Parliament)*, p. 10.

6 Honorary Professor Andrew Podger AO, *Submission 41*, p. 2.

7 Honorary Professor Andrew Podger AO, *Submission 41*, p. 2.

8 Mr Jim Hislop OAM, President, Australian Defence Force Retirees Association, *Committee Hansard*, 19 February 2026, p. 7.

Indexation of the Defence Forces Retirement Benefits scheme and Defence Force Retirement and Death Benefits scheme

3.13 During the operation of the DFRB and the early years of the DFRDB, pensions were not regularly indexed. Pensions were increased from time to time according to government decisions. DFRDB pension increases were authorised by separate annual Acts between 1 October 1972 and mid-1976. The indexation basis was the lesser of 1.4 times the increase in the CPI, or increases in male AWE.[9]

3.14 In 1977 the DFRDB Act was amended by the *Defence Force (Retirement and Death Benefits Amendments) Act 1977*, which inserted Part XA into the DFRDB Act. This change allowed the pension to be indexed from 1 July 1976. As a result, pensions were increased if there was an upward movement in the CPI. Pensions were not decreased if there was a downward movement in the CPI.[10]

3.15 Indexation arrangements for DFRB and DFRDB members aged over 55 were amended in 2014 by the *Defence Force Retirement Benefits Legislation Amendment (Fair Indexation) Act 2014* (Fair Indexation Act), which added Division 3 of Part XA of the DFRDB Act to ensure indexation arrangements for these members operate in a similar manner to the age pension.[11]

3.16 For DFRB and DFRDB members who are over 55, the relevant indexation rate is the higher of CPI and the Pension and Beneficiary Living Cost Index. The increase must also be sufficient to ensure a hypothetical 'indicative' pension does not fall below 27.7 per cent of Male Total AWE.[12]

3.17 While submitters welcomed this amendment, many were not satisfied with the extent of the change due to:

- the change only applying to pensioners aged 55 and over;
- changes not being retrospective; and
- indexation only applying on the commutable amount of one's retirement pay.

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9 See *Defence Forces Retirement Benefits (Pension Increases) Act 1973*, s. 4(2), and *Defence Force Retirement and Death Benefits (Pension Increases) Act 1976*, s. 6-7, for increases between 1973–74 and 1975–76.

10 Commonwealth Ombudsman, *Investigation into the administration of the Defence Force Retirement and Death Benefits (DFRDB) Scheme*, Report No. 06 of 2019, December 2019, pp. 44–45.

11 *Defence Force Retirement Benefits Legislation Amendment (Fair Indexation) Act 2014*, Schedule 1.

12 Commonwealth Ombudsman, *Investigation into the administration of the Defence Force Retirement and Death Benefits (DFRDB) Scheme*, Report No. 06 of 2019, December 2019, p. 45.

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Retrospectivity

3.18 Many submitters expressed disappointment that the Fair Indexation Act amendments were not retrospective, meaning that the many years their pension was indexed based on CPI remains unrectified.

3.19 The DFWA described the indexation amendment as 'only a partial fix for DFRDB' that did not consider 'the erosion of base purchasing power over the previous decades for all schemes'.[13]

3.20 Both the DFWA and ADFRA noted that the Jess Committee that originally recommended the establishment of the DFRDB scheme had opposed the use of CPI for indexation.[14]

3.21 ADFRA submitted that it is seeking restoration of DFRDB members' pension benefits to where they would be if they had been indexed according to AWE from 1976 to 1 July 2014, rather than CPI.[15]

3.22 This request was echoed by a number of individuals who made submissions to the inquiry.[16]

3.23 For example, Mr Russell Linwood observed that, between 1977 and 2014, DFRDB pensions had not kept pace with the cost of living, and that retrospective amendments would restore dignity to affected members. Mr Linwood observed that such amendments would:

> … go a long way to restoring what veterans had been promised as a reward for longer service, but have not received in practice. Instead, we receive an inequitable and eroding income, a situation our public service counterparts do not suffer.
>
> Common sense says that the system is not working to the benefit of we veterans; precisely why the fund was set up as it was in the first place. Instead, it benefits Treasury to the detriment of the veterans. This is un-Australian, especially where ADF members have no say in such matters, and as retirees we do not get listened to.[17]

Indexation for DFRDB members who did not commute

3.24 The committee also received evidence that indexation arrangements are inequitable for DFRDB members who elected not to commute, and that this has remained the case following the Fair Indexation Act.

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13 Defence Force Welfare Association, *Submission 16 (47th Parliament)*, [p. 49].

14 Australian Defence Force Retirees Association, *Submission 1 (47th Parliament)*, p. 10; Defence Force Welfare Association, *Submission 16 (47th Parliament)*, [p. 49].

15 Australian Defence Force Retirees Association, *Submission 1 (47th Parliament)*, p. 21.

16 Major (Rtd) Robert Fitzgerald, *Submission 11*; Mr Andrew Macfarlane, *Submission 4*; Mr Herb Ellerbock, *Submission 57*.

17 Mr Russell Linwood, *Submission 25*, p. 3.

3.25 It is apparent that some members chose to commute the full amount of four times their retirement pay, but others chose to commute only part of this amount. Another cohort chose not to commute any part of their pension.

3.26 However, under the DFRDB Act, regardless of the member's choice on commutation, indexation is only applied to the amount the member would have received if they had commuted four times their annual retirement pay.[18]

3.27 ADFRA described this as indexation applying only to a 'notional rate' of DFRDB pensions, which varies according to the age of retirement, rather than to 100 per cent of the benefit:

> What is the significance of it? What it actually means is that, if someone didn't commute, then their retirement pay would not be fully indexed. They'd only apply CPI to the amount that would have been leftover had the member commuted four times [their annual pension amount].[19]

3.28 Evidence to the committee suggested that it was inequitable to those DFRDB members who chose not to commute for indexation to apply only to part of their pension. Mr Clinton McKenzie argued that the difference in the amount subject to indexation 'has a profoundly negative financial consequence, exacerbated by the foreseeable (and foreseen by the Jess Committee) eroding effect of the indexation having been linked to the CPI rather than AWE'.[20]

3.29 The DFRDB Commutation Campaign alleged that DFRDB members were not advised of the indexation arrangements for non-commuting members.[21]

Indexation for pensioners under 55 and all MSBS and ADF Cover pensioners

3.30 The DFWA argued that the Fair Indexation Act did not go far enough and created inequity between DFRB and DFRDB pensioners over 55 and all those whose pensions continue to be indexed based on CPI.[22]

3.31 The DFWA observed that a number of groups were 'left behind' by the Fair Indexation Act, including DFRDB pension recipients under 55, all MSBS and ADF Cover pension recipients, and recipients of reversionary pensions.[23]

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18 Commonwealth Ombudsman, *Investigation into the administration of the Defence Force Retirement and Death Benefits (DFRDB) Scheme*, Report No. 06 of 2019, December 2019, p. 45–46.

19 Mr Clinton McKenzie, Research Team Member, Australian Defence Force Retirees Association, *Committee Hansard*, 19 February 2026, p. 9.

20 Mr Clinton McKenzie, *Submission 52*, [p. 5].

21 DFRDB Commutation Campaign, *Supplementary to submission 21*, [p. 3].

22 Defence Force Welfare Association, *Submission 16 (47th Parliament)*, [p. 48].

23 Defence Force Welfare Association, *Submission 68*, [p. 46].

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3.32 Some submitters questioned the restriction of the amendment to those aged over 55, when no age restriction existed in the original legislation.[24]

Committee view and recommendations

3.33 Many submissions and witnesses drew attention to the issue of indexation. Many stated that the real value of their military pension had been eroded by indexation based solely upon the CPI.

3.34 The committee observes that indexation arrangements for DFRB and DFRDB members aged over 55 were amended in 2014 to ensure indexation arrangements for these members operated in a similar manner to the age pension. However, these indexation arrangements do not apply uniformly across recipients of military pensions, and there is some merit in consistency in this area.

Recommendation 2

3.35 The committee recommends the Australian Government consider reviewing indexation methodology for all defined benefit military pension schemes, with a view to achieving consistency and equity.

[24] Mr Gordon Wright, *Submission 15 (47th Parliament)*; Mr Andrew Macfarlane, *Submission 4*.

Chapter 4
Other issues

4.1 This chapter discusses other key issues raised in the inquiry, including:

- issues relating to retrospective invalidity applications;
- complexity of the military superannuation system;
- definitional issues affecting reversionary pensions; and
- consolidation of military superannuation funds.

Retrospective invalidity

4.2 Some submitters raised issues regarding the reclassification of veterans' discharges from administrative to medical, also known as retrospective invalidity. Retrospective invalidity assessment is the process of assessing a member's circumstances to determine whether grounds existed on which the member could have been medically transitioned from the ADF. This assessment is based on the medical conditions of the member present at the date of transition from the ADF.[1]

4.3 There are three classes of medical invalidity under the current framework:

- Class A means the person is severely impacted by their impairments and would be significantly restricted in their capacity to undertake relevant civilian employment. Class A is allocated where there is an incapacity to undertake civilian employment of 60 per cent or more. Class A provides a full Invalidity Benefit payment.
- Class B means the person has capacity for some relevant civilian work, but would suffer moderate incapacity. Class B is allocated where there is an incapacity to undertake civilian employment of 30–59 per cent. Class B provides a partial Invalidity Benefit payment.
- Class C means the person has been deemed as not fit for ADF duty, but has the capacity to work within relevant civilian employment with minimal restriction. Class C is allocated where there is an incapacity to undertake civilian employment kinds of 0–30 per cent. There is no Invalidity Benefit payable following a Class C determination.[2]

4.4 Former members of the permanent ADF (or those on a period of continuous full-time service immediately prior to separating) who separated on

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1 Commonwealth Superannuation Corporation, Defined benefit member guide to ADF Medical Transition and Retrospective Invalidity.

2 Commonwealth Superannuation Corporation, Member guide to ADF Medical Transition and Retrospective Invalidity.

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non-medical grounds may seek to have their separation treated as if they were medically separated, in relation to superannuation benefits.[3]

4.5 According to Defence:

> For DFRDB (and DFRB) members, Defence must first approve that a medical separation could have been considered, at the time the member separated from the ADF, for the purpose of superannuation. Differing rules apply for MSBS and ADF Cover, where a CSC delegate is the decision maker for retrospective invalidity.[4]

4.6 CSC further explained nuances between retrospective invalidity claims across different military superannuation schemes:

- For DFRDB members to be considered for retrospective invalidity, they must apply to the Department of Defence. Only if CSC receives correspondence from Defence confirming that the member should have been discharged on medical grounds can it apply the retrospective change to the member's benefit.
- Where an MSBS member has been discharged for reasons other than invalidity, they may apply directly to CSC to be treated as though they had retired on the grounds of invalidity, however can only do so if they have retained a preserved MSBS employer benefit. (Therefore, if they have taken an early release of superannuation they may not have a preserved benefit and will thus be prohibited from applying for a retrospective invalidity benefit).
- An ADF Cover member may also apply directly to CSC to be treated as though they had retired on grounds of invalidity, without the requirement to have retained a preserved employer benefit.[5]

4.7 Issues raised concerning retrospective invalidity included:

- the complexity of the process;
- long wait times for outcomes;
- inadequate avenues of appeals;
- consideration of psychological injuries; and
- the impact of the entire process on veterans' wellbeing.

Complexity and timeliness

4.8 Many submitters highlighted the complexity of the process when seeking reclassification of discharge, difficulties navigating the system's bureaucracy, and the length of time need to complete the process.

4.9 RSL Australia stated that 'while access to retrospective classification has improved, the process remains fraught with complexity' due to the complicated

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3 Department of Defence, *Submission 5 (47th Parliament)*, p. 6.

4 Department of Defence, *Submission 5 (47th Parliament)*, p. 6.

5 Commonwealth Superannuation Corporation, *Submission 4 (47th Parliament)*, [p. 5].

and unclear classification system, inconsistent right of review between classifications, and inconsistent decision making by CSC.[6]

4.10 The DFWA described the process as 'probably the most complex area in the administration of veteran entitlements, due to offsetting between Department of Veterans' Affairs (DVA) Incapacity Payments and CSC payments'.[7]

4.11 The DFWA also outlined the amount of time and effort required to make a claim:

> A retrospective medical discharge claim involves trawling back though medical records back to before discharge to the current day, leading up to a decision. If claim is successful, it then involves reviewing the historical records of CSC and DVA payments made, withholding tax, and veteran tax - dating back to the date of discharge. Some of the records have been archived. Some earlier ones are still held on paper or scanned, requiring manual searching. This process is lengthy and its outcome uncertain and creates more stress. DFWA has supported veterans where the retrospective claims went back as far as the 1970s and required about 2 years for a decision.[8]

4.12 This was illustrated in a submission by Mr Mike Smith, who set out his experience applying for reclassification of discharge from administrative to medical:

> With detailed records and reports from the relevant specialist, an application was submitted to the Department of Defence in 2023. As at July 2025, my application hadn't been addressed and there is no indication when that might occur. Should my mode be altered to medical discharge, the application then needs to go through the CSC processes.[9]

4.13 DVA explained that even when retrospective invalidity is granted, veterans may still endure a protracted wait to receive updated superannuation benefits due to recalculation of past entitlements and taxation which can take several years.[10]

4.14 For example, Super Info submitted that processing times for retrospective invalidity cases had increased from around three months in 2018 to over two years in some cases from 2023 onwards, involving veterans with injuries from active duty in the Middle East from 2005 to 2024. Super Info indicated that CSC employees had attributed this to:

- delays in obtaining medical files from the Department of Defence and answers from Defence People Group about whether the former ADF member could reasonably have been retired on medical grounds; and

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6 RSL Australia, *Submission 14 (47th Parliament)*, p. 13.

7 Defence Force Welfare Association, *Submission 16 (47th Parliament)*, [p. 63].

8 Defence Force Welfare Association, *Submission 16 (47th Parliament)*, [p. 66].

9 Mr Mike Smith, *Submission 49*, [p. 3].

10 Department of Veterans' Affairs, *Submission 7 (47th Parliament)*, p. 5.

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- service standards set by the Department of Defence, which provide 18 months for CSC to process retrospective invalidity claims for members of the MSBS and DFRDB.[11]

4.15 CSC told the committee that, since 2018, it had experienced a significant year-on-year increase in claims, especially in retrospective claims, with the total number of claims increasing from 288 in 2018 to 1117 in the 2024–25 financial year, leading to delays in processing claims.[12]

4.16 CSC also outlined a review of resources and processes that it undertook with Defence in early 2024. As a result of that review, Defence allocated CSC an additional budget of $600 000, enabling it to increase its number of claims managers from 46 in 2018, to 51 at the time of writing.[13]

4.17 CSC indicated that the additional staffing has helped it to clear 97 per cent of the 1398 claims that were over 18 months old at the time of the review, with 44 claims remaining outstanding, typically where the CSC was waiting on more information to be provided. CSC also told the committee that it has closed an additional 1672 retrospective invalidity cases since 2024.[14]

4.18 The Repatriation Commission conceded that veterans applying for retrospective invalidity 'often experience confusing processes, delays, and unexpected financial implications'.[15]

4.19 To address this, the Repatriation Commission articulated the need for greater coordination between DVA, CSC, the Australian Taxation Office, Defence, and the Department of Social Services 'to streamline this process and ensure accurate and timely outcomes'.[16]

4.20 Similarly, the Veteran Family Advocate Commissioner (VFAC) noted that the reclassification of discharge process 'is fragmented across Defence, CSC and DVA' with 'no single decision point or reconciled outcome'.[17]

4.21 The VFAC argued for the establishment of:

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11 Super Info, *Submission 69*, p. 2.

12 Mr Adam Nettheim, Chief Customer Officer, Commonwealth Superannuation Corporation, *Committee Hansard*, 19 February 2026, p. 45.

13 Mr Adam Nettheim, Chief Customer Officer, Commonwealth Superannuation Corporation, *Committee Hansard*, 19 February 2026, pp. 45–46.

14 Mr Adam Nettheim, Chief Customer Officer, Commonwealth Superannuation Corporation, Committee Hansard, 19 February 2026, pp. 45–46.

15 The Repatriation Commission, *Submission 8 (47th Parliament)*, [p. 2].

16 The Repatriation Commission, *Submission 8 (47th Parliament)*, [p. 2].

17 Veteran Family Advocate Commissioner, *Submission 46*, [p. 3].

> … a single 'tell me once' pathway with firm timelines for initial decisions and internal review; on approval, backdate entitlements and pause debt recovery while decisions are pending; issue one consolidated outcome letter showing the net position across Defence, CSC, DVA and the ATO.[18]

4.22 Defence submitted that:

> Defence, through the MoU and reporting framework with CSC, have sought to have more visibility and understanding of the current status of the cases relating to retrospective medical separation with an aim to support positive change and experience for the member.[19]

Avenues for appeal

4.23 In addition to issues navigating the system, submitters raised concerns regarding the appeals process for retrospective invalidity claims.

4.24 The DFWA argued that the legislated one month to appeal decisions made by CSC is inadequate as:

> For the veteran, it is not routine, it involves a deal of specialist knowledge, gets confused with DVA medical assessment process, and is stressful. A veteran given an initial classification of Class C will likely become very anxious and will take time to understand and consider what action to take and how to appeal a challenge. Given the previous stress, many just want no more to do with it, let alone to be pressured to make a rushed decision – so just walk away from it.[20]

4.25 The DFWA instead favoured an appeal time that is 'formally extended to 6 months but still [retains the] ability to give leave to appeal after that time where extenuating circumstances exist'.[21]

4.26 Advocates Online told the committee about several problems with the application and appeal processes for retrospective invalidity, including short timeframes for responding to draft decisions, the infrequency with which the CSC Reconsiderations Committee considers appeals and the absence of medical or legal personnel:

> We get a draft decision. Sometimes, that's the first time we will know what's going on in the delegate's mind. We then have 14 or 21 days to come back and say whether we agree or disagree or give them more evidence. Once the decision is made, we can appeal. We have to notify Reconsiderations of the intention to appeal within 30 days. We do that immediately, and then we've got really as much time as we like to make the submission. But the committee sits only every couple of months, and it's a committee of six Defence Force people: three current serving and three former serving. So at

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18 Veteran Family Advocate Commissioner, *Submission 46*, [p. 2].

19 Department of Defence, *Submission 5 (47th Parliament)*, p. 7.

20 Defence Force Welfare Association, *Submission 16 (47th Parliament)*, [p. 67].

21 Defence Force Welfare Association, *Submission 16 (47th Parliament)*, [p. 67].

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> no stage through this process is there a medical person or a legal person on the appeals thing.[22]

4.27 Mr David Burrows highlighted further barriers that can potentially affect DFRB and DFRDB members which prevent them from appealing retrospective invalidity decisions made by Defence.

4.28 Mr Burrows highlighted several Administrative Appeals Tribunal (AAT) cases where the AAT advised applicants that its jurisdiction for merits reviews does not apply to decisions made by Defence. By contrast, retrospective discharge applications by MSBS members are made directly to CSC, whose decisions can be appealed to the Administrative Review Tribunal (ART).[23]

4.29 Mr Burrows submitted that:

> … the problem is the Defence procedure of not passing unsupported applications to the CSC to allow an appealable substantive decision by CSC as the primary decision maker and discretionary power holder.[24]

4.30 Mr Mark Croxford, another DFRDB member who could not appeal a retrospective invalidity decision made by Defence, argued that 'this process effectively grants Defence a gatekeeping role'.[25]

4.31 In response to questions on notice, the CSC provided the committee with information regarding appeals of decisions made by the Reconsideration Committee. In the 2024–2025 financial year there were:

- 3783 decisions made by CSC delegates relating to invalidity (including initial invalidity, retrospective invalidity and invalidity classification reviews);
- 231 internal appeals were received by the Reconsideration Committees relating to invalidity (a 6.1 per cent internal appeal rate); and
- 25 matters relating to invalidity were appealed externally to AFCA or ART (an external appeal rate of 0.6 per cent).[26]

4.32 In the 2024–2025 financial year CSC had 20 external appeals closed by AFCA and the ART. Of these matters:

- nine were withdrawn by members after CSC provided responses;
- seven were closed by AFCA after CSC provided responses;

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22 Ms Kelliegh Jackson, Chief Executive Officer, Advocates Online, *Committee Hansard*, 19 February 2026, p. 18.

23 Mr David Burrows, *Submission 12 (47th Parliament)*, p. 1. On 14 October 2024 the AAT was abolished and replaced with the Administrative Review Tribunal.

24 Mr David Burrows, *Submission 12 (47th Parliament)*, p. 1.

25 Mr Mark Croxford, *Submission 60*, [p. 3].

26 Mr Adam Nettheim, Chief Customer Officer, CSC, answers to questions on notice, 19 February 2026 (received 5 March 2026).

- three ART matters were finalised after CSC received further evidence supporting the members application and agreed that the member was therefore entitled to a benefit; and
- one matter went to final determination and found in CSC's favour.[27]

4.33 Regarding the success rate of appeals, the CSC submitted:

- Reconsideration success rate – for the 2024-2025 financial year, 50 per cent of the invalidity matters internally appealed to the Reconsideration Committee resulted in a change to the percentage of Invalidity.
- External appeal success rate – for the 2024-2025 financial year there were no successful external appeal decisions.
- However, on the basis of new medical evidence received during an external appeal CSC conceded three matters.[28]

Consideration of psychological injuries

4.34 Some submitters highlighted the difficulties they have experienced applying for reclassification of discharge in relation to psychological injuries and mental illness.

4.35 These submitters particularly cited lack of historical documentation of their psychological injures as a hindrance when applying to have their discharge reclassified on medical grounds.

4.36 Advocates Online told the committee that military personnel are generally reluctant to disclose mental health issues during their service, and that often the psychological impacts of service do not manifest until years later:

> If we look at the evidence around the disclosure of mental health injuries, veterans are generally not disclosing. Quite often a person won't know they've got a psychological injury, and it won't be known for potentially two to five years or more after service. That does not mean their condition is not manifest, and 'manifest' means causing them restriction in life or employment.[29]

4.37 Advocates Online also suggested that CSC assessments often overlooked evidence of long-term impacts:

> When we go and get a psychiatric assessment and the psychiatrist is willing to refer back to the date of discharge, that is being entirely, in some cases, discounted. That's where we're being asked for more contemporaneous evidence: where's the evidence that suggests this person was suffering a

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27 Mr Adam Nettheim, Chief Customer Officer, CSC, answers to questions on notice, 19 February 2026 (received 5 March 2026).

28 Mr Adam Nettheim, Chief Customer Officer, CSC, answers to questions on notice, 19 February 2026 (received 5 March 2026).

29 Ms Kelliegh Jackson, Chief Executive Officer, Advocates Online, *Committee Hansard*, 19 February 2026, p. 19.

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> psychological injury? … But that evidence is being ignored, and I'm not really sure how the CSC delegates can introduce this need for contemporaneous evidence when the longitudinal evidence, when you put all of the pieces of the puzzle together—dysfunction in the family; DVA claims and assessments, which are rigorous, independent medical assessments; family dysfunction; and multiple jobs—with a psychiatrist's report on top saying, 'Oh, yes, they were unwell, and I can see the factors of dysfunction,' is being ignored, discounted or downplayed.[30]

4.38 Mr Croxford stated that his claim was rejected, despite DVA having classified him as Totally and Permanently Incapacitated, due to conditions that had been diagnosed by a psychiatrist and accepted by DVA as service-related.[31] He explained that Defence did not support his application 'because there was no record of mental health illness at the time of separation'.[32]

4.39 Mr Croxford criticised this reason for rejecting retrospective invalidity claims, highlighting that 'in earlier decades, stigma and career concerns frequently prevented reporting of psychological injury'.[33]

4.40 Similarly, Mr Nathan Castle explained that his retrospective invalidity application to CSC only received a Class C classification on the rationale that his current injuries were not sufficiently reflected in his historical medical documentation.[34]

4.41 Mr Castle highlighted a finding of the Royal Commission into Defence and Veteran Suicide (the Royal Commission) that 'many ADF members underreported or withheld medical concerns out of fear of being labelled weak, malingering or unfit for duty'.[35] He argued that:

> This culture of silence and stigma has been deeply entrenched within Defence and continues to harm veterans long after their service ends. In effect, the very culture that discouraged me from seeking help is now being used to deny me fair recognition of my injuries and entitlements.[36]

4.42 Mr Castle also raised concern that not all supporting information is reviewed in retrospective invalidity applications. Mr Castle stated that his Open Arms file was not reviewed by CSC, and explained that the possibility that application

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30 Ms Kelliegh Jackson, Chief Executive Officer, Advocates Online, *Committee Hansard*, 19 February 2026, p. 19.

31 Mr Mark Croxford, *Submission 60*, [p. 3].

32 Mr Mark Croxford, *Submission 60*, [p. 1].

33 Mr Mark Croxford, *Submission 60*, [p. 5].

34 Mr Nathan Castle, *Submission 65*, [p. 1].

35 Mr Nathan Castle, *Submission 65*, [p. 1].

36 Mr Nathan Castle, *Submission 65*, [p. 1].

materials prepared by veterans are not reviewed 'conveys a sense that veteran welfare is secondary to administrative expedience'.[37]

4.43 The Royal Australian and New Zealand College of Psychiatrists (RANZCP) also highlighted limitations regarding consideration of mental illness in retrospective invalidity claims where a veteran may have been administratively discharged due to behaviour caused by mental illness.[38]

4.44 RANZCP welcomed commitments from the Chief of the Defence Force and Australian Government in response to the Royal Commission to consider the impacts of mental health on a member's conduct before recommending administrative discharge.[39]

4.45 However, RANZCP noted that these commitments have no retrospective effects, and expressed its support for 'accessible processes to reclassify administrative discharges as medical'.[40]

Impact on veterans

4.46 The DFWA explained why the process of seeking retrospective invalidity is a challenge for veterans:

> Veterans medically discharged are the cohort most vulnerable to mental health issues and suicidality. A large proportion of those seeking retrospective medical discharge may be at greater risk, as their condition has been suppressed, denied and hidden for years and probably untreated. Actually, the process of deciding and initiating is usually very hesitant, weighed with uncertainty about the outcome in an already uncertain future and creates a lot of anxiety.[41]

4.47 This was echoed by RANZCP, who highlighted that:

> … '[a] growing body of research has documented the ways that compensation systems themselves can promote worse health outcomes, especially for people with mental health problems' in part because 'mental injuries are frequently made worse by the prolonged contest to obtain compensation.' For veterans with PTSD, repeatedly recounting traumatic events in new contexts can be harmful. But across all conditions, claimants who report higher levels of stress in engaging with compensation schemes are likely to have significantly higher levels of disability, anxiety, and depression.[42]

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37 Mr Nathan Castle, *Submission 65*, [p. 2].

38 Royal Australian and New Zealand College of Psychiatrists, *Submission 3 (47th Parliament)*, p. 3.

39 Royal Australian and New Zealand College of Psychiatrists, *Submission 3 (47th Parliament)*, p. 3.

40 Royal Australian and New Zealand College of Psychiatrists, *Submission 3 (47th Parliament)*, p. 3.

41 Defence Force Welfare Association, *Submission 16 (47th Parliament)*, [p. 63].

42 Royal Australian and New Zealand College of Psychiatrists, *Submission 3 (47th Parliament)*, p. 4.

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4.48 RANZCP further submitted:

> Discharge, especially when it is involuntary for medical, administrative or disciplinary reasons, involves loss of self-identity through loss of purpose and meaning, but also implicitly involves a loss of function and status/rank, and hence, the loss of positive self-worth and self-identity.
>
> Being involuntarily discharged can seem a form of institutional betrayal which damages this belief.[43]

4.49 Super Info highlighted that this culture among ADF personnel was especially prevalent among the special forces community, who were more likely to voluntarily discharge rather than to accept a separation on medical grounds.[44]

4.50 Super Info added that deciding to separate voluntarily, rather than accept a medical discharge, could leave veterans without immediate support from superannuation and veteran entitlements. This could force them to take up employment to support their families, which could potentially exacerbate medical issues and hamper full recovery.[45]

4.51 Furthermore, Super Info indicated that extensive delays in processing of retrospective invalidity benefits increases the need for employment to meet immediate living expenses, which can then be used by the CSC to reduce incapacity assessments.[46]

4.52 RANZCP added:

> Veterans often emphasise the importance to their sense of self of having their discharge reclassified. However, retrospective reclassification can lead to increased tax and the recovery of any compensation already paid by DVA for the same condition. This can even create debts to DVA, making an otherwise beneficial outcome (the retrospective reclassification of discharge) financially harmful.[47]

4.53 Consequently, RANZCP argued that 'allowing an application for retrospective reclassification to be made separately to an application for financial entitlements should be considered'.[48]

4.54 RANZCP also noted:

> Unlike a veteran receiving benefits from DVA, there is no provision for the Commonwealth to require or fund rehabilitation programmes through the CSC when appropriate. Even when there are no physical injuries,

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43 Royal Australian and New Zealand College of Psychiatrists, *Submission 3 (47th Parliament)*, p. 4.

44 Super Info, *Submission 69*, p. 2.

45 Super Info, *Submission 69*, p. 3.

46 Super Info, *Submission 69*, p. 3.

47 Royal Australian and New Zealand College of Psychiatrists, *Submission 3 (47th Parliament)*, p. 4.

48 Royal Australian and New Zealand College of Psychiatrists, *Submission 3 (47th Parliament)*, p. 4.

> longitudinal studies show that some veterans can and do recover from probable mental health disorders over time, while treatment and rehabilitation increases wellbeing in others.[49]

4.55 RANZCP recommendations to promote better rehabilitation support for veterans receiving invalidity pensions included:

- encouragement of access to treatment through means beyond White Card entitlements;[50]
- access to rehabilitation services as part of CSC pensions to encourage a return to the workforce;
- an invalidity classification model with finer gradation to encourage rehabilitation; and
- a wellbeing-focused approach to the mandatory review of invalidity classifications to encourage engagement with treatment, rather than emphasising compensation alone.[51]

4.56 RSL Australia also advocated for a greater focus on rehabilitation among veterans receiving invalidity payments:

> … Class A and Class Military Superannuation currently has no link to rehabilitation. Once a medically transitioning member is accepted for payment of Class A or Class B superannuation, there is no provision for them to access supported rehabilitation programs. A member who does not seek support (or is not eligible for support) from DVA, 'falls through the cracks' and further rehabilitation options are negligible. Because the CSC rarely reviews invalidity payments, veterans have the security of a payment for life and their medical and psychological issues remain identified via the superannuation assessment process but never addressed. RSLA has previously recommended that access to rehabilitation in all of its forms should be a priority for medically transitioning veterans.[52]

Complexity of the military superannuation system

4.57 The complexity of the military superannuation system and the difficulties this creates for veterans in their attempts to understand and navigate the application and evaluation process was raised by several submissions to the inquiry.

4.58 In particular, submissions raised concerns regarding:

- the interaction between military superannuation and other veterans' payments;
- a need for improved education and guidance; and

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49 Royal Australian and New Zealand College of Psychiatrists, *Submission 3 (47th Parliament)*, p. 5.

50 The Veteran White Card is a treatment card for veterans for accepted service-related injuries or conditions. Medical treatment is usually free if providers accept the White Card. See, for example, Department of Veterans' Affairs, Veteran White Card.

51 Royal Australian and New Zealand College of Psychiatrists, *Submission 3 (47th Parliament)*, p. 5.

52 RSL Australia, *Submission 14 (47th Parliament)*, p. 14.

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- a lack of coordination between agencies.

Interaction with other veterans' payments

4.59 RSL Australia highlighted the offsetting of superannuation benefits against compensation payments made by DVA as a significant issue.

4.60 According to RSL Australia, the added administration and complexity of offsetting can affect a veterans' understanding of their financial stability and ability to plan their finances after leaving the ADF.[53]

4.61 RSL Australia highlighted the Royal Commission's finding regarding the stress and confusion caused by the interaction between DVA entitlements and military superannuation. It agreed with the recommendation for simplification of legislative and administrative arrangements in this area.[54]

4.62 The Repatriation Commission described offsetting arrangements as 'often confusing and emotionally difficult for veterans'. Noting that many veterans perceive offsetting policies as punitive, the Repatriation Commission expressed the need for better communication of the rationale behind these policies, while simultaneously remaining empathetic and understanding of veterans' concerns.[55]

Need for improved education and guidance

4.63 In addition to a simplified system, RSL Australia advocated in favour of improved education and greater collaboration between government agencies to improve current ADF members and veterans' financial literacy and understanding of the military superannuation system more broadly.[56]

4.64 The Repatriation Commission expressed the need for 'improved and ongoing education regarding offsetting mechanisms', including 'transparent, consistent communication from the point of enlistment through transition' to civilian life.[57]

4.65 Similarly, the VFAC argued in favour of improved guidance to veterans on the impact their superannuation decisions will have on other DVA payments to limit the number of veterans who make irreversible choices without understanding the consequences.[58]

4.66 To do so, the VFAC suggested that the CSC should:

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53 RSL Australia, *Submission 14 (47th Parliament)*, p. 15.

54 RSL Australia, *Submission 14 (47th Parliament)*, p. 15.

55 The Repatriation Commission, *Submission 8 (47th Parliament)*, [p. 2].

56 RSL Australia, *Submission 14 (47th Parliament)*, p. 16.

57 The Repatriation Commission, *Submission 8 (47th Parliament)*, [p. 2].

58 Veteran Family Advocate Commissioner, *Submission 46*, [p. 3].

- include standard, plain-English paragraphs in all CSC decision and offer letters explaining DVA impacts, offsets and where to obtain independent advice;
- provide a short cooling-off period and funded access to independent advice before any irrevocable election; and
- publish a CSC–DVA journey map with three or four clear scenarios most families face.[59]

4.67 The DFWA stated that potential improvements to training and education should focus firstly on websites and publications, as these may be a veteran's first authoritative source on a particular subject. Consequently, the DFWA emphasised the importance of ensuring general advice provided to veterans is 'correct, clear and current'.[60]

Coordination between agencies

4.68 Lack of coordination between agencies was also cited as an impediment to veterans' ability to understand and navigate the military superannuation system.

4.69 The DFWA described the current framework as creating 'legislation silos' in which different agencies that are required to interact instead largely work within the confines of their own legislation and funding. It submitted that this means that there is 'often no agency responsible for delivery of the best outcome for the [veteran and their family]'.[61]

4.70 The DFWA also noted that any support to help veterans navigate the system between different agencies has largely come from ex-service organisations such as RSL Queensland. It proposed that an ex-service organisation peak body as proposed by the Royal Commission could provide consistent and meaningful cross-agency support for veterans.[62]

4.71 The Repatriation Commission stated that 'veterans should not bear the burden of navigating separate and inconsistent systems' and emphasised the need for greater collaboration across DVA, CSC, the ATO, and DSS to 'prevent delays, discrepancies and unnecessary financial stress'.[63]

4.72 The Repatriation Commission expressed support for the Productivity Commission and Professor Podger's recommendations for a single agency to administer disability compensation, superannuation and incapacity payments

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59 Veteran Family Advocate Commissioner, *Submission 46*, [p. 3].

60 Defence Force Welfare Association, *Submission 16 (47th Parliament)*, [pp. 81–82].

61 Defence Force Welfare Association, *Submission 16 (47th Parliament)*, [p. 16].

62 Defence Force Welfare Association, *Submission 16 (47th Parliament)*, [pp. 66–67].

63 The Repatriation Commission, *Submission 8 (47th Parliament)*, [p. 2].

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to 'simplify processes, reduce distress and delays, and enhance transparency and trust for veterans'.[64]

4.73 The Department of Veterans' Affairs established a Taskforce on Wellbeing agency and peak body in March 2025 to work with the veteran community co-design a new agency focused on veteran and family wellbeing and establish a national peak body for ex-service organisations.[65]

4.74 The new wellbeing agency is to open on 1 July 2026. The purpose of the agency is to create a more connected system of support for serving ADF members by taking responsibility for transition supports that are currently shared between the Departments of Defence and Veterans' Affairs. The agency will coordinate relevant Defence, DVA and community programs, services and supports for veterans and families, with a focus on early intervention and prevention during transition from the ADF to civilian life.[66]

Implementation of the Douglas decision

4.75 Several submitters raised concerns regarding coordination between CSC and the ATO in applying legislative changes in relation to the full Federal Court decision in *Commissioner of Taxation v Douglas* (the Douglas decision).[67]

4.76 In the Douglas decision, the Federal Court found that some DFRDB and MSBS invalidity pensions starting on or after 20 September 2007 are superannuation lump sums rather than superannuation income streams and should be taxed accordingly.[68]

4.77 In 2024, the *Social Services and Other Legislation Amendment (Military Invalidity Payments Means Testing) Act 2024* was passed by the Parliament to ensure these pensions retain their tax-free component when assessed by Centrelink for the purposes of the *Social Security Act 1991*.[69]

4.78 The DFWA told the committee that inconsistent taxation treatment of invalidity benefits can have profound effects on the financial wellbeing of veterans and their families:

> The tax regime—it all goes back to the Douglas decision, which was the taxation of invalidity benefits from DFRDB and MSBS. The legality—this is complex tax law. Basically, all of those invalidity benefits are capable of

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64 The Repatriation Commission, *Submission 8 (47th Parliament)*, p. 2.

65 Department of Veterans' Affairs, Taskforce on Wellbeing agency and Peak Body.

66 The Hon. Matt Keogh MP, Minister for Veterans' Affairs, 'New wellbeing agency to open 1 July 2026', *Media Release*, 18 December 2025.

67 *Commissioner of Taxation v Douglas* [2020] FCAFC 220.

68 Mr Jason Andersen, *Submission 64*, p. 2.

69 Mr Jason Andersen, *Submission 64*, p. 2.

> being reviewed. What that means is that they can be decreased; they can go to zero. One of the veterans involved in that had had eight reviews of his pension, and he went from an A to a B to a C—which is nothing; it's virtually ceased—and then back up to a B. … That was over a period of about four years. So it is not a lifetime pension. You try and go and get a mortgage and they say, 'What's your income? Oh, an invalidity benefit? That's not lifetime.' The mortgage lenders get a bit twitchy about things not being lifetime pensions … Under tax law, if it's not a lifetime pension and not an income stream, it is a lump sum. The payments are actually a series of lump sums, and lump sums coming from a defined benefit scheme have a significant tax advantage over an income stream. They're taxed totally differently.[70]

4.79 Mr Jason Andersen's submission alleges that neither Centrelink or CSC are correctly implementing the 2024 legislative changes, resulting in pensions being assessed as fully taxable and in turn affecting support payments and creating debts for impacted individuals.[71]

4.80 According to Mr Andersen, Centrelink cites CSC's reporting of veterans' income as the issue, while CSC states it cannot update its reporting until Centrelink issues new guidance.[72]

4.81 Mr Andersen also explained that the lack of clear policy guidance has resulted in inconsistent ART decisions in relation to the issue in different states.[73]

Reversionary pensions – definitions of 'spouse' and 'dependant'

4.82 Some submissions raised concerns regarding the provision of reversionary pensions to the families of deceased veterans, and how definitions in superannuation legislation can prevent some families from meeting legal dependency requirements. This particularly relates to definitions of 'spouse' and 'dependant'.

4.83 Under the Superannuation Act, a person may be taken to be a spouse who survives a deceased person if:

> (a) the person had previously had a marital or couple relationship with the deceased person; and
> (b) the person did not, at the time of the death, have a marital or couple relationship with the deceased person but was legally married to the deceased person; and

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70 Mr John Lowis, President, Defence Force Welfare Association (Queensland Branch), *Committee Hansard*, 19 February 2026, p. 29.

71 Mr Jason Andersen, *Submission 64*, pp. 3, 9.

72 Mr Jason Andersen, *Submission 64*, p. 3.

73 Mr Jason Andersen, *Submission 64*, p. 6.

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(a) in CSC's opinion, the person was wholly or substantially dependent upon the deceased person at the time of death.[74]

4.84 Legacy Australia's (Legacy) submission focused specifically on the definitions of 'marital or couple relationship' and 'spouse who survives a deceased person' under the *Superannuation Act 1976* (the Superannuation Act).[75] Legacy argued that these definitions negatively impact spouses who have physically separated due to severe mental illness, alcoholism, substance abuse, and domestic violence.[76]

4.85 Similarly, the Australian Financial Complaints Authority (AFCA) raised concerns regarding similar provisions in the *Military Superannuation Benefits Act 1991*, which apply to the Military Superannuation Benefits Scheme.

4.86 AFCA described the MSBS provisions for reversionary pensions as 'complex' and 'unlike equivalent provisions AFCA has seen in the trust deeds for other funds'.[77]

4.87 AFCA explained:

> This complexity, and the unusual definition of the term 'spouse', [has] led to circumstances where a surviving spouse who no longer lived with the deceased prior to their death due to serious family violence has been ineligible to receive their spouse's death benefit.[78]

4.88 AFCA described one complaint considered by an AFCA panel against CSC as the MSBS trustee in which:

> The complainant explained that she and the deceased had stopped living together because the deceased, who had a lengthy career in the military, was suffering from Post Traumatic Stress Disorder (PTSD) and alcohol abuse disorder. The complainant and the children in the household were subject to significant domestic violence at the hands of the deceased throughout the couple's relationship, which it was accepted was a result of the deceased's PTSD.
>
> The AFCA Panel that considered this complaint found, however, that in all the circumstances there was no longer a marital or couple relationship, and that the complainant was not wholly or substantially dependent on the deceased when he died. This meant that the complainant did not meet the

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74 *Superannuation Act 1976*, s. 8B.

75 The definitions of 'marital couple' and 'spouse' are identical in the *Superannuation Act 1976*, s. 8A and 8B and the *Defence Force Retirement and Death Benefits Act 1973*, s. 6A and 6B.

76 Legacy Australia, *Submission 44*, p. 2.

77 Australian Financial Complaints Authority, *Submission 6 (47th Parliament)*, p. 7.

78 Australian Financial Complaints Authority, *Submission 6 (47th Parliament)*, p. 7.

> definition of 'spouse' in the trust deed and was not eligible to receive any part of the deceased's death benefit.[79]

Dependency

4.89 Legacy specifically pointed to the requirement to prove dependency upon the deceased person to CSC and highlighted the case of one widow who had a continuing relationship with a veteran but had physically separated due to the veteran's mental illness, which had led to the issuance of a Protection Order under the ACT Domestic Violence Act.[80]

4.90 CSC rejected the widow's application for a reversionary pension and advised:

> Also, for the purposes of superannuation law, a physically separated couple must nevertheless remain in an ongoing relationship, and mere emotional dependency is insufficient; there must be financial dependency … Furthermore, when considering the illness itself, even if it is the alleged cause of the separation, the relationship must otherwise still be maintained. If there is no ongoing relationship, the deeming provisions in the Act do not apply.[81]

4.91 Mrs Patricia Cook told the committee that the CSC had refused her application for her husband's reversionary pension when he died in 2019. Mr Cook suffered PTSD as a result of his service in Vietnam. As a result, he often self-medicated with alcohol and acted violently. He therefore had to live separately from his family for their safety. Mrs Cook told the committee that, despite living apart, she and her husband maintained contact regarding their children's education assisted each other financially, and saw each other socially and at work.[82]

4.92 Mr Ian Wills explained that it was well established that military service can cause psychiatric illness in some individuals, placing strains on domestic relationships that mean that families need to adapt to the circumstances. Mr Wills stated that:

> Mrs Cook and her family maintained a strong relationship with her husband, despite these service related circumstances. She provided financial support to him and took responsibility following his death, but she was deemed not to be financially dependent upon Mr Cook—correctly but unfairly. Her application for their contributory superannuation benefit was repeatedly denied, despite the Superannuation Act making provision for absence due to illness or infirmity. Unfortunately, in recent years, CSC has followed a strict interpretation of the act that families must be financially dependent on the member.[83]

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79 Australian Financial Complaints Authority, *Submission 6 (47th Parliament)*, pp. 7–8.

80 Legacy Australia, *Submission 44*, p. 3.

81 Legacy Australia, *Submission 44*, p. 3.

82 Mrs Patricia Cook, Private capacity, *Committee Hansard*, 19 February 2026, p. 32.

83 Mr Ian Wills, Legatee, Legacy Club of Canberra, *Committee Hansard*, 19 February 2026, p. 33.

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4.93 Legacy also noted that section 8A(5) of the Superannuation Act makes provision for physical and mental illness, as it states:

> (5) For the purposes of this section, a person is taken to be living with another person if CSC is satisfied that the person would have been living with that other person except for a period of:
>
> (a) temporary absence; or
> (b) absence because of the person's illness or infirmity.[84]

4.94 Legacy contended that the interpretation of 'dependence' as requiring financial dependence, and understanding of mental illness in the consideration of applications is inappropriate as:

> … the Act was introduced at a time when family structures were quite different to today, where both partners now commonly engage in the workforce. The 'dependency' concept today is not as clearcut and at the time, the present-day acceptance of mental health as a specific illness had not been developed to the extent prevailing now, nearly 50 years later.[85]

4.95 Legacy noted that 'it is understood that in other contexts, such as inheritance law, cases have held that dependence can be an emotional concept'.[86] Legacy also argued:

> Fundamental to this issue is that this interpretation of the Act is discriminatory. It discriminates against the families of Commonwealth employees who suffer from mental illness resulting from their employment. Other legislation exists to protect employees from unfair discrimination.[87]

4.96 The DFWA also advocated for change, stating:

> It is the DFWA view that families in these circumstances were possibly not foreseen or considered when the [*Superannuation Industry (Supervision) Act 1993*] was introduced. The community is now much more aware of mental health issues and the link to domestic violence than they were 20 years ago when the Acts came into being.[88]

4.97 The DFWA also argued that 'if Family Law action had been initiated, but not settled, before the Veteran's death, then that should be strong evidence of dependency'.[89]

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84 *Superannuation Act 1976*, s. 8A(5).

85 Legacy Australia, *Submission 44*, p. 2.

86 Legacy Australia, *Submission 44*, p. 4.

87 Legacy Australia, *Submission 44*, p. 4.

88 Defence Force Welfare Association, *Submission 16 (47th Parliament)*, [p. 76].

89 Defence Force Welfare Association, *Submission 16 (47th Parliament)*, [p. 76].

4.98 The VFAC highlighted that 'DVA can recognise a separated partner in [family and domestic violence] contexts where CSC may not, producing divergent outcomes and potential clawbacks'.[90]

4.99 The VFAC advocated for the alignment of CSC and DVA 'by adopting a presumption in favour of survivors with safe, low-risk evidence options and clear timeframes'. [91]

Consolidation of military superannuation funds

4.100 Several submissions outlined the inability of members of now-closed superannuation schemes to move or consolidate their military superannuation, leaving some members in a financially disadvantageous position.

4.101 This issue was specifically raised in relation to the MSBS, a hybrid superannuation scheme encompassing employee contributions and defined benefits paid by the employer.

4.102 The DFWA explained:

> The Employee and Employer Benefits of MSBS is locked into the CPI:
>
> (a) Only on discharge, can a veteran access the Employee Benefit and roll it over into another Super Fund of choice.
> (b) The Employer Benefit is locked into MSBS until age 55 years, earning CPI.[92]

4.103 Defence explained the MSBS as:

> … a hybrid scheme, providing both an accumulation and defined benefit. An MSBS benefit can include three components; member benefit, ancillary benefit and employer benefit. Both the member benefit and ancillary benefit components are accumulation benefits and are fully portable. The employer benefit component is a defined benefit, and has restricted portability. For example, a member of MSBS who separates from the ADF prior to age 55, must preserve their employer benefit in the scheme. They may however choose to rollover their accumulation benefit.[93]

4.104 Defence added:

> While preserved MSBS members are unable to transfer their employer benefit to another superannuation fund, they are able to convert their employer benefit into a life time indexed pension, or elect to transfer this amount as a lump sum value to another complying superannuation fund, after reaching 55 years of age.[94]

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90 Veteran Family Advocate Commissioner, *Submission 46*, [p. 2].

91 Veteran Family Advocate Commissioner, *Submission 46*, [p. 1].

92 Defence Force Welfare Association, *Submission 16 (47th Parliament)*, [p. 19].

93 Department of Defence, *Submission 5 (47th Parliament)*, p. 5.

94 Department of Defence, *Submission 5 (47th Parliament)*, p. 5.

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4.105 The DFWA argued that this is inequitable compared to other superannuation funds, which allow employees to 'roll over' their superannuation to different funds.[95]

4.106 Mr Bartholomeusz submitted that:

> This restriction can hinder efficient fund management and potentially reduce the overall benefits by limiting members' investment options and returns.[96]

4.107 One submitter outlined their experience attempting to transfer their MSBS superannuation upon discharge:

> I initially enquired about removing the entirety of my super out of MSBS upon separation from the Army in 2013 and was told I could only take my contributions and not the full amount. I decided to leave everything in one place to allow it to keep compounding, though it finally got to me too much that I was no longer allowed to contribute and keep growing my contributions that I decided to roll my contributions out into my personal super in 2021. Something I regret to this day, that I didn't remove it earlier.[97]

4.108 The submitter expressed their frustration that their pension would increase, at most, by only 3 per cent per year until they turned 55. It would only be at that point that they would be entitled to roll over the entirety of their entitlements into a fund where they could choose their investment strategy and anticipate much greater returns. They told the committee that the inability to move their funds any earlier would have a huge effect on their retirement and their wellbeing.[98]

Committee view and recommendations

4.109 Once again, the committee thanks individuals and organisations for making valuable contributions to this inquiry. In particular, the committee recognises all that shared their personal stories in submissions and at the hearing.

Retrospective invalidity

4.110 The committee acknowledges the breadth of evidence indicating that current application and evaluation processes regarding retrospective invalidity are complex.

4.111 The committee also notes evidence regarding a military culture of unwillingness to disclose injury or mental illness, and the effect that this culture has on decisions to transition to civilian life.

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95 Defence Force Welfare Association, *Submission 16 (47th Parliament)*, [p. 19].

96 Mr Arran Bartholomeusz, *Submission 9 (47th Parliament)*, [p. 1].

97 Name withheld, *Submission 66*, p. 1.

98 Name withheld, *Submission 66*, p. 1.

4.112 The committee understands that PTSD and other service-related mental illnesses may make it more difficult for veterans to navigate the application and evaluation process for retrospective invalidity.

4.113 The committee notes that a new wellbeing agency, developed through consultation and co-design with veterans, families, ex-service organisations and service providers, is to open 1 July 2026.

4.114 The committee looks forward to seeing how this agency is implemented and work with veterans to improve outcomes.

Complexity of the military superannuation system

4.115 The committee acknowledges evidence that shows navigating the military superannuation system is complex. Members and veterans are required to interact with the Departments of Defence and Veterans' Affairs, as well as the Commonwealth Superannuation Corporation. Evidence to the committee indicated that this complexity can produce frustration for veterans and their families.

4.116 As noted above, a new wellbeing agency is to open on 1 July 2026. The agency will be responsible for reducing complexity by helping veterans and their families find the information they need, and provide support for veterans as they transition out of the ADF into civilian life.

4.117 Again, the committee will maintain an interest in how this agency is implemented the performance of new agency in reducing complexity and improving connectivity of supports for members, veterans and families.

Reversionary pensions

4.118 The committee acknowledges evidence regarding the provisions of Superannuation Act, especially subsection 8A(5), which allows for temporary separation due to illness including that current definitions may not adequately reflect the complexity of many situations veterans and their families are faced with.

4.119 The committee acknowledges the prevalence of PTSD among veterans, and its effects on their families, including received evidence that the families of veterans who experience PTSD and other service-related mental illness often undergo significant trauma due to domestic and family violence. As a result of their illness, many veterans are no longer able to live with their families.

4.120 The committee also heard that this trauma is significantly exacerbated when surviving spouses are deemed ineligible for reversionary pensions because they were not living with the member when the member died.

4.121 Evidence to the committee indicated that living apart does not necessarily mean that people are not mutually dependent.

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4.122 The committee notes evidence regarding the provisions of the Superannuation Act, especially subsection 8A(5), which provides that couples who are temporarily separated due to illness may still be considered mutually dependent.

Recommendation 3

4.123 The committee recommends that the Australian Government consider whether current definitions are adequate, particularly those of 'spouse' and 'mutually dependent', to accommodate couples living apart due to experience of PTSD, other service-related mental illnesses, and domestic and family violence.

Consolidation of military superannuation funds

4.124 The committee notes the distinctive nature of the Military Superannuation and Benefits Scheme as a hybrid superannuation scheme encompassing employee contributions and defined benefits paid by the employer.

4.125 Evidence to the committee indicated that there is frustration that both employee contributions and defined benefits are indexed to CPI. Only when members leave the ADF can they access the Employee Benefit and roll it over into another superannuation fund of their choice. Additionally, the Employer Benefit is locked into MSBS until age 55 years. Submitters indicated that they would prefer to have the ability to move at least the Employee Benefit into another superannuation fund at any time, with a view to achieving returns in excess of the CPI.

4.126 Noting these concerns raised by submissions, the committee considers that the Australian Government could consider whether it might be appropriate to amend the MSBS, to allow members more flexibility to choose their superannuation fund.

Recommendation 4

4.127 The committee recommends that the Australian Government consider allowing Military Superannuation and Benefits Scheme members to roll over their Employee Benefit to another superannuation fund of their choice.

Senator Dave Sharma
Chair

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Additional comments from Senator Jacqui Lambie

Introduction

1.1 Military superannuation and pension schemes for current and former members of the Australian Defence Force (ADF) are a reflection of the Commonwealth's recognition of their military service. They are intended to recognise the distinctive nature of military careers which involve prolonged separation from family, limitations on personal freedoms, and physical and psychological demands associated with defence service. The schemes are designed to provide retirement income to support members' transition from military to civilian life and ensure that those who serve can retire with financial security.

1.2 There have been concerns raised over decades about the operation, fairness and transparency of military superannuation and pension schemes, particularly the Defence Force Retirement and Death Benefits (DFRDB) scheme and the Military Superannuation and Benefits Scheme (MSBS). While these schemes provided retirement benefits to many former ADF members, parts of their legislative design and administration continue to generate significant frustration for veterans and organisations that represent them.

1.3 This inquiry was established based on my engagement with many veterans and organisations, including a high volume of correspondence received by my office regarding the operation of those military superannuation and pension schemes. A common theme has been the emotional toll associated with seeking recognition and fairness as many veterans spend their later years trying to resolve disputes about their entitlements.

1.4 In response to these concerns, on 11 February 2025 I proposed this inquiry to the Senate, and with bipartisan support, it was referred to the Senate Finance and Public Administration References Committee (committee).

1.5 The DFRDB scheme was established under the *Defence Force Retirement and Death Benefits Act 1973* (DFRDB Act) following recommendations of the Joint Select Committee on Defence Forces Retirement Benefits Legislation, known as the Jess Committee.[1] Under the DFRDB scheme, retirement pensions are calculated based on years of service with members contributing a portion of their salary towards their retirement benefit.

1.6 These additional comments intend to highlight key issues raised during the committee's inquiry and outline recommendations intended to improve the operation and appropriateness of the military superannuation and pension schemes for veterans in line with its policy intent. The main issues involve commutation, indexation, complexity of legislative frameworks, educational

[1] Joint Committee on Defence Forces Retirement Benefits Legislation, *Report*, May 1972, pp. 1–5.

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campaigns, dependants and resources for the Commonwealth Superannuation Corporation. While some of these matters have been examined in previous inquiries, many veterans argue that the underlying concerns remain unresolved, leading to ongoing frustration and calls for meaningful review and legislative reform.

1.7 I would like to thank the committee for its work in conducting this inquiry and for extending its reporting timeframe to facilitate my participation. I also want to acknowledge and thank the many veterans and organisations that provided submissions. These insights into lived experiences are essential to ensuring that future reforms reflect the realities faced by members of the defence and veteran community.

Commutation arrangements

1.8 A significant issue raised during the inquiry is the operation of commutation arrangements under the DFRDB scheme. Commutation allows eligible members to convert a portion of their defined benefit pension into a lump sum payment at the time of retirement. Members who have completed twenty years of service may elect to commute up to five years of their retirement into a lump sum. This option was actively promoted and widely taken up by retiring members, with reports suggesting that approximately 85 per cent of DFRDB participants elected to commute a portion of their pension.[2]

1.9 The policy rationale for commutation was outlined in the Jess Committee review, which recognised that many ADF members retire relatively young compared with the civilian workforce and often face significant financial pressures during the transition to civilian life. These pressures may include purchasing a home, supporting children through education, relocating or undertaking further training to obtain civilian employment.[3] As such, access to a lump sum payment was intended to provide flexibility and financial support during the transition period from military to civilian life.

1.10 There has been significant concern about how these arrangements operate in practice. Under the DFRDB Act, the reduction applies to members' pension following commutation and is calculated using a formula based on life expectancy assumptions contained in Schedule 3. The lump sum received by the member is divided by their expected remaining lifetime at the time of retirement to determine the amount by which the pension will be reduced.

1.11 Members who elect to commute a portion of their pension receive a permanently reduced retirement income for the remainder of their lives. Importantly, the reduction does not cease once the amount equivalent to the lump sum has been

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2 Commonwealth Ombudsman, *Defence Force Retirement and Death Benefits (DFRDB)*, December 2019, p. 14.

3 Joint Committee on Defence Forces Retirement Benefits Legislation, *Report*, May 1972, p. 17.

repaid through reduced pension payments. Instead, the reduced pension continues indefinitely for the remainder of the veteran's life. For members who live beyond the life expectancy used in the calculation, the cumulative reduction in the pension exceeds the value of the lump sum originally received.

1.12 Many DFRDB recipients have described their understanding of commutation at the time of retirement as being akin to a temporary advance on their pension. Under this interpretation, the lump sum would effectively be repaid over time through reduced pension payments after which the pension would return to its full level. However, under the current legislative framework, the pension reduction remains in place for life.

1.13 Veteran organisations have argued that the permanent nature of this reduction was not clearly communicated to members when they made decisions about retirement.[4] Evidence provided to the inquiry suggests that government pamphlets and presentations emphasised the benefits of receiving a lump sum payment but did not clearly explain the long-term consequences of the pension reduction.[5] These concerns have contributed to a perception among veterans that the exchange of a fixed lump sum for a lifetime reduction in retirement pay represents a disproportionate trade-off, particularly when combined with the life expectancy assumptions that reflect demographic conditions from several decades ago.[6]

1.14 The interpretation of legislation has been confirmed in *McKenzie v Commonwealth Superannuation Corporation* [2023] FCA 396 where the Federal Court ruled that electing to commute military pensions results in permanent reduction in retirement pay. Justice Perry found that paragraph 24(3)(B) of the DFDB Act contains no temporal limitation and rejected the argument that the reduction ceases once a member reaches their statistical life expectancy.[7] I do not fault Justice Perry's judgement because it is correct in law. However, what is clear is that the legislation does not reflect the messaging that was delivered to service personnel at the time.

1.15 The information provided to members regarding commutation has also been examined in previous inquiries. In 2019, the Commonwealth Ombudsman conducted an investigation into the administration of the DFRDB Scheme and

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4 Australian Defence Force Retirees, Association Inc, *Submission 1 (47th Parliament)*, p. 1; DFRDB Commutation Campaign, *Submission 2 (47th Parliament)*, p. 8; and Defence Force Welfare Association *Submission 16 (47th Parliament)*, (Annex), p. 1.

5 Mr Clinton McKenzie, Research Team Member, Australian Defence Force Retirees Association, *Committee Hansard*, 19 February 2026, pp. 8–9; Mr Herb Ellerbock, *The Gross Reduction of Benefits*, February 2017, p. 10; DFRDB Commutation Campaign, *Submission 2 (47th Parliament)*, p. 2; Peter Grothen, Submission 3, p. 2; and Mr Geoff Trowbridge, *Submission 48*, p. 3.

6 Mr Herb Ellerbock, *The Gross Reduction of Benefits*, February 2017, p. v.

7 *McKenzie v Commonwealth Superannuation Corporation [2023] FCA 396* [66].

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determined that ADF members had been provided misleading or incorrect information which amounted to defective administration. The Ombudsman required the Department of Defence and the Chief of Defence Force to formally acknowledge these errors and issue an apology to affected members.[8] The Ombudsman also reported that commutation is generally to the benefit of DFRDB members, a position which has been strongly refuted by many veterans and related organisations.[9]

1.16 Unfortunately, these investigations did not result in broader remedial measures. Many veterans believe that the outcomes produced by the commutation provisions do not align with contemporary expectations of fairness in retirement income systems. In circumstances where large numbers of former service personnel feel they have been disadvantaged or inadequately informed, there is a strong public interest to ensure that these measures are carefully reconsidered. I would also make the point that if a private company was found to have engaged in similar conduct, considered to be false and misleading conduct under the *Competition and Consumer Act 2010*, they would most likely be subject to substantial penalties and required to make remedies and that would be irrespective of any claims their customers did not actually suffer because of that conduct. The same standard should apply to government agencies.

Recommendation 1

1.17 The Australian Government undertake a targeted review of the commutation provisions contained in the *Defence Force Retirement and Death Benefits Act 1973* to rectify the deficiencies and ensure it aligns with the messaging provided to service personnel at the time of its introduction.

Recommendation 2

1.18 Where evidence demonstrates that defective administration materially influenced retirement decisions resulting in financial detriment, the Australian Government provide appropriate remedial actions for affected DFRDB members, including Act of Grace payments or other compensation measures.

Use of outdated life expectancy factors

1.19 A related issue is the life expectancy tables used to calculate the reduction to pension associated with commutation under the DFRDB scheme.

1.20 The DFRDB Act incorporates life expectancy tables from the Australian Bureau of Statistics data from 1960-1962 which were embedded in the legislation when

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8 Commonwealth Ombudsman, *Defence Force Retirement and Death Benefits (DFRDB)*, December 2019, p. 54.

9 Commonwealth Ombudsman, Investigation into the DFRDB Scheme, December 2019, p. 54.

the scheme was introduced in 1973.[10] These tables continue to be used to determine the reduction applied to a member's pension following the commutation of part of their retirement benefit.

1.21 As life expectancy has increased since the early 1960s, many DFRDB retirees now live beyond the life expectancy predictions used to calculate the reduction to their pension. Approximately 80 percent of members who decided to commute have lived beyond the 1960–62 life expectancy assumptions by an average of 10 years.[11] The effect of this arrangement is that the pension reduction applied following commutation continues for the remainder of the member's life, including beyond the period originally anticipated when the scheme was designed. For some veterans, this has contributed to the view that the lifetime reduction in retirement income may be disproportionate to the lump sum received at retirement.

1.22 The use of life expectancy factors from the 1960s has remained a point of concern for many veterans. Given the passage of time and evolving nature of retirement income systems, there is merit in reviewing whether the current legislative assumptions remain appropriate.

Recommendation 3

1.23 The Australian Government update the life expectancy tables relied on by the *Defence Force Retirement and Death Benefits Act 1973*.

Indexation

1.24 The purpose of indexation is to preserve the real value of retirement benefits overtime and help ensure long-term financial security for the retiree. As such, the method of indexation plays an important role to maintain purchasing power and support a dignified standard of living in retirement.

1.25 Historically, DFRDB pensions have been indexed primarily based on the Consumer Price Index (CPI). While CPI is designed to measure changes in the cost of goods and services, various submitters argue that CPI alone does not adequately reflect broader changes in community living standards.[12] Where wage growth exceeds inflation, reliance solely on CPI may lead to a gradual decline in the relative value of pensions compared with community earnings.

1.26 The Jess Committee originally recommended that military pensions should be adjusted in a manner consistent with average weekly earnings which is not

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10 Australian Defence Force Retirees Association Inc, *Submission 1 (47th Parliament)*, p. 6.

11 Mr Geoff Trowbridge, *Submission 48,* p. 3.

12 Defence Force Welfare Association, *Submission 16 47th Parliament)*, p. 16; Mr Gary Lang, *Submission 28*, p. 4; and Mr Geoff Trowbridge, *Submission 48*, p. 4.

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reflected in the current DFRDB framework.[13] While the impact remains subject to debate, stakeholders argue that the difference between CPI-based indexation and wage-based benchmarks over time may represent a substantial reduction in the overall value of pension entitlements.[14]

1.27 The government introduced reforms in 2014 that aimed at improving indexation arrangements for certain military pensions. Under these changes, pensions for members aged 55 years and over are indexed using a more favourable formula which incorporates the higher of CPI or the Pensioner and Beneficiary Living Cost Index.[15] These reforms represent a positive step towards improving the fairness of indexation arrangements for military pension recipients. However, evidence provided to this inquiry indicate that concerns regarding the long-term erosion of pension value remain prevalent within the veteran community which continue to call for a more favourable indexation formula to apply across the full value of defined benefits.

1.28 Ensuring that military pensions maintain their relative value is an important component of providing fair and dignified retirement outcomes for ADF members. The evidence presented to this inquiry suggests that, despite previous inquiries and reforms, there remains ongoing debate about whether the current indexation framework fully reflects contemporary expectations of fairness, transparency and adequacy in the retirement income systems.

Recommendation 4

1.29 The Australian Government commission an independent review of military pension indexation arrangements to determine if reliance on Consumer Price Index-based indexation remains appropriate and whether alternative benchmarks, such as wage growth measures, should be utilised instead to ensure equitable retirement outcomes.

Education campaigns and financial literacy

1.30 The complexity of military superannuation schemes presents significant challenges for current and former ADF members, particularly in understanding and planning their long-term financial futures. Multiple military superannuation schemes have operated concurrently, each with different eligibility requirements, contribution structures and benefit calculations.[16] Members who served during transitional periods can find themselves eligible for multiple schemes, and subsequently required to elect which scheme they

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13 Joint Committee on Defence Forces Retirement Benefits Legislation, *Report*, May 1972, pp. 1 and 32.

14 Mr Herb Ellerbock, *The Gross Reduction of Benefits*, February 2017, p. iv.

15 See *Defence Force Retirement Benefits Legislation Amendment (Fair Indexation) Act 2014*.

16 RSL Australia, *Submission 14 (47th Parliament)*, p. 15.

want to subscribe to, and has been shown the advice they are provided is not independent and possibly incorrect. A situation which would likely result in the loss of an Australian Financial Services Licence (AFSL) for a person providing financial advice to the general public.

1.31 Additionally, the overlap between superannuation, taxation and veterans' compensation legislation can create additional administrative and financial uncertainty for veterans attempting to plan for retirement. There are also problematic offset arrangements under the *Military Rehabilitation and Compensation Act 2003* which provides that certain disability payments may be reduced where a veteran receives income from Commonwealth Superannuation Corporation.[17]

1.32 Delivering financial education to ADF members faces a number of challenges. Members are often young and in the early stages of their careers and the operational demands of military service, including frequent relocations, intensive training and deployments, can limit opportunities to engage with financial education programs.[18] While information about military superannuation schemes is available, it can be difficult to locate, interpret and apply in practice, particularly where multiple agencies carry responsibility for different aspects of veterans' financial entitlements. I acknowledge that the CSC has implemented some educational initiatives, their submission advised in 2024 they had conducted 3272 one-on-one consultations and other briefings that were attended by an additional 8172 personnel, for perspective as at 30 June 2024 there was a total of 57 226 permanent members of the ADF.[19]

1.33 Improving financial literacy and the accessibility of information could play an important role in enabling ADF members to make informed decisions about their long-term financial security.

Recommendation 5

1.34 The Australian Government implement a coordinated whole of government education and awareness strategy to provide former and current ADF members with accessible information about military superannuation and pension arrangements.

Recommendation 6

1.35 The Australian Government should strengthen coordination between the Department of Defence, the Department of Veterans' Affairs and the

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17 RSL Australia, *Submission 14 (47th Parliament)*, p. 8.

18 Mr Andrew Podger, *Report of the Review into Military Superannuation Arrangements*, 2007, p. vi.

19 Department of Defence, *Annual Report 2023–24*, p. ii.

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Commonwealth Superannuation Corporation to ensure that information provided to members is consistent, accessible and easy to understand.

Recommendation 7

1.36 The Department of Defence provide professional financial advice to all ADF members at key career points such as recruitment, mid-career service and transition to civilian life to ensure an accurate understanding of applicable military superannuation or pension schemes.

Transparency and legislative complexity

1.37 There have been concerns about the complexity of the legislative framework governing military superannuation schemes. The technical nature of the legislation has made it difficult for members to clearly understand their entitlements and long-term implications of financial decisions.[20]

1.38 Specifically, this complexity has contributed to confusion among some members about the operation of provisions relating to commutation, indexation and reversionary benefits. The inquiry heard that, at the time the legislation was originally introduced, the level of explanatory material available did not fully outline the consequences of some of the provisions and there was limited parliamentary scrutiny and insufficient consultation.[21] In response, a number of submissions noted that aspects of the legislative framework are complex and difficult to interpret without specialist knowledge.[22]

1.39 It should also be noted that previous reviews have acknowledged this complexity. For example, the Commonwealth Ombudsman observed that misinformation and confusion regarding certain provisions contributed to 'disappointment, distress, anger and frustrated expectations for many DFRDB members'.[23] As such, ensuring that superannuation arrangements are transparent, accessible and clearly communicated will enable ADF members to make informed decisions about their futures.

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20 Australian Defence Force Retirees Association, *Submission 1 (47th Parliament)*, p. 12; RSL Australia, *Submission 14 (47th Parliament)*, pp. 15 and 19; Mr Russel Linwood ASM, *Submission 14*, p. 1; and Mr Ron Haack, *Submission 39*, p. 1.

21 On explanatory material, see Australian Defence Force Retirees Association, *Submission 1 (47th Parliament)*, pp. 13–14; Mr Andrew Macfarlane, *Submission 4*, p. 2; Mr Mike Hughes, *Submission 50*, p. 1; and Mr Gregory Decker, *Submission 63*, p. 13. On limited parliamentary scrutiny and insufficient consultation, see Australian Defence Force Retirees Association, *Submission 1 (47th Parliament)*, pp. 15–16.

22 Defence Force Welfare Association, *Submission 16 (47th Parliament)*, Annex F, p. 5.

23 Commonwealth Ombudsman, *Defence Force Retirement and Death Benefits (DFRDB)*, December 2019, p. 54.

Legislative overreach

1.40 An area not considered in detail during the inquiry was the operation of section 37 of the DFRDB Act which effectively provides Defence with a veto power over whether applications for retrospective medical discharge are referred to the Commonwealth Superannuation Corporation.[24] This gatekeeping mechanism has been criticised as adversarial by preventing independent determination of claims and restricting access to a merits review.[25]

1.41 Whilst it is improving, the culture within Defence discourages the reporting and documentation of psychological injuries. As a result, many veterans experience a problem where conditions formally accepted by the Department of Veterans' Affairs as service-related are not afforded equivalent recognition in superannuation and discharge classification frameworks. This denies veterans from retrospective medical classifications and related entitlements.

1.42 In addition, the Notional Retiring Age reductions impose financial penalties based on outdated assumptions with provisions that disproportionately impact members who completed qualifying service but separated before their conditions were formally recognised.[26]

1.43 Taken together, these issues demonstrate that the current legislative and administrative framework is not fit for purpose and require targeted reform to restore fairness, consistency and accountability.

Recommendation 8

1.44 The Australian Government review section 37 of the *Defence Force Retirement and Death Benefits Act 1973* for relevance and necessity, with the aim of ensuring all applications are referred to the Commonwealth Superannuation Corporation for independent assessment, without requiring the opinion of the Chief of the Defence Force.

Widows, widowers and dependants

1.45 The legislative framework governing military superannuation and pension schemes appears to have unintended consequences for widows, widowers and other dependants of former ADF members. Under the DFRDB scheme, reversionary pensions are typically calculated as a proportion of a member's retirement pay and are intended to provide ongoing financial support following the death of the member. However, the value of these pensions can be affected by earlier decisions and settings within the scheme.

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24 Mr Mark Croxford, *Submission 60*, p. 6.

25 Mr Mark Croxford, *Submission 60*, p. 3.

26 Mr Mark Croxford, *Submission 60*, pp. 2–3.

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1.46 For example, the interaction of commutation and indexation arrangements may reduce the base value of a member's pension which in turn affects the level of reversionary benefits. Where a member's pension has been reduced through commutation, or where components are not fully indexed over time, these reductions flow through to the surviving spouse's entitlements. As a result, some dependents may receive a pension that reflects a diminished or partially indexed benefit, potentially leading to a gradual decline in its real value over time.[27]

1.47 Concerns were also raised regarding the application of eligibility criteria for reversionary pensions, particularly the requirement to demonstrate financial dependency under the *Superannuation Act 1976*. Evidence presented to the inquiry highlights cases where surviving spouses were denied access to reversionary benefits despite long-term marital relationship, on the basis that they were not financially dependent at the time of the member's death. This position reflects an outdated understanding of family and financial arrangements and does not align with contemporary social norms.[28] The committee heard that veterans experiencing post-traumatic stress disorder or other service-related mental illnesses may live separately from their partners due to that illness or family safety concerns. Under the current framework, in such cases the surviving spouse is excluded from reversionary pensions despite there having been an ongoing mutual dependence.[29]

Recommendation 9

1.48 The Australian Government revise reversionary pension arrangements across military superannuation and pension schemes to ensure that surviving spouses and dependants retain eligibility when they are living apart from a member due to illness or safety concerns.

Staffing and resources for the Commonwealth Superannuation Corporation

1.49 Evidence provided to the Committee indicates that the Commonwealth Superannuation Corporation (CSC) is experiencing significant resourcing pressures due to a sharp increase in invalidity and retrospective claims. The CSC reported that retrospective claims have risen from 288 in 2018, to 1117 in 2025, an almost four-fold increase, and the invalidity claims have remained stable.[30] Over the same period, the number of claim managers increased marginally from

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27 Australian Defence Force Retirees Association, *Submission 1 (47th Parliament)*, p. 14.

28 Mrs Patricia Cook, Private capacity, *Committee Hansard*, 19 February 2026. pp. 32–35.

29 Mrs Patricia Cook, Private capacity, *Committee Hansard*, 19 February 2026. pp. 32–35.

30 Mr Adam Nettheim, Chief Customer Officer, Commonwealth Superannuation Corporation, *Committee Hansard*, 19 February 2026, p. 45–46.

46 to 51, a clear indication that resourcing has not kept pace with the growing demand.[31]

1.50 The organisation continues to receive approximately 100 new retrospective claims each month.[32] These extended processing times often result in financial hardship and personal stress to veterans, especially for individuals unable to work while their claims are being assessed, noting the CSC had stated that they had claims that were over 18 months old.[33]

Recommendation 10

1.51 The Australian Government provide sufficient resourcing for the Commonwealth Superannuation Corporation to ensure its claim management team is appropriately staffed to process claims in a timely manner, consistent with the needs of serving and former ADF members.

Conclusion

1.52 Military superannuation and pension schemes remain a critical issue for many current and former members of the ADF and their families. While frameworks such as the DFRDB scheme were established to accommodate the unique career patterns of military service, evidence indicate that key elements of their design continue to give rise to concern. Specifically, issues relating to commutation, outdated life expectancy assumptions, indexation and the treatment of dependents have contributed to perceptions of inequity and financial disadvantage among veterans.

1.53 The military superannuation and pension schemes have been subject to multiple inquiries and investigations which have identified various shortcomings, yet meaningful reforms have not been implemented. There is an urgent need for the government to build upon the extensive body of existing reviews and recommendations to deliver a modern, fit for purpose system that reflects the realities of military service, but also meets the needs and expectations of ADF personnel post separation.

1.54 The legislative framework underpinning military superannuation and pension schemes is complex, characterised by layered amendments and technical provisions that are difficult to navigate. This complexity and gaps in

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[31] Mr Adam Nettheim, Chief Customer Officer, Commonwealth Superannuation Corporation, *Committee Hansard*, 19 February 2026, p. 45–46.

[32] Mr Adam Nettheim, Chief Customer Officer, Commonwealth Superannuation Corporation, *Committee Hansard*, 19 February 2026, p. 45–46.

[33] Mr Adam Nettheim, Chief Customer Officer, Commonwealth Superannuation Corporation, *Committee Hansard*, 19 February 2026, p. 45–46.

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communication and financial education has contributed to misunderstandings about entitlements and implications of decisions in retirement.

1.55 Ultimately, military superannuation and pension schemes are a fundamental expression of the nation's obligation to those who have served. Ensuring these arrangements are fair, transparent and sustainable is essential to restoring confidence and delivering equitable outcomes for veterans and their families.

Senator Jacqui Lambie

Appendix 1
Submissions and additional information

47th Parliament

1 Australian Defence Force Retirees Association Inc.
2 DFRDB Commutation Campaign
3 Royal Australian & New Zealand College of Psychiatrists
4 Commonwealth Superannuation Corporation (CSC)
5 Department of Defence
6 Australian Financial Complaints Authority
7 Department of Veterans' Affairs
8 The Repatriation Commission
9 Mr Arran Bartholomeusz
10 Name Withheld
11 Major (Rtd) Robert Fitzgerald
12 Mr David Burrows
13 Mr H.P.M. Hoebee
14 RSL Australia
15 Mr Gordon Wright
16 Defence Force Welfare Association
17 Mrs Samantha Field
18 Confidential
19 Confidential

48th Parliament

1 Mr Graham Darcy
2 Mr Dave Jones
- 2.1 Supplementary to submission 2
- 2.2 Supplementary to submission 2
- 2.3 Supplementary to submission 2
- 2.4 Supplementary to submission 2

3 Mr Peter Grothen
4 Mr Andrew Macfarlane
5 Mr Craig Thomas
6 Mr Peter Lehman
7 Mr Charles Mollison
8 Mr Brian Macklin
9 Mr Brian Collins
10 Mr Fred Lane

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11 Mr Thomas Williams
12 Mr Brian Roberts
13 Mr David Stacy
14 Mr Peter Martin
15 Mr Anthony Parkin
16 Mr Warren Duscha
17 Mr H.P.M. Hoebee
18 Mr Darryl Nicholls
19 Mr Peter Murray
20 Mr Peter Foote
21 DFRDB Commutation Campaign
- 21.1 Supplementary to submission 21

22 Mr Chris Duffield
23 Colonel (Ret) Peter Diddams
24 Mr Michael Brown
25 Mr Russell Linwood ASM
26 Mr Clive Dennett
27 Mr John Pollock
28 Mr Gary Lang
29 Mr Victor Edwards
30 Mr Mario Simic
31 Mr Doug Conn
32 Mr Alan Young
33 Mr Robert May
34 Mr Richard Usher OAM
35 Mr David Burrows
36 Mr Derek Bannister
37 Mr Gary Thompson
38 Mr Charles Myhill
39 Mr Ron Haack
40 Mr Greg Hynds
41 Mr Andrew Podger AO
42 Mr Brian Roberts
43 Mr Garth Gilbert
44 Legacy Australia
45 Mr Warren Schilling
46 Veteran Family Advocate Commissioner
47 Super Members Council
48 Mr Geoff Trowbridge
49 Mr Mike Smith
50 Mr M. Hughes
51 Mr David Foster
52 Mr Clinton McKenzie

53 Australian Prudential Regulation Authority
54 Name Withheld
55 Name Withheld
56 Name Withheld
57 Mr Herb Ellerbock
- 57.1 Supplementary to submission 57
- 57.2 Supplementary to submission 57

58 Mr Jim Hislop
59 Mr Benjamin Cremen
60 Mr Mark Croxford
61 Col (Retd) Peter Bysouth
- 61.1 Supplementary to submission 61

62 Mr Robert McGuinness
63 Mr Gregory Decker
64 Mr Jason Andersen
- 64.1 Supplementary to submission 64

65 Mr Nathan Castle
66 Name Withheld
67 Name Withheld
68 Defence Force Welfare Association
- 68.1 Supplementary to submission 68
- 68.2 Supplementary to submission 68
- 68.3 Supplementary to submission 68

69 Super Info
70 Ms Emma Byrnes
- 70.1 Supplementary to submission 70

71 Advocates Online
72 Mr Graham Boyd
73 Mr Steve Coates
74 Name Withheld
75 Mr Peter Williamson
76 Mr Paul Cook
77 Mr Robert Oliveri
78 Commonwealth Superannuation Corporation
79 Mr Peter Thornton
80 Confidential

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Additional Information

1 Australian Defence Force Retirees Association, Cabinet minutes, 8 December 1976 (received 19 February 2026)

2 Australian Defence Force Retirees Association, DFRDB Retirement Benefits pamphlet, December 1981 (received 19 February 2026)

3 Australian Defence Force Retirees Association, DFRDB Retirement Benefits pamphlet, January 1985 (received 19 February 2026)

4 Australian Defence Force Retirees Association, DFRDB Retirement Benefits pamphlet, January 1987 (received 19 February 2026)

5 Australian Defence Force Retirees Association, DFRDB Retirement Benefits pamphlet, June 1989 (received 19 February 2026)

6 Australian Defence Force Retirees Association, Email to the Hon Matt Keogh, Minister for Veterans' Affairs, 20 January 2023 (received 19 February 2026)

7 Australian Defence Force Retirees Association, Information on DFRB and DFRDB commutation (received 19 February 2026)

8 Ms Kelliegh Jackson, Chief Executive Officer, Advocates Online, Opening statement (received 19 February 2026)

9 Dr Mark Lax, Chair, Legacy Australia, Opening statement (received 19 February 2026)

10 Dr Mark Lax, Chair, Legacy Australia, Additional statement (received 19 February 2026)

11 Mr John Lowis, Acting President, Defence Force Welfare Association Queensland Branch, Opening statement (received 19 February 2026)

12 Mrs Patricia Cook, Opening statement (received 19 February 2026)

13 Mr Dave Jones (received 19 February 2026)

14 Mr Dave Jones, Supporting Table: How DFRDB Fails as a Superannuation or Pension Scheme (received 19 February 2026)

Answer to Question on Notice

1 Mr Andrew Bruce Macfarlane, answer to question on notice from a public hearing on 19 February 2026 (received 27 February 2026)

2 Commonwealth Superannuation Corporation, answers to questions on notice from a public hearing on 19 February 2026 (received 5 March 2026)

3 Defence Force Welfare Association, answers to questions on notice from a public hearing on 19 February 2026 (received 6 March 2026)

4 Department of Defence, answers to questions on notice from a public hearing on 19 February 2026 (received 17 March 2026)

Correspondence

1 Mr Ernest Gimm, Correspondence for ADF Superannuation Inquiry (Received 21 October 2025)

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Appendix 2
Public hearings and witnesses

Thursday 19 February 2026
Committee Room 2S1
Parliament House
Canberra

DFRDB Commutation Campaign
- Mr Peter Williamson

Australian Defence Force Retirees Association
- Mr Jim Hislop OAM, President

Australian Defence Force Retirees Association
- Mr Herb Ellerbock, Secretary

Australian Defence Force Retirees Association
- Mr Ron Haack, Treasurer

Australian Defence Force Retirees Association
- Mr Clinton McKenzie, Member

Advocates Online
- Ms Kelliegh Jackson, Chief Executive Officer (Veteran)

Legacy Australia
- Dr Mark Lax OAM CSM, Chair

Defence Force Welfare Association
- Mr Chris Lowis, National Secretary

Defence Force Welfare Association
- Mr John Lowis (by video conference), Qld Branch President

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Ms Patricia Cook, Private capacity

Mr Ian Wills, Private capacity

Mr Dave Jones (by video conference), Private capacity

Mr Jason Andersen (by video conference), Private capacity

Mr Nathan Castle (by video conference), Private capacity

Mr Andrew Macfarlane, Private capacity

Mr Peter Thornton (by video conference), Private capacity

Department of Defence

- Mr Ky Blackman, First Assistant Secretary, People Policy and Development

Department of Defence

- BRIG Kirk Lloyd, Director General, People Policy and Employment Conditions

Commonwealth Superannuation Corporation

- Mr Adam Nettheim, Chief Customer Officer

Australian Government

Australian Government response to the Senate Finance and Public Administration References Committee report:

Inquiry into the operation and appropriateness of the superannuation and pension schemes for current and former members of the Australian Defence Force (ADF)

XX June 2026

Introduction

The national superannuation arrangements are provided to preserve savings to deliver income for a dignified retirement, alongside government support, in an equitable and sustainable way. The ADF superannuation and pension schemes are designed to provide commensurate arrangements for ADF personnel, with special consideration to the unique nature of military service.

The superannuation and pension schemes for current and former ADF members are set out by legislative instruments. As noted by the Committee, there have been five ADF superannuation and pension schemes since 1948. The date a member joined the Permanent Forces, or continuous full time service, determines their superannuation scheme:

- Defence Forces Retirement Benefits (DFRB) – commenced in 1948 and closed to new members on 30 September 1972.
- Defence Force Retirement and Death Benefits (DFRDB) – opened in 1972 and closed to new members on 30 September 1991. DFRDB is a defined benefit superannuation scheme, meaning that final benefits are calculated based on a legislative formula at the time a member separates from the ADF.
- Military Superannuation and Benefits Scheme (MSBS) – opened on 1 October 1991 and closed to new members on 1 July 2016. MSBS is a hybrid superannuation scheme, which means it is a part accumulation and part defined benefit fund.
- Australian Defence Force Superannuation (ADF Super) – is an available choice fund for members who join the ADF from 1 July 2016. ADF Super is an accumulation scheme. ADF personnel who joined from 1 July 2016 can elect any eligible choice fund.
- Australian Defence Force Cover (ADF Cover) – commenced on 1 July 2016. ADF Cover is a defined benefit pension scheme that provides death and invalidity cover for personnel under the age of 60. Irrespective of a member's choice of superannuation fund, all members who joined the ADF after 1 July 2016 are covered by this scheme for death and invalidity benefits up to the age of 60.

The Government notes that ADF superannuation schemes have evolved over time in recognition of the unique nature of military service, as well as changing social and economic conditions. The closure of individual schemes and the subsequent introduction of new superannuation arrangements were decisions of government, informed by recommendations from independent reviews. Successive ADF superannuation schemes were introduced to contemporise the superannuation offering, or to address structural limitations or deficiencies in earlier schemes that could not be adequately resolved through legislative amendment.

The fundamental design of the ADF superannuation schemes has been preserved to ensure the protection of accrued and promised retirement benefits, a longstanding practice and treatment that is consistent with other statutory defined benefit superannuation schemes. From time to time, minor legislative amendments have been made to address administrative or technical matters and to ensure ongoing compliance with relevant Commonwealth legislative requirements.

The operation and day-to-day administration of the ADF superannuation schemes is the responsibility of Commonwealth Superannuation Corporation (CSC), while the policy responsibility rests with Defence. Defence and CSC maintain a strong collaborative working relationship focussed on providing quality, empathetic and consistent support to ADF members, veterans and their families.

The Committee made four recommendations. Through a submission of additional comments, a further 10 recommendations were made by Senator Jacqui Lambie. The Government has prepared a formal response to both the Committee's four recommendations and Senator Lambie's additional 10 recommendations.

The Government thanks the Committee for its work on this Inquiry, as well as those who provided submissions and appeared at the hearing.

Recommendations

Recommendation 1

2.98 The Committee recommends that the Australian Government consider whether the current settings of Defence Force Retirement and Death Benefit (DFRDB) pensions are fair and equitable for all members.

Response:

The Government **notes** this recommendation.

The settings of DFRDB pensions, including the use of static life expectancy tables and the permanency of a commutation election, have been reviewed on several occasions. This included an independent Commonwealth Ombudsman review in December 2019, the *Investigation into the administration of the Defence Force Retirement and Death Benefits (DFRDB) scheme*. The Ombudsman observed that any changes made to the law governing DFRDB would have a potential unfair impact on those members who have already made an election. This observation was also made by the Senate Foreign Affairs, Defence and Trade (FADT) References Committee in an inquiry into the accuracy of information provided to DFRDB members, in July 2021.

The Government notes that the Committee concurred with the Ombudsman and FADT Committee conclusion, that changes to the DFRDB scheme would potentially create other unfair outcomes for those who did not commute or only partially commuted.

The Government notes that the DFRDB pension settings have not changed since the Commonwealth Ombudsman completed his 2019 report and is satisfied that the scheme is operating as intended.

Recommendation 2

3.35 The Committee recommends the Australian Government consider reviewing indexation methodology for all defined benefit military pension schemes, with a view to achieving consistency and equity.

Response:

The Government **notes** this recommendation.

Defined benefit scheme design generally considers the benefits as a whole, while pension indexation is one component of the benefit design, the value of the pension itself, including service based benefit multiple and final salary or final average salary, are an important consideration. Changing one component of the benefit design without consideration of the overall basis and level of benefits provided would be inconsistent with the intentions of the scheme when the design was initially set.

The Government notes that the indexation methodology applying to defined benefit military pension schemes broadly aligns with the indexation standard applied nationally. The principal exception is the DFRDB and DFRB schemes, where from 1 July 2014, a different indexation methodology applied for members over the age of 55.

Both DFRDB and DFRB are closed, unfunded defined benefit schemes, not subject to the superannuation regulatory regime, and reflect the unique conditions of historical military service, which includes early compulsory retirement ages and limited benefit payment options. The *Defence Force Retirement Benefits Legislation Amendment (Fair Indexation) Act 2014* amended the indexation methodology for the DFRDB and DFRB schemes to more closely align with Age Pension indexation arrangements. This was a discrete and targeted amendment, deliberately limited to these two schemes in recognition of their special characteristics.

The Government considers that the 2014 Fair Indexation Bill delivered a reasonable, proportionate and carefully scoped reform, and is satisfied that these arrangements appropriately recognise the distinct nature of the DFRDB and DFRB schemes. Accordingly, the Government does not consider that these arrangements should be extended to other military schemes, including the MSBS and ADF Cover, which should continue to closely align with national indexation arrangements.

Recommendation 3

4.123 The Committee recommends that the Australian Government consider whether current definitions are adequate, particularly those of 'spouse' and 'mutually dependent', to accommodate couples living apart due to experience of PTSD, other service-related mental illnesses, and domestic and family violence.

Response:

The Government **agrees** with this recommendation.

The Government agrees to review the current definitions that determine eligibility for reversionary spouse benefits under the ADF defined benefit schemes, having regard to their alignment with broader Government superannuation arrangements for death benefits, and to ensure that relevant terminology is clear and easily interpreted.

The Government notes that Defence remains committed to preventing and responding to family and domestic violence through the *Defence Strategy for Preventing and Responding to Family and Domestic Violence 2023–2028* and the associated Action Plan released in December 2024. These initiatives set out practical measures to improve safety, support and system-wide responses for Defence members and their families.

As part of this commitment, Defence is working to strengthen its understanding and response to systems abuse, which can include misuse of organisational processes to further control or harm others. This work is being informed by both lived experience and recommendations from inquiries such as the Royal Commission into Defence and Veteran Suicide, which recognised the strong link between family and domestic violence and broader wellbeing risks, including suicidality.

Recommendation 4

4.127 The Committee recommends that the Australian Government consider allowing Military Superannuation and Benefits Scheme members to roll over their Employee Benefit to another superannuation fund of their choice.

Response:

The Government **agrees** with this recommendation.

The MSBS employee benefit is portable and the Government notes that portability of the employee benefit is an important feature of the MSBS and agrees that the extant provisions are fit for purpose.

The Government agrees to ensure that clear information around portability of MSBS employee benefits is available to members so they can easily understand their options.

Additional Recommendations from Senator Jacqui Lambie

Recommendation 1
1.17 The Australian Government undertake a targeted review of the commutation provisions contained in the *Defence Force Retirement and Death Benefits Act 1973* to rectify the deficiencies and ensure it aligns with the messaging provided to service personnel at the time of its introduction. Response: The Government **disagrees** with this recommendation. This recommendation is substantively addressed under Committee Recommendation 1 and accordingly refers to its response to that recommendation.

Recommendation 2
1.18 Where evidence demonstrates that defective administration materially influenced retirement decisions resulting in financial detriment, the Australian Government provide appropriate remedial actions for affected DFRDB members, including Act of Grace payments or other compensation measures. Response: The Government **notes** this recommendation. The Government notes there is a current mechanism under the Compensation for Detriment caused by Defective Administration (CDDA) Scheme where DFRDB complainants have access to this particular service. The Government notes that following a recommendation from the Senate Foreign Affairs and Defence Trade References Committee in their 2021 inquiry, Defence implemented a more tailored approach for DFRDB CDDA claims. This increased assistance in navigating the claim process and addressed particular issues raised during the Inquiry.

Recommendation 3
1.23 The Australian Government update the life expectancy tables relied on by the *Defence Force Retirement and Death Benefits Act 1973*. Response: The Government **disagrees** with this recommendation. This recommendation is substantively addressed under Committee Recommendation 1 and accordingly refers to its response to that recommendation.

Recommendation 4

1.29 The Australian Government commission an independent review of military pension indexation arrangements to determine if reliance on Consumer Price Index-based indexation remains appropriate and whether alternative benchmarks, such as wage growth measures, should be utilised instead to ensure equitable retirement outcomes.

Response:

The Government **disagrees** with this recommendation.

This recommendation is substantively addressed under Committee Recommendation 2 and accordingly refers to its response to that recommendation.

Recommendation 5

1.34 The Australian Government implement a coordinated whole of government education and awareness strategy to provide former and current ADF members with accessible information about military superannuation and pension arrangements.

Response:

The Government **notes** this recommendation.

The Government notes that defined benefit schemes can be complex, particularly where they interact with non-superannuation benefits available to veterans and their families.

The Government notes that Defence has made significant changes and improvements to support veterans through their transition from the ADF, and there is ongoing work to build on these changes through implementing recommendations of the Royal Commission into Defence and Veteran Suicide.

The new Veteran and Family Wellbeing Agency is set to open on 1 July 2026 and will expand on current services. The agency will support serving ADF personnel, veterans and their families to prepare for transition to civilian life and navigate the veteran support ecosystem. The agency will provide alternate referral pathways for ex-serving members that support the integration between Defence, the Department of Veterans' Affairs (DVA) and third party providers such as CSC.

The Government notes that Defence also supports improved financial literacy through tailored education and resources provided by the ADF Financial Services Consumer Centre (www.adfconsumer.gov.au), with a focus on encouraging personnel to understand their overall financial wellbeing, of which superannuation is one component.

Recommendation 6

1.35 The Australian Government should strengthen coordination between the Department of Defence, the Department of Veterans' Affairs and the Commonwealth Superannuation Corporation to ensure that information provided to members is consistent, accessible and easy to understand.

Response:

The Government **agrees** with this recommendation.

The Government acknowledges the importance of strengthened coordination between Defence, DVA and CSC to ensure information provided to members is consistent, accessible and easy to understand.

The Veteran Transition Action Plan sets out the actions that key Australian Government agencies aim to achieve to improve transition outcomes. The plan includes a range of priorities and success factors including financial wellbeing actions across key agencies.

The Government notes there is ongoing work between Defence, DVA and CSC, including implementing the recommendations of the Royal Commission into Defence and Veteran Suicide.

Recommendation 7

1.36 The Department of Defence provide professional financial advice to all ADF members at key career points such as recruitment, mid-career service and transition to civilian life to ensure an accurate understanding of applicable military superannuation or pension schemes.

Response:

The Government **notes** this recommendation.

The Government acknowledges that there are key milestones throughout an individual's career at which important financial decisions are required, and that ADF members should be equipped to make those decisions.

The Government notes that Defence provides a financial benefit to support ADF personnel to access independent financial advice, within 24 months of the date of transition. This benefit is designed to reduce the cost of obtaining advice and in turn ensure that professional financial advice is accessible for eligible ADF personnel.

The Government notes that Defence also supports improved financial literacy through tailored education and resources provided by the ADF Financial Services Consumer Centre (www.adfconsumer.gov.au), with a focus on encouraging personnel to understand their overall financial wellbeing, of which superannuation is one component.

Recommendation 8

The Australian Government review section 37 of the *Defence Force Retirement and Death Benefits Act 1973* for relevance and necessity, with the aim of ensuring all applications are referred to the Commonwealth Superannuation Corporation for independent assessment, without requiring the opinion of the Chief of the Defence Force.

Response:

The Government **agrees** to this recommendation.

The Government agrees to review section 37 of the *Defence Force Retirement and Death Benefits Act 1973*, with an aim to streamline the retrospective invalidity application process for DFRDB members.

With a view to improving consistency across the ADF superannuation schemes, and timeliness of claims processing, the Government will expand the review of section 37 of the DFRDB Act to include section 51(6) of the *Defence Forces Retirement Benefits Act 1948*.

Recommendation 9

1.48 The Australian Government revise reversionary pension arrangements across military superannuation and pension schemes to ensure that surviving spouses and dependants retain eligibility when they are living apart from a member due to illness or safety concerns.

Response:

The Government **notes** this recommendation.

The Government notes that this recommendation is substantively addressed under Committee Recommendation 3 and accordingly refers to its response to that recommendation.

Recommendation 10

1.51 The Australian Government provide sufficient resourcing for the Commonwealth Superannuation Corporation to ensure its claim management team is appropriately staffed to process claims in a timely manner, consistent with the needs of serving and former ADF members.

Response:

The Government **notes** this recommendation.

The Government notes Defence and CSC will continue to work together on prioritising resources to improve claims processing times and the overall standard of service provided to veterans, consistent with the needs of serving and former serving ADF members.

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THE HON MATT KEOGH MP
MINISTER FOR VETERANS' AFFAIRS
MINISTER FOR DEFENCE PERSONNEL

Ref No: GR26-000002

The Hon Anthony Albanese MP
Prime Minister
Parliament House
CANBERRA ACT 2600

Dear Prime Minister,

INQUIRY INTO THE OPERATION AND APPROPRIATENESS OF THE SUPERANNUATION AND PENSION SCHEMES FOR CURRENT AND FORMER MEMBERS OF THE AUSTRALIAN DEFENCE FORCE (ADF)

I write to seek your agreement to table the Government response to the Senate Finance and Public Administration References Committee report on the Inquiry into the operation and appropriateness of the superannuation and pension schemes for current and former members of the Australian Defence Force.

The Senate Finance and Public Administration References Committee tabled its report in Parliament on 19 March 2026. The report outlines evidence received from a wide range of witnesses and public submissions, including representatives of Defence Service Organisations, independent contributors, the Department of Defence, and the Commonwealth Superannuation Corporation. The committee summarised its findings and made four formal recommendations, along with ten additional recommendations from Senator Jacqui Lambie.

The committee's four recommendations address the Defence Force Retirement and Death Benefits scheme pension settings, the indexation methodology of military pension schemes, definitions of spouse dependency for reversionary death benefits, and portability of employee contributions within the Military Superannuation and Benefits scheme.

Parliament House
CANBERRA ACT 2600
Ngunnawal and Ngambri Country

Telephone: 02 6277 7820
minister@dva.gov.au

I request your review and seek your written approval of the attached Government response at your earliest convenience.

Yours faithfully,

HON MATT KEOGH MP

/ / 2026

Encl.
Proposed Government Response to the Senate Standing Committee on Finance and Public Administration Inquiry into the Operation and appropriateness of the superannuation and pension schemes for current and former members of the Australian Defence Force (ADF)

THE HON MATT KEOGH MP
MINISTER FOR VETERANS' AFFAIRS
MINISTER FOR DEFENCE PERSONNEL

Ref No: GR26-000002

Senator the Hon Sue Lines
President of the Senate
PO Box 6100
Parliament House
CANBERRA ACT 2600

Dear President,

INQUIRY INTO THE OPERATION AND APPROPRIATENESS OF THE SUPERANNUATION AND PENSION SCHEMES FOR CURRENT AND FORMER MEMBERS OF THE AUSTRALIAN DEFENCE FORCE (ADF)

Pursuant to Standing Order 166, relating to the presentation of documents when the Senate is not sitting. I present to you the Government Response to the Senate Standing Committee on Finance and Public Administration report into the operation and appropriateness of the superannuation and pension schemes for current and former members of the Australian Defence Force (ADF).

Yours faithfully,

HON MATT KEOGH MP

/ / 2026

Encl.
Government Response to the Senate Standing Committee on Finance and Public Administration Inquiry into the Operation and appropriateness of the superannuation and pension schemes for current and former members of the Australian Defence Force (ADF)

Parliament House
CANBERRA ACT 2600
Ngunnawal and Ngambri Country

Telephone: 02 6277 7820
minister@dva.gov.au

OFFICIAL

Attachment E – Recommendation background

Recommendation 1
The Committee recommends that the Australian Government consider whether the current settings of Defence Force Retirement and Death Benefits pensions are fair and equitable for all members.

Recommendation 1 relates to the current settings of the Defence Force Retirement and Death Benefits (DFRDB) pensions, and whether they are fair and equitable for all members. The committee focussed primarily on two policy issues in the preamble for this recommendation:

a. The permanency of the pension reduction as a result of electing to commute a portion of the pension; and

b. The use of the 1960-1962 expectation of life factors.

The committee considered previous reviews of the scheme by the Senate Foreign Affairs Defence and Trade References Committee in 2021 and the investigation undertaken by the Commonwealth Ombudsman in 2019, both of which concluded that amending the DFRDB scheme would potentially create other unfair outcomes for those that did not commute or only partially commuted. The committee concurred with the conclusions of these earlier reviews.

At the committee hearing on 19 February 2026, witnesses provided evidence in relation to the misinformation provided to them around the time they were claiming their benefits from the 1970's onwards. The information mainly pertained to the permanency of the reduction in pension should a member commute a portion to a lump sum.

The 2019 Commonwealth Ombudsman report assessed the information provided about commutation and the impact of the choice to take a lump sum, resulting in a permanent reduction to a member's retirement pay. The Ombudsman did conclude that Defence provided some incorrect information to members of the scheme at the time.

Defence did not dispute the findings of the Ombudsman's report. As a result of the findings, the Chief of the Defence Force at the time, General Angus Campbell, AO DSC and the Defence Secretary at the time, Mr Greg Moriarty, issued an apology to DFRDB members. In their letter, they expressed their apologies on behalf of Defence for providing incorrect advice to some DFRDB members and for the confusion and emotional impact that it may have caused.

The question of whether the permanent reduction to the pension is being interpreted and administered correctly has been addressed in previous reports and the more recent *McKenzie v Commonwealth Superannuation Corporation* court case.

The applicant, Mr McKenzie, a member of the DFRDB scheme, sought to challenge the permanent reduction of his retirement pay following his election to commute. On 2 May 2023, the Hon Justice Perry delivered her judgment and dismissed the case, stating in her view an election to commute does result in a permanent reduction in the annual amount of retirement pay to which that member is owed. Full details of the judgment are available at www.judgments.fedcourt.gov.au/judgments/Judgments/fca/single/2023/2023fca0396.

Defined benefit schemes rely on actuarial analysis and recommendations to determine key scheme features that determine benefits and cost to sustain the scheme. The use of specific life expectancy factors is a key scheme feature that relies on actuarial recommendation. In the past, the Australian Government Actuary (AGA) has advised that when the DFRDB scheme was introduced in 1973, the use of the 1960-62 Australian Life Tables as a commutation factor was favourable to members relative to the alternative pension.

Further, the Ombudsman made note of the life expectancy tables in his investigation into the administration of the DFRDB scheme. The Ombudsman concluded that as the scheme drafters did not include a provision to update the tables from time to time, it would suggest the tables were meant to be used as a static commutation factor. This is consistent with the static commutation factors used in the civilian Commonwealth Superannuation Scheme.

Defence consulted the AGA on the committee's recommendation, to seek their view on whether they would support a further review of the DFRDB scheme, including commutation provisions and the use of the stagnant 1960-1962 expectation of life factors.

The AGA affirmed their position outlined during the Ombudsman's investigation, that the pension commutation provisions and life expectancy tables used in the *Defence Force Retirement and Death Benefits Act 1973* should not be reviewed.

Specifically in relation to the expectation of life factors, the AGA has confirmed that such factors for defined benefit funds are generally set when the scheme commences and do not change over time. The factors used in the DFRDB Act have not been changed since their establishment and it is the view of the AGA that they were not intended to be updated.

If Government were to consider any change to the DFRDB life expectancy tables, Defence would recommend that the amendment be prospective in nature to avoid inequitable scheme outcomes. This would limit the application of an amendment to members who have not yet claimed their retirement pension and elected to commute. As at 23 March 2026, there were 267 contributing DFRDB members. Effecting a change for the small portion of DFRDB members in the contribution phase would create a significant disparity in the rest of the membership base.

In relation to the permanence of a DFRDB commutation election, recent actuarial analysis of DFRDB retirements revealed that there continues to be an almost universal take-up of the commutation option, with an average commutation multiple election of between 4 and 5, 5 being the maximum commutation multiple. This evidence suggests that despite ongoing concerns and advocacy by DFRDB veterans on the permanency of commutation and stagnant expectation of life factors, most contemporary DFRDB members consider that the option is financially beneficial.

In the report tabled on 19 March 2026, the committee recognised that DFRDB members still consider that remedial action is required to address perceived inequities, however it concurred with the previous reviews into this matter, which concluded that remediation would potentially lead to other unfair outcomes.

Defence notes the conclusion of the committee and those of previous inquiries, and the recent views and analysis provided by the AGA, and propose that Government should note this recommendation.

Recommendation 2

The Committee recommends the Australian Government consider reviewing indexation methodology for all defined benefit military pension schemes, with a view to achieving consistency and equity.

The indexation arrangements for Commonwealth superannuation defined benefit pensions has changed over time. Prior to 2014, the indexation methodology that applied to the ADF defined benefit pension schemes broadly aligned to the arrangements that applied to other Commonwealth defined benefit pension schemes including the 1922 Scheme, Papua New Guinea (Staffing Assistance) (PNG) Scheme, Commonwealth Superannuation Scheme (CSS) and Public Sector Superannuation (PSS) Scheme.

On 1 July 2014, The *Defence Force Retirement Benefits Legislation Amendment (Fair Indexation) Act 2014* amended the indexation methodology for the DFRDB and Defence Forces Retirement Benefits (DFRB) schemes, to address a long-standing grievance of the veteran and ex-service community about the differing indexation arrangements that apply to the DFRDB/DFRB and the Age Pension. The Bill introduced revised methodology to more closely align with Age Pension indexation arrangements, and deliberately limited the measure to these two schemes in recognition of their special characteristics. The amendment specifically identified differential indexation arrangements for those pensioners who were under the age of 55 and those who were over 55. Both DFRDB and DFRB are closed, unfunded defined benefit schemes, not subject to the superannuation regulatory regime, and reflect the unique conditions of historical military service, including early compulsory retirement age and limited benefit payment options.

The extant indexation arrangements for ADF superannuation pensions varies for each of the superannuation schemes:

- ADF Super and Choice funds – These schemes do not provide a defined benefit pension and as such, there are no indexation arrangements in place.
- ADF Cover – Reversionary and invalidity pensions payable under the ADF Cover scheme are indexed by upward movement in the Consumer Price Index (CPI), twice a year.
- Military Superannuation and Benefits Scheme (MSBS) – Pensions payable under the MSBS are indexed by upward movement in the CPI, twice a year.
- DFRDB and DFRB
    - Under 55 – Indexed in line with upward movements of the CPI, twice a year.
    - Over 55 – Indexed in line with the higher of either, CPI or the Pensioner and Beneficiaries Living Cost Index (PBLCI), twice a year.

Defined benefit schemes rely on actuarial analysis and recommendations to determine scheme design, including pension indexation arrangements. In considering the committee's recommendation, Defence sought the opinion of the AGA on the adequacy of the extant ADF defined benefit pension indexation arrangements, and whether they agree that these arrangements could be reviewed.

In addition, Defence sought the AGA's opinion on whether a review should include the indexation arrangements of other Commonwealth defined benefit schemes, including the PSS and CSS, both of which are indexed by upward movement in the CPI, twice a year.

Defence highlighted the risk that while the recommendations refer directly to military pension schemes, making an exclusive change to the indexation arrangements of the ADF defined benefit schemes could create further inequity across Government schemes, increasing the likelihood of subsequent reviews being conducted in the future.

The AGA agreed that a review of pension indexation arrangements may provide an opportunity to address long-standing issues around equitable pension indexation arrangements, relevant indexation methodologies, and whether the spending habits of different pensioner cohorts, including age pensioners and defined benefit superannuation pensioners, should inform the pension indexation methodology. In their feedback, the AGA agreed with Defence's concern, that a review of the ADF defined benefit schemes in isolation may result in inconsistent indexation arrangements across Government defined benefit schemes, and noted that the ADF defined benefit schemes are largely modelled on the civilian defined benefit superannuation schemes.

The AGA emphasised that Defined benefit scheme design generally considers the benefits as a whole, noting that pension indexation is only one component of the benefit design, with the value of the pension itself, including the service based benefit multiple and the use of final salary or final average salary, an important consideration. Changing one component of the benefit in isolation without consideration of the overall basis and generosity of the whole benefit would be inconsistent with the intentions of the scheme when the design was initially set. The difference in the application of final salary (DFRDB, DFRB and CSS) and final average salary over the three years prior to retirement (MSBS and PSS) is an example of variations on overall benefit design.

The Department of Finance did not support reviewing the ADF indexation arrangements, and noted that a change to ADF indexation in isolation would result in misalignment with the APS defined benefit schemes – creating inequity across Government schemes.

The indexation arrangements for MSBS and ADF Cover are largely consistent with national indexation arrangements, and while this is not consistent with DFRDB and DFRB, the 2014 Fair Indexation Bill rationalised the unique approach which was broadly accepted.

It is anticipated that agreeing to review pension indexation methodology would create significant workforce expectation, and if a favourable change was not resultant from the review, it would exacerbate discontent.

In light of stakeholder feedback, Defence proposes that Government should note this recommendation.

Recommendation 3

The Committee recommends that the Australian Government consider whether current definitions are adequate, particularly those of 'spouse' and 'mutually dependent', to accommodate couples living apart due to experience of PTSD, other service-related mental illnesses, and domestic and family violence.

Superannuation is designed to provide income in retirement to the member, and if they die, to those who were dependent on them. This ensures that benefits are paid to people who relied on the deceased's income or support[1].

The ADF superannuation arrangements include the provision of death cover. These benefits ensure that a veteran's dependants are financially supported in the event of death. Due to the defined benefit nature of the schemes, eligibility for death benefits is defined by scheme legislation – unlike accumulation schemes, which allow for the nomination of beneficiaries.

Eligibility for superannuation death benefits, including definitions of an eligible spouse, dependant and relationship vary across legislation. Where no eligible dependants are found, a death benefit may be payable to the deceased estate. Relevant legislative instruments:

- *Defence Forces Retirement Benefits Act 1948*
- *Defence Force Retirement and Death Benefits Act 1973*
- *Military Superannuation and Benefits Act 1991*
- Military Superannuation and Benefits Trust Deed
- *Australian Defence Force Cover Act 2015*

Spouse eligibility within the extant military superannuation legislative instruments.

The ADF Superannuation legislation provides CSC with delegation to make decisions to determine eligibility for ADF superannuation death benefits. In making their decisions, CSC may rely on relevant case law where appropriate.

There are two distinct pathways for spouse eligibility within the military superannuation legislative instruments. One pathway is for assessment of a 'marital or couple relationship' and provides discretion for the delegate to consider where a couple would have been living together, in a relationship, except for a period of absence. There are provisions in each legislative instrument to consider whether this absence is due to special circumstances, illness or infirmity. Whilst the special circumstances provision does not directly express a requirement to consider reasons for separation due to domestic violence, CSC rely on case law where appropriate.

The second pathway to assess spouse eligibility considers situations where a person is no longer in a 'marital or couple relationship' with the deceased person, but they were still legally married and the applicant spouse is 'wholly or substantially dependent' on the deceased at the time of death. The case law that CSC relies upon to support these decisions indicates the assessment of dependency is an objective test, and as such, a test of financial dependency is the strongest and most relevant.

For the purpose of the ADF superannuation rules, 'separation' is interpreted to be where a couple are no longer living together, but have otherwise maintained a couple relationship.

[1] https://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bId=r7111

This is different to how separation is interpreted in broader contexts, such as when considering family law.

Requiring proof of dependency prevents distant relatives, housemates, estranged spouses, or financially independent adult children from claiming ongoing pension benefits.

The death benefits provided by defined benefit schemes are highly beneficial – they generally provide a lifetime spouse pension. Because of this, and the requirement for the Commonwealth to assure funding of these arrangements, eligibility is necessarily restricted to dependants who relied on the deceased financially at the time of death.

Committee evidence:

Defence notes that the committee received public submissions, and heard witness testimony on the impacts of service-related mental illness and domestic and family violence, on eligibility for reversionary death benefits. The evidence received by the committee discussed the outcomes of a non-Defence superannuation scheme, the CSS.

The APS defined benefit superannuation schemes, the CSS and PSS, provide similar criteria for assessing the eligibility of spouse benefits provided under the ADF superannuation legislative instruments.

The committee report also referenced a submission by the Defence Force Welfare Association (DFWA) that advocated for changes to both the *Superannuation Act 1976* (CSS) and the *Superannuation Industry (Supervision) Act* (the SIS Act) *1993* provisions that determine eligibility for reversionary spouse death benefits, on the basis that the concept of 'dependency' has evolved since the inception of these instruments.

Overarching and connecting legislation such as the *Income Tax Assessment Act 1997* and the SIS Act also provide definitions relating to interdependent relationships and dependency, to determine superannuation death benefit financial outcomes. The terms used in these instruments vary to those used in the ADF superannuation instruments. For example, the SIS Act uses more contemporary language to define 'separation' such as 'temporarily living apart' and 'do not live together'. Broadly speaking, despite different language and definitions, the eligibility outcomes under these instruments are not dissimilar to the eligibility outcomes under the ADF and APS defined benefit schemes.

Discussion on proposed approach/actions/next steps to address Recommendation 3:

Defence recognises that the impact of service-related mental illness and domestic and family violence, on eligibility for superannuation death benefits, may extend beyond the ADF superannuation schemes. Further, it is recognised that mental illness, including PTSD, domestic and family violence is not unique to families within the ADF.

It is noted that the evidence considered by the committee did not relate to the eligibility outcomes of the ADF superannuation schemes, and further notes that the committee's recommendation is broad - it does not recommend that the review be limited to the ADF superannuation schemes.

Reviewing the ADF superannuation schemes in isolation of other funds and governing legislation may lead to inequitable treatment between different superannuation funds, and may create policy friction between connecting legislation.

To date, the SIS Act, associated regulations and other national governing legislation, have not been reviewed to address the matter of eligibility for superannuation death benefits, where separation has occurred due to domestic violence.

Defence assess that a review of the ADF superannuation legislative definitions would provide an opportunity to clarify frequently misinterpreted legislative terms, such as the term 'separation' when describing a couple 'living apart'. It would also provide an opportunity to prescribe additional circumstances that CSC must consider when making an eligibility decision where a couple are not living together due to 'special circumstances'. Currently, CSC may (and often do) rely on case law to support their eligibility decisions where they consider special circumstances are present, however this is at their discretion - they are not required to do so. Prescribing additional special circumstances, such as mental illness and domestic and family violence, would ensure these circumstances are always considered by CSC when making an eligibility decision.

The Department of Finance and Treasury provided feedback on the draft Government response to recommendation 3, confirming they are satisfied that the review of legislative terms should be limited to the ADF superannuation schemes.

Defence proposes the Government **agree** to this recommendation, to review the definitions of spouse and dependent in the ADF superannuation scheme legislative instruments.

Recommendation 4

The Committee recommends that the Australian Government consider allowing Military Superannuation and Benefits Scheme members to roll over their Employee Benefit to another superannuation fund of their choice.

The MSBS 'Employee Benefit' can consist of the member benefit (employee contributions), and any ancillary benefit which may comprise the additional personal contributions made by the member, such as salary sacrifice, and any government top-up contributions.

MSBS employee benefits are accumulation style benefits, which are afforded portability provisions that are more flexible than those applied to the defined benefit component of MSBS. As these are accumulation benefits, both components are invested as per the member's choosing, in line with CSC's investment portfolio options. Members also have the availability to switch their investment at any time. Both of these components are only payable as a lump sum once the member has reached their preservation age and retired from the workforce. These benefits cannot form part of the defined benefit lifetime pension and are governed by the standard preservations rules applicable to most Australians.

To avoid doubt, the committee have not made any recommendation regarding the portability of the employer benefit, which comprises the funded and unfunded employer contributions.

From establishment in 1991, members of the MSBS have the option to roll over their member benefit (employee contributions) to another superannuation fund after leaving the Australian Defence Force, at any age.

From 1 July 2016, members of MSBS have the opportunity to opt out of the scheme and contribute to a different superannuation fund of their choice, while they are serving in the ADF. These members also have the option to roll over their existing member benefit (employee contributions) to another superannuation fund of their choice.

Due to the nature of this recommendation, Defence propose to **agree** to the recommendation, and confirm that the portability of the employee benefit is already available to MSBS members.

The committee recommendation has highlighted that more information needs to be made available to MSBS members about the portability of their member benefit, as well as their options for superannuation choice.

Defence agrees to work closely with CSC, as the administrator of MSBS, to continue improving education for MSBS members. Defence will also endeavour to improve internal education and communication for MSBS members within Defence resources to ensure support.

Additional recommendations provided by Senator Jacqui Lambie

In addition to the formal committee recommendations, there were 10 recommendations put forward by Senator Jacqui Lambie that were not adopted by the committee. Recommendation 1, 3, 4 and 9 of Senator Lambie's recommendations are being considered more broadly under the committee's formal recommendations relating to the consideration of reviewing entitlements under the DFRDB scheme and the definitions relating to spouse dependency for reversionary death benefits.

Senator Lambie's remaining recommendations relate to current work underway to some degree, other than recommendation 8, which Defence proposes the Government agrees to. Further information about the additional recommendations is below.

Recommendation 2

Where evidence demonstrates that defective administration materially influenced retirement decisions resulting in financial detriment, the Australian Government provide appropriate remedial actions for affected DFRDB members, including Act of Grace payments or other compensation measures.

The DFRDB scheme and the information provided to its members has been reviewed by the Commonwealth Ombudsman in 2019 and a Senate Committee inquiry in 2021. Both investigations concluded that Defence historically provided some DFRDB members misleading information regarding commutation; however, this was unlikely to have caused a financial detriment to members. Regardless, any member who believes they have suffered financial detriment as a result of the incorrect information can apply to the Compensation for Detriment caused by Defective Administration (CDDA) Scheme.

To date, claimants through the CDDA Scheme have been unable to demonstrate a financial detriment due to commuting part of their pension. Generally, the claimants did not dispute they were better off having commuted. Their complaint asserted that the DFRDB scheme was not as generous as they were led to believe it would be.

As at 13 February 2026, Defence had received 70 claims under the CDDA Scheme about commutation under the DFRDB scheme. 56 claims have been declined and five were withdrawn after discussion and correspondence with the Claims Manager in Defence Legal. Seven claimants requested an internal review after the initial decision to decline.

On examination of the claimants' circumstances, none were able to show how their situation differed from those who the Ombudsman's commissioned modelling showed were generally better off having commuted. Most were in the cohort who used the commutation lump sum to help them purchase a house.

One person applied for a judicial review of the way section 24 of the scheme is interpreted. They sought confirmation that there is an implied time limit on the reduction to pension payments that follows commutation: *McKenzie v Commonwealth Superannuation Corporation* [2023] FCA 396 (2 May 2023). The Court dismissed the application, because the words of the *Defence Force Retirement and Death Benefits Act 1973* did not permit the construction of words sought by the applicant (i.e. the words can't be read that way).

Defence propose to note this recommendation given that there is already a process available to members in this target audience. Defence agree that there should be a mechanism in place for members who believe they have suffered a financial detriment, but disagree that a new scheme should be developed in response to this recommendation.

Recommendation 5 and 6

The Australian Government implement a coordinated whole of government education and awareness strategy to provide former and current ADF members with accessible information about military superannuation and pension arrangements.

The Australian Government should strengthen coordination between the Department of Defence, the Department of Veterans' Affairs and the Commonwealth Superannuation Corporation to ensure that information provided to members is consistent, accessible and easy to understand.

The Government acknowledges that the nature of the ADF defined benefit schemes is complex and can be difficult to understand. Veterans and their families also have access to various other entitlements and benefits, outside superannuation. The system that veterans are required to navigate can be challenging, which has been identified in previous reviews concerning matters relating to veterans. Defence has made significant changes and improvements since the establishment of the Joint Transition Authority (JTA) in 2020, to support veterans through their transition from the ADF.

Defence, the Department of Veterans' Affairs (DVA) and CSC already work closely together and are working on strengthening cross agency collaboration through the JTA, the Veteran and Family Wellbeing Agency and other appropriate mechanisms. Work is continuing across Defence, DVA and CSC to improve education and guidance provided to serving members and veterans, with a focus on clearer, more consistent messaging across superannuation, compensation and support systems.

More broadly, the new Veteran and Family Wellbeing Agency, set to open on 1 July 2026, will expand on current services and provide alternate referral pathways for ex-serving members that support the integration between Defence, DVA and third party providers such as CSC.

Defence propose that Government note recommendation five and agree with recommendation six. Defence agree that education and awareness is important for veterans and acknowledge the range of work which is underway.

Recommendation 7

The Department of Defence provide professional financial advice to all ADF members at key career points such as recruitment, mid-career service and transition to civilian life to ensure an accurate understanding of applicable military superannuation or pension schemes.

There are key milestones throughout an individual's career at which important financial decisions are required, and each individual should be equipped to deal with that.

Defence support improved financial literacy through tailored education and resources provided by the ADF Financial Services Consumer Centre, with a focus on encouraging personnel to understand their overall financial wellbeing, of which superannuation is one component.

The ADF Financial Services Consumer Centre provides a Financial Advice Referral Program designed to assist ADF members in privately obtaining financial advice services that are free from remuneration-based conflicts of interest by providing a list of financial advisers who have agreed to provide advice on a genuine fee for service basis.

Defence also provides a financial benefit of $1000 to support ADF members to access independent financial advice. A member is eligible on application for professional financial advice within 24 months of their transition date if the financial advice meets the relevant criteria. Financial advice should be independent and confidential for all ADF personnel and as such, Defence do not subsidise any financial adviser or refer personnel to specific advisors.

The Australian Securities and Investments Commission have regulatory guidelines and prohibition about what employers can and cannot do in relation to providing financial advice to employees or influencing decisions, including advice in relation to their superannuation.

Defence propose to note this recommendation as it may be inappropriate for Defence as an employer to engage in a commercial arrangement to provide personal financial advice for ADF members. Defence remain committed to improving overall education and financial literacy for ADF members.

Recommendation 8

The Australian Government review section 37 of the Defence Force Retirement and Death Benefits Act 1973 for relevance and necessity, with the aim of ensuring all applications are referred to the Commonwealth Superannuation Corporation for independent assessment, without requiring the opinion of the Chief of the Defence Force.

At present, members of the DFRB scheme and the DFRDB scheme are required to apply for retrospective invalidity through the Department of Defence before applying to CSC. This is an additional step to what is required for members of MSBS or ADF Cover, both of which may apply directly to CSC for retrospective invalidity. The two-step process causes significant confusion for DFRDB and DFRB veterans trying to navigate a retrospective invalidity application, and extends the timeframe to get a decision on their application by approximately six months.

In making these decisions, Defence relies of the opinion of Joint Health Command to assess whether the evidence provided by the applicant supports a decision to treat them as if they were medically separated from the Australian Defence Force. In 2024 Defence made 65 decisions of which 92 per cent were supported, in 2025 Defence made 117 decisions, of which 98 percent were supported.

Defence propose that Government agree to review section 37 of the *Defence Force Retirement and Death Benefits Act 1973*, with an aim to streamline the retrospective invalidity application process for DFRDB members and align the retrospective invalidity process with the ADF Cover and MSBS schemes.

In addition, with a view to improving consistency across the ADF superannuation schemes, and timeliness of claims processing, Defence propose that the Government response should agree to include the review of section 51(6) of the *Defence Forces Retirement Benefits Act 1948*.

Should the review result in an amendment to the legislative provisions, it may also reduce administrative processing effort and resources for these decisions overall. CSC already review the majority of the applications received by Defence, there would be a slight increase in the number of cases they are required to consider – being the small percentage of applications that Defence may not have supported and therefore never eventuated to a CSC retrospective invalidity application.

Recommendation 10

The Australian Government provide sufficient resourcing for the Commonwealth Superannuation Corporation to ensure its claim management team is appropriately staffed to process claims in a timely manner, consistent with the needs of serving and former ADF members.

Defence and CSC have committed to work collaboratively and have agreed on the importance of providing quality, empathetic and consistent support to ADF members, veterans and their families. Defence and CSC have an agreed Memorandum of

Understanding (MoU), which aims to better support veterans and their families in receiving information and services about their superannuation.

The MoU outlines the role of CSC and Defence in relation to the schemes and describes the services CSC will deliver to members. The MoU specifies performance standards and funding arrangements as well as the framework for consultation, including incident escalation and management.

The objective of the Service Standard is to ensure that the support and services provided to ADF members, veterans and their families are agreed and are of a specified standard, in order to meet mutual and individual agency and member outcome expectations.

Defence fund expenses relating to the operation and administration of the ADF defined benefit schemes, including ADF Cover and subsidisation of the ADF Super scheme. Funding is set on an annual, financial year basis.

Each year CSC outline the administrative costs for the following year and put forward a fee proposal for Defence consideration. To date, Defence has not declined or negotiated a reduced fee for any CSC funding proposed that relates to an ADF claims management activity.

Defence propose to note this recommendation. Defence is committed to improving the standard of service provided to veterans and is working with CSC to prioritise resources and funding to improve both the claims processing time, and the overall standard of service provided to veterans.

Defence FOI 0044/26/27
Internal Review
Document 2

THE HON MATT KEOGH MP
MINISTER FOR VETERANS' AFFAIRS
MINISTER FOR DEFENCE PERSONNEL

Ref No: GR26-000002

The Hon Anthony Albanese MP
Prime Minister
Parliament House
CANBERRA ACT 2600

Dear Prime Minister,

INQUIRY INTO THE OPERATION AND APPROPRIATENESS OF THE SUPERANNUATION AND PENSION SCHEMES FOR CURRENT AND FORMER MEMBERS OF THE AUSTRALIAN DEFENCE FORCE (ADF)

I write to seek your agreement to table the Government response to the Senate Finance and Public Administration References Committee report on the Inquiry into the operation and appropriateness of the superannuation and pension schemes for current and former members of the Australian Defence Force.

The Senate Finance and Public Administration References Committee tabled its report in Parliament on 19 March 2026. The report outlines evidence received from a wide range of witnesses and public submissions, including representatives of Defence Service Organisations, independent contributors, the Department of Defence, and the Commonwealth Superannuation Corporation. The committee summarised its findings and made four formal recommendations, along with ten additional recommendations from Senator Jacqui Lambie.

The committee's four recommendations address the Defence Force Retirement and Death Benefits scheme pension settings, the indexation methodology of military pension schemes, definitions of spouse dependency for reversionary death benefits, and portability of employee contributions within the Military Superannuation and Benefits scheme.

Parliament House
CANBERRA ACT 2600
Ngunnawal and Ngambri Country

Telephone: 02 6277 7820
minister@dva.gov.au

I request your review and seek your written approval of the attached Government response at your earliest convenience.

Yours faithfully,

s22 [redacted]

HON MATT KEOGH MP

4/6 / 2026

Encl.
Proposed Government Response to the Senate Standing Committee on Finance and Public Administration Inquiry into the Operation and appropriateness of the superannuation and pension schemes for current and former members of the Australian Defence Force (ADF)

Defence FOI 0044/26/27
Internal Review
Document 2

THE HON MATT KEOGH MP
MINISTER FOR VETERANS' AFFAIRS
MINISTER FOR DEFENCE PERSONNEL

Ref No: GR26-000002

Senator the Hon Sue Lines
President of the Senate
PO Box 6100
Parliament House
CANBERRA ACT 2600

Dear President, Sue,

INQUIRY INTO THE OPERATION AND APPROPRIATENESS OF THE SUPERANNUATION AND PENSION SCHEMES FOR CURRENT AND FORMER MEMBERS OF THE AUSTRALIAN DEFENCE FORCE (ADF)

Pursuant to Standing Order 166, relating to the presentation of documents when the Senate is not sitting. I present to you the Government Response to the Senate Standing Committee on Finance and Public Administration report into the operation and appropriateness of the superannuation and pension schemes for current and former members of the Australian Defence Force (ADF).

Yours faithfully,

s22 [redacted]

HON MATT KEOGH MP

26 / 6 / 2026

Encl.
Government Response to the Senate Standing Committee on Finance and Public Administration Inquiry into the Operation and appropriateness of the superannuation and pension schemes for current and former members of the Australian Defence Force (ADF)

Parliament House
CANBERRA ACT 2600
Ngunnawal and Ngambri Country

Telephone: 02 6277 7820
minister@dva.gov.au

Defence FOI 0044/26/27
Internal Review
Document 3

Australian Government
Defence

Ministerial Brief for Action

MB22-000444

FOR: Minister for Defence Personnel

THROUGH: A/Secretary A/CDF

CC: A/Associate Secretary, A/VCDF, FASMECC

Action Requested By: At your convenience

Reason for Urgency: N/A

DEFENCE FORCE RETIREMENT AND DEATH BENEFITS SCHEME INDEXATION CORRESPONDENCE

Key Issues:

Some veterans groups as well as individual veterans continue to campaign on three matters relating to the Defence Force Retirement and Death Benefits scheme (DFRDB): misleading information regarding the effect of commutation on retirement pensions, indexation methodology and the use of set life expectancy. These campaigns led to an investigation by the Commonwealth Ombudsman in 2019 and a Senate Committee inquiry in 2021.

Both investigations concluded that Defence historically provided some DFRDB members misleading information regarding commutation, however this was unlikely to have caused a financial detriment to members. These reports recognised the beneficial nature of the DFRDB scheme and did not recommend changes to commutation, the indexation methodology or to the use of set life expectancy factors.

Recommendation:

That you:

1. **approve** the proposed standard response for your use at Attachment D. Approved/Not approved with amendment

Media Considerations:

It is likely some veterans or veterans groups will approach the media on this issue and there has been some interest from media in previous years including a story on ABC's 7.30 Program which may have contributed to the call for the Senate Committee inquiry referenced above.

Extensive investigations into the DFRDB scheme have confirmed that the scheme is being administered correctly and veterans are receiving the benefits they are entitled to. It is acknowledged that some members were given incorrect information several decades ago and that they were unlikely to have suffered financial detriment as a result. The Secretary and Chief of the Defence Force have formally apologised for incorrect information given to DFRDB members.

Signature: s22

Matt Keogh
July 2022

31-07-2022

s47E(d)

Cleared by:
Fiona McSpeerin
A/First Assistant Secretary
People Policy and Culture
25/7/2022
s47E(c)

Contact Officer:
s47E(c)
Director, Superannuation
s22

Sensitivity: Yes.

1. As covered in media considerations, it is likely some veterans or veterans groups will approach the media on this issue.

Financial Impacts: No.

Systems/legislation/deregulation/media implications: No.

Consultation: No.

Attachments:

Attachment A	Accuracy of information provided to DFRDB scheme members, Foreign Affairs, Defence and Trade References Committee Report.
Attachment B	Australian Government Response to the Senate Foreign Affairs, Defence and Trade References Committee Inquiry into the accuracy of information provided to DFRDB members.
Attachment C	Investigation into the administration of the DFRDB scheme, Commonwealth Ombudsman.
Attachment D	Proposed DFRDB standard words for Ministerial Correspondence.
Attachment E	Talking Points.

Background:

2. On 2 July 2021 the Senate Foreign Affairs, Defence and Trade References Committee (the Committee) released their final report into the "Accuracy of information provided to DFRDB scheme members" following their inquiry into the matter. A copy of the report is at Attachment A.

3. The Committee's report made two recommendations and on 2 December 2021 the former Government tabled its response to the report (Attachment B).

4. The Committee concluded that the Commonwealth Ombudsman in his 2019 report (Attachment C) comprehensively addressed the matters raised by veterans regarding the administration of the DFRDB scheme. The Committee agreed there is no dispute that incorrect information was provided by Defence to some DFRDB members, which led them to believe that their commuted pension would increase once they reached their life expectancy factor age. This has been recognised as defective administration by Defence and an apology has been issued by the Secretary of Defence and the Chief of the Defence Force.

5. The Ombudsman established the decision to commute is not likely to have caused a financial detriment; however could not rule out that there may be outlying cases where a member may have suffered a financial detriment. He deemed the Compensation for Detriment caused by Defective Administration (CDDA) scheme would be suitable for such cases.

6. Defence has received 46 claims under the CDDA scheme. 41 claims have been declined and five were withdrawn after discussion with the delegate.

7. Claimants were unable to show a financial detriment due to commuting part of their pension. Generally, the claimants did not dispute they were better off having commuted. Their complaint about the DFRDB scheme was that it wasn't as generous as they were led to believe it would be.

8. On 11 May 2022, the Federal Court heard the matter of McKenzie vs CSC, which is considering whether the DFRDB pension of a member who elects to commute a portion of their pension must be reduced permanently. Judgement for this case is reserved.

9. Veteran groups have raised concerns regarding the methodology of indexing DFRDB pensions. This resulted in a beneficial change to indexation for DFRDB members over age 55 in 2014. The indexation methodology has been reviewed multiple times since the scheme started. While some reviews differ on the exact method, they broadly agree with a method that allows for pensions to maintain their purchasing power over time.

10. Currently DFRDB pensioners under age 55 have the indexed portion of their pension indexed with the Consumer Price Index (CPI), which is the same as other government superannuation defined benefit pensions. DFRDB pensioners over age 55 have their indexed portion of their pension indexed with the better of CPI or the Living Cost Index for Pensioners and Beneficiaries.

11. The use of set life expectancy factors to calculate DFRDB members' commutation lump sum and residual pension benefit has also been a concern of some veteran groups. These concerns were discussed in the Ombudsman and the Senate Committee review. Neither review suggested changes to the use of set life expectancy tables.

12. Some veterans continue to campaign for changes to the scheme. We have recently received correspondence on this matter and we expect to receive more over time. Proposed standard wording to respond to these enquires is at Attachment D and Talking Points are provided at Attachment E.

Defence FOI 0044/26/27
Internal Review
Document 3

The Senate

Foreign Affairs, Defence and Trade References Committee

Accuracy of information provided to Defence Force Retirement and Death Benefits (DFRDB) members

July 2021

Defence FOI 0044/26/27
Internal Review
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List of Recommendations

Recommendation 1

5.21 The committee recommends that the Australian Government consider ways to improve members' understanding of DFRDB and other military superannuation schemes. This could include additional information and education for ADF recruits and officer cadets, and ongoing updates for ADF personnel. It could also comprise a dedicated website or webpage for members, including a summary of the scheme and information on a member's contributions history and any residual pension payable.

Recommendation 2

5.22 The committee recommends that the Australian Government consider more assistance for DFRDB members to make claims under the CDDA scheme and appeal any adverse decisions or a separate reparation payments scheme for DFRDB members who are unsuccessful under the CDDA scheme to recognise the government's moral obligation to address any confusion and distress caused by defective administration. Where a CDDA claim was successful, compensation could include any professional costs expended in preparation of the claim, and legal and other professional costs if a claimant successfully appealed an adverse finding. Further, where the claimant's CDDA appeal was unsuccessful, the Commonwealth should consider not applying for costs to be awarded against the claimant.

Chapter 1
Introduction and background

Referral

1.1 On 18 March 2021, the Senate referred the following matter to the Senate Foreign Affairs, Defence and Trade References Committee for inquiry and report by 24 June 2021:

> The accuracy of information provided to Defence Force Retirement and Death Benefits (DFRDB) members, including:
>
> (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;
>
> (b) whether retirement payments were indexed as required by legislation and, if not, what remedial action (if any) could be taken;
>
> (c) policy and legislative issues, including provisions for:
>
> (i) use of certain life expectancy tables,
>
> (ii) permanency of reductions to commuted pensions, and
>
> (iii) indexation arrangements; and
>
> (d) recommendations on any potential changes to administrative arrangements, policy or legislation;
>
> (e) advice on costs associated with any recommendations;
>
> (f) all relevant existing information and previous reviews in relation to DFRDB, including the findings of the Ombudsman's investigation;
>
> (g) the level of understanding among DFRDB members about how the legislation works, and ways to improve this; and
>
> (h) any related issues.[1]

Conduct of the inquiry

1.2 Details of the inquiry were placed on the committee website at: http://www.aph.gov.au/senate_fadt. The committee also contacted a number of relevant individuals and organisations to notify them of the inquiry and invite submissions by 30 April 2021. Public submissions received are listed at Appendix 1.

1.3 The committee held a hearing on 20 May 2021 in Canberra. A list of witnesses who gave evidence at the public hearing is available at Appendix 2. Submissions and the Hansard transcript of evidence may be accessed through the committee website.

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[1] *Journals of the Senate*, No. 96—18 March 2021, p. 3365.

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1.4 The committee thanks the organisations and individuals who provided submissions and participated in the committee's hearing.

Background

What is DFRDB?

1.5 The Defence Force Retirement and Death Benefits (DFRDB) scheme operates to provide retirement benefits to members of the Australian Defence Force. (ADF). It commenced on 1 October 1972 and closed to new members on 30 September 1991[2] and has been closed to re-entering members since 1 July 2016.[3] Originally overseen by the DFRDB Authority, from 2011, it has been managed by the Commonwealth Superannuation Corporation (CSC).[4]

1.6 The DFRDB scheme was a 'specially designed pension arrangement which differed from other public sector superannuation schemes to accommodate the particular needs of the ADF'. For example:

- retirement pensions were based on rank, took into account earlier retiring ages and were designed to supplement civil employment earnings
- commutation provided access to capital for relatively young retirees who were transitioning to civilian life.[5]

1.7 The CSC 2019-20 Annual Report indicated that as at 30 June 2020 there were 51,560 DFRDB pensioners[6] (excluding Defence Forces Retirement Benefits (DFRB)) and 1,029 contributors.[7]

Joint Select Committee

1.8 Before the DFRDB scheme commenced, the DFRB scheme was in operation. On 2 September 1970 the Joint Select Committee on Defence Forces Retirement Benefits Legislation[8] was established 'to inquire into and report upon the

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2 When the Military Superannuation and Benefits Scheme (MSBS) was established.

3 It was not compulsory for DFRDB members to transfer to the MSBS. MSBS closed to new members on 30 June 2016 and from 1 July 2016 ADF Super became the default employer fund for all new ADF members. However members may choose another complying superannuation fund. Defence, *Submission 39*, p. 1.

4 Australian Government, Commonwealth Superannuation Corporation, About your scheme, A summary of the Defence Force Retirement and Death Benefits Scheme, 2016 pp. 5-6.

5 Commonwealth Ombudsman, Investigation into the administration of the Defence Force Retirement and Death Benefits (DFRDB) Scheme, Report No. 06 of 2019, December 2019, p. 5.

6 Pensioners figures indicate the number of pension accounts, not the number of individuals who get a pension (eg. One account can have multiple children or spouses paid from it)

7 *CSC Annual Report 2019-20*, pp. 354-355.

8 Chaired by Mr John David Jess, C.B.E. MP and is therefore referred to as the Jess Committee or Jess Report.

Defence Forces Retirements Benefits legislation…'. The final report of this committee, tabled on 18 May 1972, noted that the appointment of the committee 'reflected the concern of private members and of Senators of all parties with the operation of the present legislation. In particular the very high contribution rates that were being required of certain pre-1959 entrants to the scheme, the delays in completion of the statutory actuarial reviews and the ever growing complexity of the legislation were causing concern'.[9]

1.9 In broad terms, the committee recommended a new military superannuation scheme be established to replace the existing pre-1959 and post-1959 DFRB schemes[10] and that the assets of the DFRB Fund be transferred to the Consolidated Revenue Fund.[11]

1.10 The Department of Defence (Defence) confirmed that the DFRDB scheme legislation 'was derived from the 1972 report of the Joint Select Committee (the Jess Committee) which made 20 recommendations to the Government of the day. The majority of the recommendations were accepted, with modifications to some'.[12] Defence highlighted that the government of the day accepted most but not all of the recommendations.[13]

What is commutation?

1.11 Commutation, is 'the option to take a lump sum up front in exchange for a reduced retirement pay, [and] 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'. Originally:

> 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.[14]

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9 Joint Select Committee on Defence Forces Retirement Benefits Legislation, Report, 18 May 1972, p. 7.

10 DFRB is a closed scheme established in 1948 which closed to new contributors on 30 September 1972. Contributing customers at that time automatically transferred to DFRDB on 1 October 1972. See https://www.transparency.gov.au/annual-reports/commonwealth-superannuation-corporation/reporting-year/2018-2019-43 accessed 27 May 2021.

11 Leslie Nielson, Military superannuation myths and reality, Parliamentary Library, Research Paper no. 17, 2007-08, 10 January 2008, p. [7].

12 Defence, *Submission 39*, p. 1.

13 Defence, *Submission 39*, p. 3.

14 Commonwealth Ombudsman, Investigation into the administration of the Defence Force Retirement and Death Benefits (DFRDB) Scheme, Report No. 06 of 2019, December 2019, p. 5.

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1.12 Defence explained commutation in the following way:

> Commutation is the early payment of part of a member's retirement pay in the form of a lump sum. The decision to commute is entirely voluntary and is neither an advance nor a loan, but rather an immediate payment in exchange for a permanent reduction in pension. The lump sum forms part of the member's overall superannuation benefit and the pension is permanently reduced to recognise that lump sum recipients obtain long-term advantage from the immediate use of their lump sum.[15]

1.13 Defence explained that '[w]hen the DFRDB Act 1973 was legislated, the commutation provisions were mirrored off the DFRB scheme'.[16]

1.14 Eligible DFRDB members 'may elect to commute part of their retirement pay entitlement into a lump sum at the time of their discharge regardless of their age (which could have been as early as 36), or further employment'.[17]

1.15 S24(1) of the DFRDB Act provides the legislative basis for commutation: 'A person who is, or is about to become, entitled to retirement pay[18] may, by notice in writing given to CSC, elect to commute a portion of his or her retirement pay in accordance with this section'.[19]

1.16 It was noted that 'receiving commutation requires an active choice to be made. To receive a commutation lump sum, members needed to fill in a commutation election form and submit it to CSC within 3 months before retirement, or in the 12 months after discharge'.[20]

1.17 If a member elects to commute, paragraph 24(3)(b) of the DFRDB Act contains a statutory process of calculating the resulting reduction to retirement pay:

> the commutation lump sum is divided by the person's 'expectation of life factor' to produce the annual reduction for commutation. The expectation of life factor is worked out according to their age and gender using a table in Schedule 3.[21]

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15 Defence, *Submission 39*, p. 6.

16 Defence, *Submission 39*, p. 6.

17 Commonwealth Ombudsman, Investigation into the administration of the Defence Force Retirement and Death Benefits (DFRDB) Scheme, Report No. 06 of 2019, December 2019, p. 8.

18 A percentage of a person's salary immediately before discharge and depends on the number of complete years of effective service. See Commonwealth Ombudsman, Investigation into the administration of the Defence Force Retirement and Death Benefits (DFRDB) Scheme, Report No. 06 of 2019, December 2019, p. 9.

19 Commonwealth Ombudsman, Investigation into the administration of the Defence Force Retirement and Death Benefits (DFRDB) Scheme, Report No. 06 of 2019, December 2019, p. 9.

20 Commonwealth Ombudsman, Investigation into the administration of the Defence Force Retirement and Death Benefits (DFRDB) Scheme, Report No. 06 of 2019, December 2019, p. 9.

21 Commonwealth Ombudsman, Investigation into the administration of the Defence Force Retirement and Death Benefits (DFRDB) Scheme, Report No. 06 of 2019, December 2019, p. 11.

Numbers choosing to commute

1.18 The Commonwealth Ombudsman (Ombudsman) noted that the numbers choosing to commute dropped slightly in recent years but remains high (at or above 85 per cent).[22]

1.19 Defence reported that data from the CSC 'shows that during the period from 1996 to 2019 there were 19,591 DFRDB members eligible to commute and on average, approximately 94 per cent (18,513) elected to commute'.[23]

Review by the Commonwealth Ombudsman

1.20 The DFRDB has been subject to a number of reviews and these are detailed in the Defence submission.[24] The most recent review was undertaken by the Ombudsman which looked specifically at the information provided to DFRDB members with respect to commutation.

1.21 On 5 April 2019 the Minister for Veterans' Affairs and Defence Personnel wrote to Ombudsman asking that he consider undertaking an inquiry into the DFRDB scheme. After considering the request, on 10 April 2019, the Ombudsman wrote to the minister indicating that he had decided to commence an own motion investigation under the own motion powers *Ombudsman Act 1976*.[25]

1.22 The Ombudsman told the committee that he agreed to do so 'on the basis that there were serious allegations about how the scheme was administered'. The key issue was 'whether DFRDB members, or some of them, had been misled as to their DFRDB entitlements and were, consequently owed compensation'.[26]

Scope of the investigation

1.23 The Ombudsman limited the scope of the investigation to the 'administration of the DFRDB Scheme, and particularly the issue of commutation. The primary focus of the investigation [was] the accuracy of the information provided to DFRDB members'.[27]

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[22] Commonwealth Ombudsman, Investigation into the administration of the Defence Force Retirement and Death Benefits (DFRDB) Scheme, Report No. 06 of 2019, December 2019, p. 14.

[23] Defence, answers to questions on notice, received 4 June 2021, question 5. Note: CSC advised that data prior to 1996 is not available.

[24] Defence, *Submission 39*, pp. 2-3.

[25] Commonwealth Ombudsman, Investigation into the administration of the Defence Force Retirement and Death Benefits (DFRDB) Scheme, Report No. 06 of 2019, December 2019, p. 1.

[26] Commonwealth Ombudsman, *Submission 52*, p. [2].

[27] Commonwealth Ombudsman, Investigation into the administration of the Defence Force Retirement and Death Benefits (DFRDB) Scheme, Report No. 06 of 2019, December 2019, p. 1.

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1.24 The Ombudsman informed the committee that as well as inviting submissions, they met with stakeholder groups and interviewed more than 30 people. The submissions showed:

- the majority of DFRDB members who made submissions to our Office chose to commute and some of these decisions were based on a correct understanding of the scheme;
- a small number of submitters understood the scheme's operation and decided not to commute;
- many submitters felt they were misled to believe that the reduction to their retirement pay, resulting from commutation, was temporary and would cease when they reached their life expectancy factor age – some members felt frustration, disappointment and anger when this turned out to be incorrect;
- a large proportion of submitters asserted that they relied on Defence's advice to their detriment, and were owed compensation, however a small number of submitters told us that Defence's advice did not cause financial detriment, and some expressed that awarding compensation to the DFRDB members who chose to commute would be wrong.[28]

1.25 Mr Michael Manthorpe, Commonwealth Ombudsman, clarified for the committee that:

> My investigation was focused on the accuracy of information about commutation that was provided to DFRDB members by scheme administrators in relevant departments. This reflects the scope of my functions under the Ombudsman Act, which authorises me to investigate matters of administration, as opposed to matters of policy, concerning the design of the scheme.[29]

1.26 The Ombudsman noted that the following issues which go to the 'nature of the legislation passed by parliament and matters of government policy' were out of scope of the investigation:

- Whether legislation is fair and just, including provisions for:
  - Use of certain life expectancy tables
  - Permanency of reductions to commuted pensions
  - Indexation arrangements.
- Whether government ought to take different policy decisions or make amendments to legislation.[30]

1.27 The Ombudsman noted:

> While these matters are not within scope, the submissions we received indicated a high level of dissatisfaction with current policy settings, as

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[28] Commonwealth Ombudsman, *Submission 52*, p. [3].

[29] *Proof Committee Hansard*, 20 May 2021, p. 25.

[30] Commonwealth Ombudsman, Investigation into the administration of the Defence Force Retirement and Death Benefits (DFRDB) Scheme, Report No. 06 of 2019, December 2019, p. 2.

> expressed through the statutory arrangements. A section has therefore been included to summarise the out of scope issues arising in the submissions received. There was also evidence of confusion among DFRDB members about how DFRDB legislation works. We have endeavoured to provide clarification on the operation of the legislation.[31]

Design of the scheme

1.28 Issues raised with the committee focused on dissatisfaction with the design of the scheme. This included the effect of commutation on retirement pay (see Chapter 2) as well as indexation arrangements and some others including the use of the expectation of life factor tables (see Chapter 3).

Permanent reduction in retirement pay

1.29 The DFRDB legislation provides two options, to commute with a reduced pension or not to commute. Commutation and its effects are explained above.[32] See Chapter 2 about the information provided to DFRDB members on commutation and Chapter 3 in relation to this design aspect of the scheme.

Indexation

1.30 Defence noted that since the introduction of the DFRDB in 1973 'there have been a range of reviews to consider the most appropriate method of indexation for DFRDB members' and:

> While some reviews differ in the exact methods to be used, they broadly agree that a fair method if indexation allows for pension recipients to maintain the purchasing power of the pension over time.[33]

1.31 Defence further explained that in 1973, the Jess Committee recommended that 'pensions paid from DFRDB should be indexed annually to maintain relativity with Average Weekly Earnings. However, only ad hoc increases in line with Average Weekly Earnings were made to pensions between 1973 and 1976'.[34]

Legislative background

1.32 The Ombudsman went through the legislative background to indexation in his report as briefly described below:

- in 1977 the DFRDB Act was amended by the *Defence Force (Retirement and Death Benefit Amendments) Act 1977* which allowed the pension to be indexed from 1 July 1976 resulting in pensions increasing if there was an

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[31] Commonwealth Ombudsman, Investigation into the administration of the Defence Force Retirement and Death Benefits (DFRDB) Scheme, Report No. 06 of 2019, December 2019, p. 2.

[32] Defence, *Submission 39*, p. 6. See also Commonwealth Ombudsman, Investigation into the administration of the Defence Force Retirement and Death Benefits (DFRDB) Scheme, Report No. 06 of 2019, December 2019, Foreword.

[33] Defence, *Submission 39*, p. 8.

[34] Defence, *Submission 39*, p. 8.

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upward movement in the CPI (but not decreased if there was a downward movement);
- the *Superannuation and Other Benefits Legislation Amendment Act 1986* temporarily reduced the annual CPI indexation by 2 per cent from 23 October 1986 to 20 October 1989 at which point the published CPI indexation was again applied each year;
- from 1 January 2002, retirement pay indexation frequency was increased to twice a year;
- in 2014 the *Defence Force Retirement Benefits Legislation Amendment (Fair Indexation) Act 2014* added Division 2 of Part XA of the DFRDB Act which applies to pensioners over 55 years of age, to ensure DFRDB indexation arrangements in this group operate similarly to the indexation arrangements that apply to the age pension.[35]

1.33 The submission from Defence also outlines a number of reviews into this issue. Defence confirmed that since 2014 'there have been no further changes or reviews into the indexation methodology for DFRDB pensions'.[36]

1.34 In summary, currently:

> For members who are under 55, the relevant indexation rate is the Consumer Price Index (unless the CPI is negative, in which case the pension is unchanged. This ensures pensions are not reduced if there is downward movement in the CPI).
>
> For members who are 55 and over, the relevant indexation rate is the higher of CPI or the Pensioner and Beneficiary Living Cost Index. There is an additional safeguard which means the increase must be sufficient to ensure a hypothetical 'indicative' pension does not fall below 27.7 per cent of Male Total Average Weekly Earnings.[37]

1.35 While concerns about the statutory indexation formula increasing the commutation reduction over time fell within the scope of the Ombudsman's investigation, concerns about the statutory formula were beyond the scope but were summarised.[38] See Chapter 3 for discussion of issues raised in relation to indexation.

Structure of the report

1.36 The report consists of five chapters:

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[35] Commonwealth Ombudsman, Investigation into the administration of the Defence Force Retirement and Death Benefits (DFRDB) Scheme, Report No. 06 of 2019, December 2019, pp. 44-45.

[36] Defence, *Submission 39*, p. 9.

[37] Commonwealth Ombudsman, Investigation into the administration of the Defence Force Retirement and Death Benefits (DFRDB) Scheme, Report No. 06 of 2019, December 2019, p. 45.

[38] Commonwealth Ombudsman, Investigation into the administration of the Defence Force Retirement and Death Benefits (DFRDB) Scheme, Report No. 06 of 2019, December 2019, p. 44.

- Chapter 1 is the referral, conduct of the inquiry and some background information;
- Chapter 2 covers the information provided to DFRDB members in relation to commutation;
- Chapter 3 details the design issues with the scheme raised with the committee;
- Chapter 4 covers suggestions and costs; and
- Chapter 5 details the committee's conclusions and recommendations.

Chapter 2
Provision of information to DFRDB members

2.1 This chapter details the provision of information on commutation to DFRDB members, highlighting the information provided by the Commonwealth Superannuation Corporation (CSC) and Defence, as well as the findings of the Commonwealth Ombudsman (Ombudsman) who looked into this issue in detail, including whether there had been financial detriment as a result of the information provided and whether compensation was warranted. It also notes some responses to the Ombudsman's report and the Ombudsman's reply.

2.2 It is worth noting at the start of this chapter information contained in the Ombudsman's report about commutation which summarises the key issue and the options that have been and are available in legislation:

> It is important to note that there have only ever been two options available to DFRDB members: namely, to commute, or not to commute. DFRDB members reported being told that commutation was a loan to be repaid over their life expectancy. Such information is incorrect. At law, commutation is not a loan, but a permanent exchange of one type of entitlement for another. The result is a permanent reduction to retirement pay.[1]

Numbers choosing to commute

2.3 Ahead of investigating the information provided to DFRDB members the numbers choosing to commute is helpful to keep in mind. The Ombudsman's report noted that the numbers choosing to commute dropped slightly in recent years but remains high (at or above 85 per cent),[2] even after improved guidance about the effect of commutation started to be published from 2004. A 2001 Administrative Appeals Tribunal (AAT) decision also made it clear that 'retirement pay cannot revert to the pre commutation rates once life expectancy factor age is achieved'.[3]

2.4 The CSC told the committee that:

> Anecdotally, we are aware that the commutation option has been highly regarded by members of the Defence Force as it has assisted people to make the transition to civilian life (including allowing them to make

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1 Commonwealth Ombudsman, Investigation into the administration of the Defence Force Retirement and Death Benefits (DFRDB) Scheme, Report No. 06 of 2019, December 2019, Foreword.

2 Commonwealth Ombudsman, Investigation into the administration of the Defence Force Retirement and Death Benefits (DFRDB) Scheme, Report No. 06 of 2019, December 2019, p. 14.

3 Commonwealth Ombudsman, Investigation into the administration of the Defence Force Retirement and Death Benefits (DFRDB) Scheme, Report No. 06 of 2019, December 2019, pp. 14-15.

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> choices for their financial future, such as paying off loans and/or purchasing property.[4]

2.5 The Ombudsman reported on interviews held with some DFRDB members, that '[w]ith very few exceptions, we were told they would have still commuted, because at the time they needed access to capital, for example to purchase a home or business'.[5]

2.6 A submitter confirmed that:

> I would like to add that due to the many moves required during defence service most retiring DFRDB members relied on the commutation…lump sum to provide a deposit for their own homes as they settled back into civilian life.[6]

2.7 Mr Herb Ellerbock, Secretary, Australian Defence Force Retirees Association, (ADFRA) noted that his circumstances at the time meant that he needed to commute:

> I had not been able to establish anything after 20 years in the Army. We moved from pillar to post. I had a young family. Interest rates were very high at the time, something in the order of 17 per cent. It was the only way I was going to be able to buy a house. So, yes, I would have made that decision regardless.[7]

2.8 Mr Kel Ryan, President, Defence Force Welfare Association, noted that commutation 'notwithstanding that its future implications were little understood…was a significant attractive element to the scheme…'[8]

2.9 The DFRDB COMMUTATION CAMPAIGN (the Campaign), however, was of the view that '[h]ad the Superannuants been aware of the Life-Term impost of their Retirement Pay, very few would have accepted the lump sum proffered by the DFRDBA'.[9]

Provision of information

2.10 On the question of who provided incorrect information to them, some submitters pointed to Defence, a smaller number to the Defence Force Retirement and Death Benefits Authority (DFRDBA)/CSC and many were not specific, stating that they attended resettlement seminars and outlining what they were told.

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4 CSC, *Submission 50*, p. [4].

5 Commonwealth Ombudsman, Investigation into the administration of the Defence Force Retirement and Death Benefits (DFRDB) Scheme, Report No. 06 of 2019, December 2019, p. 34.

6 Name withheld, *Submission 26*, p. [1]. See also Mr Charles Myhill, *Submission 29*, p. 2.

7 *Proof Committee Hansard*, 20 May 2021, p. 11.

8 *Proof Committee Hansard*, 20 May 2021, p. 12.

9 DFRDB COMMUTATION CAMPAIGN, *Submission 22*, p. 6.

2.11 In summary, the argument to the committee is that some DFRDB members were led to believe that the reduction to their retirement pay as a result of commuting or taking a lump sum was temporary and would cease on reaching their life expectancy factor age. DFRDB members assert that they relied on this information to their financial detriment and/or that this design aspect of the DFRDB scheme is not fair.

2.12 The Campaign which represents over 1,000 veterans registered with the campaign and a further 2,000 with registered interest through social media sites, detailed the understanding that arose from advice provided by Defence:

> Superannuants were fully aware that once the Lump Sum was received, their annual Retirement Pay would be reduced by an amount calculated on their length of Service, rank, salary, and the number of years until they reached their Notional Life Expectancy point. At that point, they understood their Retirement Pay reductions would cease. This too, they were falsely assured of by Defence, in Official publications over a 20-year period….[10]

2.13 Mr Ken Stone, Independent Advocate, the Campaign, pointed out to the committee that Defence published 'six editions of an official publication' that advised ADF personnel that retirement pay reductions would stop once they reached their notional retirement age.[11]

2.14 Commander Anthony Parkin (Rtd) was just one of many who recounted their experience:

> I attended a Resettlement Seminar early 1989 prior to retiring in July 1989 having served in the Royal Australian Navy for 20 years. I was informed of the opportunity to commute a portion of my DFRDB pension and receive a lump sum payment. I understood that, once the lump sum was received, my annual Retirement Pay would be reduced by an amount calculated on my length Service, rank, salary, and the number of years until I reached my Notional Life Expectancy point, when I understood the reduction would cease. At no time was I advised that this reduction in my Retirement Pay would be for life; I expected my full Retirement Pay to be reinstated once I had paid off the lump sum and reached the Life Expectancy point of around 72 years.[12]

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10 DFRDB COMMUTATION CAMPAIGN, *Submission 22*, p. 6.

11 *Proof Committee Hansard*, 20 May 2021, p. 2.

12 Cmdr Anthony Parkin (rtd), *Submission 1*, p. 1. See also Name withheld, *Submission 2*, pp. 1-3; Mr Neville Madden, *Submission 3*, p. 1; Mr William Harrison, *Submission 4*, p. 1; Mr Ian Bawden, *Submission 5*, p. 1; Mr Alan White, *Submission 6*, p. 1; Mr Anthony Ryan, *Submission 7*, p. 1; Mr William Krause, *Submission 8*, p. 1; Mr Kenneth Park *Submission 9*, p. 1; Name withheld, *Submission 10*, pp. 1-2; Mr Keith McIntosh, *Submission 11*, p. 1; Commander Graham J Darcy RAN (Rtd), *Submission 12*, pp. 1-2; Mr Clive Dennett, *Submission 13*, pp. 1-2; Mr John Snell, *Submission 14*, p. 1; Mr Graham Morris, *Submission 15*, p. 1; Mr Bruce Campbell, *Submission 16*, pp. 1-3; Australian Army Training Team Vietnam Association (WA Branch) Inc, *Submission 17*, pp. 1-2; Name withheld, *Submission 18*, p. 1; WG Ritchie AM RAN (Rtd), *Submission 19*, p. 1; Mr Pater Larard,

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2.15 Similarly another submission stated:

> 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 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.[13]

2.16 Yet another submitter argued:

> DFRDB members were not informed that if they took the commutation option that they would keep paying for the commutation lump sum with a reduced pension for the rest of their lives. DFRDB Members who chose not to commute their pensions will still be getting the extra amount (circa $2000 per year) for the rest of their lives.[14]

DFRDBA/CSC

2.17 Other submitters pointed to the DFRDBA (now CSC) as the source of misleading information or saw failings in communication with DFRDB members. For example Mr Rodney Cox told the committee that he considers that 'I have been deceived by the DFRDB AUTHORITY in accepting a Lump Sum benefit known as a COMMUTATION – without the conditions, thereof, being openly made known to me'.[15] Mr Keith McIntosh was also of the view that the CSC failed to disclose the fact that commutation 'was for life in the resettlement seminar I attended and in the correspondence I received'.[16]

2.18 The Campaign also pointed to the DFRDBA. Mr Ken Stone explained:

> …the primary DFRDB Authority brochure, that was issued on October 1974 and had DFRDB advice to serving members, was not actually issued

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Submission 20, pp. 1-2; Mr Clive Connor, *Submission 23*, pp. 1-2; Mr Robert Richards, *Submission 24*, p. 1; Name withheld, *Submission 25*, p. [2]; Name withheld, *Submission 27*, p. [1]; Mr Charles Myhill, *Submission 29*, p. 1; Mr David Plummer, *Submission 31*, p. [4]; Name withheld, *Submission 32*, p. 2; Name withheld, *Submission 33*, pp. [1-2].; Mr Richard Usher, *Submission 34*, p. 3; Name withheld, *Submission 35*, p. 2; Name withheld, *Submission 37*, p. [1]; Defence Force Welfare Association (WA Branch, *Submission 38*, p. 1; Name withheld, *Submission 40*, p. [2]; Mr Paul McGregor, *Submission 41*, p. [1]; Name withheld, *Submission 42*, p. 2; Name withheld, *Submission 43*, p. [2]; Name withheld, *Submission 44*, p. [1]; Mr Steven Kersnovske, *Submission 47*, pp. 1-2; Name withheld, *Submission 48*, p. 2; Mr Martin Smith, *Submission 55*, p. [1]; Mr Jim Nicholls, *Submission 56*, p. 2; Name withheld, *Submission 58*, p. [1]; Mr Michael Tehan, *Submission 59*, p. [1]; Mr Tom Williams, *Submission 61*, p. [1]; Mr Greg Decker, *Submission 73*, p. 1; Mr Arthur Drury, *Submission 76*, p. 2.

13 Name Withheld, *Submission 18*, p. [1].

14 Name withheld, *Submission 26*, p. [2].

15 Mr Rodney Cox, *Submission 51*, p. 3. Emphasis in original.

16 Mr Keith McIntosh, *Submission 11*, p. 1. See also Mr Bruce Campbell, *Submission 16*, p. 3.

> to every serving ADF member. No; the authority only issued it to DFRDB Authority resettlement counsellors and Department of Defence resettlement administrators.[17]

2.19 Mr Stone explained further:

> That authority [DFRDBA] created and clearly enunciated administrative policy for communication to the Department of Defence—the scheme sponsor—to whom they were responsible. Why not the same statement to superannuants? It was clear, it was concise and it was understandable. Conspicuously, though, that same authority abjectly failed to render the clear and concise interpretation and communication of that policy to their clients, those being DFRDB contributors and veteran superannuants.[18]

2.20 Mr Stone concluded:

> The maladministration of client communications by the DFRDB [A]uthority failed to provide accurate policy advice to contributors. In so doing, it failed to identify its prime target audience and failed to deliver [correct] communication policy to them.[19]

2.21 The Campaign alleged that:

> [t]he term Commutation, and the policy it represented, in applying a Life-Term impost (at the full reduction-rate applied to total recovery of the pre-payment sum by their National Life Expectancy Point, ongoing) was duplicitously hidden by DFRDBA from contributors. Additionally, also over-written with false information, by their direct employer, Defence. The TRUE policy was never revealed to eligible superannuants – even on revelation by the DFRDBA some 30-years after the scheme was launched, only ADF personnel were then advised – not Veteran Superannuants.[20]

2.22 Further, the Campaign submitted that there was 'a complete failure in client communications and consequently, client understanding of its Schemes'. It added:

> Such communications should be on a one-on-one basis not through intermediaries such as Departmental processes. The same conditions should apply to CSC in regards to its clients, as are met by private sector financial industry providers.[21]

2.23 Another submitter argued that 'the DFRDB Authority has failed to divulge to contributors, its intent to sustain reductions in pay indefinitely even after the full amount of commutation has been recovered'.[22]

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17 *Proof Committee Hansard*, 20 May 2021, p. 2.

18 *Proof Committee Hansard*, 20 May 2021, p. 1.

19 *Proof Committee Hansard*, 20 May 2021, p. 1.

20 DFRDB COMMUTATION CAMPAIGN, *Submission 22*, p. 12.

21 DFRDB COMMUTATION CAMPAIGN, *Submission 22*, pp. 9, 19. Emphasis in original.

22 Name withheld, *Submission 32*, p. 3.

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2.24 Mr Michael Tehan submitted that there was a 'failure by DFRDB[A] to openly identify a crucial condition; that the pension would be permanently reduced even after the advance payment had been fully repaid'.[23]

2.25 The Vietnam Veterans Association of Australia also alleged that 'false advice [was] often given by representatives of the DFRDB[A].'[24] Mr Jim Nicholls pointed to the incorrect information provided by Defence arguing that 'it serves to demonstrate the ineptitude of the DRDFB Authority to communicate its policy condition even to the Defence Department that sponsors the DFRDB Superannuation Scheme, let alone to individual contributors and superannuants'.[25]

2.26 However, Mr Colin Wade, one of three single service officers representing the respective service nominees on the DFRDB Authority Board who had extensive involvement with and experience of the administration of the DFRDB scheme, provided evidence that:

> [a]ll DFRDB members who voluntarily elected commutation of part of their retirement pay were provided with the correct advice by the DFRDB Authority. Members who elected to apply for a lump sum commutation and a reduction in retirement pay signed the commutation election form and the DFRDB Authority subsequently confirmed the election to commute and advised members the reduction in retirement was reduced from that date in accordance with the intent of the DFRDB Act 1973.[26]

2.27 Mr Wade added that during ADF Resettlement Seminars 'the DFRDB seminar presentations were conducted by experienced Counselling Officers' and they 'conducted the presentations using a standardized, pre-prepared 'overhead projector' slideshow and later a 'powerpoint' format to ensure consistency of information across all seminars'. He noted that video footage reviewed by the Ombudsman recorded in 1984 and 1989 confirmed that DFRDB members were advised of the correct application of the life expectancy factor 'as described in the original DFRDB Authority circular provided to Defence in 1973'.[27]

Did everyone receive incorrect information?

2.28 While some submitters contended that all DFRDB members received the incorrect advice,[28] this was not the evidence provided to the committee or the Ombudsman. The Ombudsman noted that '[s]ome members [chose to

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23 Mr Michael Tehan, *Submission 59*, p. 2.

24 Vietnam Veterans Association of Australia, *Submission 49*, p. 1.

25 Mr Jim Nicholls, *Submission 56*, p. 2.

26 Mr Colin Wade, *Submission 60*, p. [5].

27 Mr Colin Wade, *Submission 60*, p. [5].

28 Mr Ken Stone, *Proof Committee Hansard*, 20 May 2021, p. 3.

commute] on the basis of the incorrect advice, while others did so based on a correct understanding of the scheme'.[29]

2.29 While noting that many ADF members were misinformed about the operation of commutation, the Defence Force Welfare Association (DFWA) stated that '[i]t is also clear that many ADF members were correctly informed of the effects of commutation and specifically that the reduction to the pension was for life. Whether the ADF Members acted on correct or incorrect advice, most Members elected to commute. A small percentage decided not to commute'.[30]

2.30 The committee received a submission which indicated that the submitter:

> elected to commute my DFRDB pension on leaving the services, in the full knowledge that in doing so my pension (payment) would be reduced for my lifetime and in the event of my demise my then surviving wife would receive 5/8 of my pension (calculated on the basis that I had not commuted)'.[31]

2.31 This submitter added that 'I always made a point of advising both senior officers and NCOs who were retiring or about to retire of the conditions of DFRDB including the permanent reduction of pension should they commute and the benefits of a "deferred pension" which was not well known at the time'.[32] While acknowledging the findings of the Ombudsman's inquiry that there are people who were given incorrect information, the submitter added that 'these same persons appear very reluctant to admit or agree that many were properly informed and indeed make false claims to back their assertions that **ALL 55,000 DFRDB RECIPIENTS WERE MISLED**'.[33]

2.32 The submitter told the committee that they attended a resettlement seminar in late 1984 over 2 days, attended by around 100 personnel where 'quite a discussion ensued regarding the life long pension reduction'.[34]

2.33 This submitter further noted that '[t]here are Facebook sites specifically on the DFRDB commutation dispute which actively discourages, removes and in my case threaten those who claim to have known about the life long reduction in pension because it weakens their claims of rorts, criminal behaviour, false and

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[29] Commonwealth Ombudsman, Investigation into the administration of the Defence Force Retirement and Death Benefits (DFRDB) Scheme, Report No. 06 of 2019, December 2019, Foreword.

[30] DFWA, *Submission 54*, p. 7. See also Mr Win Fowles, *Proof Committee Hansard*, 20 May 2021, p. 13.

[31] Name withheld, *Submission 21*, p. 1.

[32] Name withheld, *Submission 21*, p. 1.

[33] Name withheld, *Submission 21*, p. 1. Emphasis in original.

[34] Name withheld, *Submission 21*, p. 2.

misleading information they claim was promulgated or published by relevant Government Authorities'.[35]

2.34 This submitter concluded that:

> I am totally of the view that those who are seeking compensation, restitution of the payment at the conclusion of their Notional Life Expectancy are opportunists taking advantage of a perceived lack of information at the time of their discharge, be it real or imagined. Would I like my pension restored at reaching my NLE, the answer is YES. But I accepted the conditions prevailing at my time of discharge and I will not lie, claim rorts, misrepresentation or whatever in order to do so.[36]

2.35 Mr Wade also attended presentations by representatives of the DFRDBA to ADF personnel on the DFRDB scheme at ADF resettlement seminars. He told the committee that throughout his career he was not aware that ADF personnel in pay and discharge sections were providing misleading information and had he or the other service representatives been aware then corrective action would have been taken.[37]

2.36 Mr Wade noted the numerous examples of incorrect information disseminated to ADF personnel and agreed that the failure of Defence to ensure only accurate information was provided to DFRDB members constituted defective administration by Defence. He added that:

> However, while the misleading information was provided in good faith, no ADF personnel were authorised to interpret documents and advice provided to DFRDB members by the DFRDB Authority on the DFRDB scheme or the commutation provisions within the DFRDB Act 1973.[38]

2.37 Further, '[w]hile amounting to defective administration by Defence, the provision of unauthorized and misleading information, does not affect the legitimacy of the DFRDB legislation'.[39]

2.38 Defence highlighted that the Ombudsman found 'there had been a mixed message over the years' in relation to the provision of information on commutation:

> Sometimes the message was correct and clearly identified what commutation meant for members, but, unfortunately, on other occasions, that wasn't the case. A number of publications within the Defence context over the years had put forward some wrong information, and that's what

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35 Name withheld, *Submission 21*, pp. 1-2.

36 Name withheld, *Submission 21*, p. 2. Emphasis in original.

37 Mr Colin Wade, *Submission 60*, pp. 6-7.

38 Mr Colin Wade, *Submission 60*, p. 6.

39 Mr Colin Wade, *Submission 60*, p. 8.

> the Ombudsman had identified through the inquiry that they had conducted.[40]

Commonwealth Ombudsman findings

Information provided by DFRDBA/CSC

2.39 The Ombudsman's report contains a detailed description of the DFRDBA/CSC operational guidelines, brochures, forms and letters from 1973.[41]

2.40 In 1973, the DFRDBA issued a circular to all Defence service agencies explaining how the scheme would operate. This circular clearly explained the permanence of the commutation reduction:

> Although a life expectancy factor is used, full retirement pay is not restored should the member live beyond normal life expectancy. By the same token, should the member die before attaining the expected age, no attempt is made to recover the amount of the lump sum outstanding form the dependents or the estate.[42]

2.41 The original 1973 form for commutation required members to sign the following acknowledgement:

> I realise that under the provisions of Section 24 future retirement pay payments will be reduced as a consequence of this election on and from the date the election is received by the Authority.[43]

2.42 In 1978 the form was accompanied by explanatory notes which stated 'Commutation is a conversion of a portion of future retirement pay payments to a one time lump sum. Once the conversion is made the portion commuted cannot be restored during the member's lifetime'.[44]

2.43 The Ombudsman noted that 'forms were often accompanied by a print out of the commutation calculation and the future rate of retirement pay'.[45]

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[40] Mr David Nockels, First Assistant Secretary, People, Policy and Culture, Department of Defence, *Proof Committee Hansard*, 20 May 2021, p. 21.

[41] Commonwealth Ombudsman, Investigation into the administration of the Defence Force Retirement and Death Benefits (DFRDB) Scheme, Report No. 06 of 2019, December 2019, pp. 24-25.

[42] Commonwealth Ombudsman, Investigation into the administration of the Defence Force Retirement and Death Benefits (DFRDB) Scheme, Report No. 06 of 2019, December 2019, p. 25.

[43] Commonwealth Ombudsman, Investigation into the administration of the Defence Force Retirement and Death Benefits (DFRDB) Scheme, Report No. 06 of 2019, December 2019, p. 26. This was also pointed out by Mr Wade, *Submission 60*, p. [4].

[44] Commonwealth Ombudsman, Investigation into the administration of the Defence Force Retirement and Death Benefits (DFRDB) Scheme, Report No. 06 of 2019, December 2019, p. 27. This was also pointed out by Mr Wade, *Submission 60*, p. [4].

[45] Commonwealth Ombudsman, Investigation into the administration of the Defence Force Retirement and Death Benefits (DFRDB) Scheme, Report No. 06 of 2019, December 2019, p. 27.

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2.44 The Ombudsman found that [t]he information provided by the DFRDB Authority (now CSC) was at all times correct. However:

> while correct, the information was not sufficiently clear to correct the misunderstanding that many members had from their interactions with Defence. With the benefit of hindsight, I can now see how this information could have been clearer, as is the case with CSC's current documents.[46]

2.45 The Campaign was critical that the Ombudsman Report found no defective administration in relation to the DFRDBA (now CSC). Mr Stone argued that the Ombudsman 'was blind to the DFRDBA administrative failures'.[47]

2.46 The information provided has subsequently been improved on a number of occasions since 2004.[48] The current advice available from the CSC booklet, *A summary of the Defence Force Retirement and Death Benefits Scheme*, notes: 'Commutation of a benefit results in a permanent reduction in your retirement benefit based on your life expectancy…If you choose to claim a commutation lump sum, this will permanently reduce your pension…'.[49]

2.47 CSC noted that it participated in the Ombudsman's investigation 'to the fullest extent possible…even though CSC did not exist for the vast majority of the period in question'. CSC provided:

> 'a large quantity of historical documents' dating back some 40 years to the Ombudsman. The Ombudsman found that CSC was 'responsive and co-operative' in providing 'significant amounts of information going back many decades'.[50]

2.48 CSC also noted that 'people could obtain information and confirm their understanding prior to making an election to commute'.[51]

2.49 Ms Alana Scheiffers, General Counsel, CSC, elaborated on the actions taken following the Ombudsman's report:

> The recommendations from the inquiry firstly related to updating communications, so those communications have all been reviewed and updated per the recommendation. We have reported back to the Ombudsman and advised the Ombudsman that all of those recommendations have been implemented. There was also a recommendation around communicating with a specific cohort of

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46 Commonwealth Ombudsman, Investigation into the administration of the Defence Force Retirement and Death Benefits (DFRDB) Scheme, Report No. 06 of 2019, December 2019, Foreword.

47 *Proof Committee Hansard*, 20 May 2021, p. 2.

48 Commonwealth Ombudsman, Investigation into the administration of the Defence Force Retirement and Death Benefits (DFRDB) Scheme, Report No. 06 of 2019, December 2019, p. 55.

49 CSC, *A summary of the Defence Force Retirement and Death Benefits Scheme*, 2016, p. 14.

50 CSC, *Submission 50*, p. [2].

51 CSC, *Submission 50*, p. [3].

> members. I can't recall exactly off the top of my head but it was a certain time frame prior to retirement. So we have communicated with that cohort of members as required and continue to answer any questions. A part of the recommendations, a minor one, was to make sure that we referred to Defence's apology, which we did on our website.[52]

2.50 In relation to the specific cohort, the Ombudsman recommended that 'commutation election forms and standard letters (sent to members in advance of their retirement and immediately after commutation) should clearly explain commutation will result in a permanent reduction to retirement pay'. In addition the CSC should identify 'whether there are any members who have discharged and have already received the existing standard letter, but who are still in time to either commute, or ask CSC to reverse their commutation election. CSC should write to this cohort to explain that commutation will result in a permanent reduction to retirement pay'.[53]

2.51 On notice, the CSC confirmed that it had communicated with 47 individuals as a result of the Ombudsman's recommendation.[54]

2.52 Responding to questions from the committee, Ms Schieffers outlined the way the CSC communicates with members:

> There are two methods of communication we would have with our members. Firstly, for those who are currently contributors, those who are still serving, which is approximately 900 members, they receive annual statements from us each year. With respect to pensioners, we communicate with them on a regular basis to advise them of updates to their pension payments with respect to the CPI increases that happen six-monthly.[55]

2.53 On notice, the CSC confirmed that they have contact details for all members as they 'are all current DFRDB pensioners who receive regular communication from CSC'.[56]

2.54 Given the allegations in relation to the CSC, particularly those of intent to sustain reductions in pension, it is also important to note the role of the CSC:

> CSC does not make or change policy in regard to any of the super schemes that we administer, including the DFRDB scheme.
>
> Policy and legislative change is formulated and dictated by the Government of the day. CSC simply puts in place any changes and

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52 *Proof Committee Hansard*, 20 May 2021, p. 20.

53 Commonwealth Ombudsman, Investigation into the administration of the Defence Force Retirement and Death Benefits (DFRDB) Scheme, Report No. 06 of 2019, December 2019, p. 56.

54 CSC, Answers to questions on notice from public hearing 20 May 2021, received 26 May 2021, p. 1.

55 *Proof Committee Hansard*, 20 May 2021, p. 20.

56 CSC, Answers to questions on notice from public hearing 20 May 2021, received 26 May 2021, p. 1.

> administers the schemes according to the policies or legislation made by the Government.[57]

Information provided by Defence

2.55 The Ombudsman found 'numerous examples of incorrect written and verbal information being disseminated within Defence from commencement of the scheme in 1973 onwards'. He noted that '[t]his information helped create and reinforce a relatively widespread misunderstanding among DFRDB members that the retirement pay reduction due to commutation would cease on reaching the life expectancy factor age'.[58]

2.56 The Ombudsman's investigation focused on the accuracy of the information provided to DFRDB members and it recognised that:

> Many DFRDB members, likely numbering in the thousands, were provided incorrect information by Defence personnel who were responsible for providing advice about the workings of the scheme. Those DFRDB members were led to believe, incorrectly, that their commuted pensions would increase once they reached their life expectancy factor age. The absence of clear guidelines and instructions to staff led to this incorrect information being provided, which resulted in a misunderstanding of the basic design of the scheme.[59]

2.57 The Ombudsman concluded that '[i]n my view, this amounted to defective administration by Defence' and recommended that the Secretary of the Department of Defence and the Chief of the Defence Force apologise for the defective administration that occurred and for the disappointment members have experienced. The apology letter can be found at Appendix D to the Ombudsman's report.[60] It is also available from the Defence website.[61]

2.58 On notice, Defence advised that 'four individuals contacted the Department of Defence via the DFRDB investigation email address to request a posted copy of the apology letter. One individual called requesting a verbal apology, and a response was provided by Defence'. In addition:

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[57] CSC Annual Members' Meeting, Tuesday 16 March 2021, Questions and Answers, 15 April 2021, p. 15.

[58] Commonwealth Ombudsman, Investigation into the administration of the Defence Force Retirement and Death Benefits (DFRDB) Scheme, Report No. 06 of 2019, December 2019, p. 22.

[59] Commonwealth Ombudsman, Investigation into the administration of the Defence Force Retirement and Death Benefits (DFRDB) Scheme, Report No. 06 of 2019, December 2019, Foreword.

[60] Commonwealth Ombudsman, Investigation into the administration of the Defence Force Retirement and Death Benefits (DFRDB) Scheme, Report No. 06 of 2019, December 2019, Foreword.

[61] See https://www.defence.gov.au/PayandConditions/ADF/Super-DFRDB-review.asp accessed 8 April 2021.

> Since May 2019 there have been 115 contacts via 1800DEFENCE and the Defence Customer service email inbox regarding DFRDB. This includes both enquiries that were general in nature and enquiries that were requesting specific information to support submissions to the Ombudsman. Of this five enquiries were seeking further information or seeking an appeal in relation to the Ombudsman's review. All queries were responded to by Defence.[62]

2.59 Defence indicated that from the early 2000s onwards it has provided the correct information to DFRDB members.[63]

Claims of financial detriment

2.60 Many DFRDB members who wrote in to the committee believe that based on the information provided to them, their decision to commute has resulted in financial detriment, which they want remedied.[64] For example, the Campaign stated:

> The compulsory Retirement Pay reduction continued beyond Superannuant NLE points with Veteran Superannuants being unaware this would continue Life-Term. This was at the financial detriment of the 55,000 Veteran Superannuants that accepted the Commutation, and **without superannuants knowing the actual conditions of repayment as automatically applied to their Superannuation by the Commonwealth's DFRDB agent**.[65]

2.61 The Campaign added:

> Our campaign contends the Commonwealth is depriving DFRDB Superannuants of over $100 MILLION annually from ongoing Retirement Pay reductions – despite Superannuants having fully repaid their Commutation Lump Sum on reaching their Life Expectancy point. This estimate is simply an assumed average reduction, across the cohort, of some $2,000 per person.[66]

2.62 The Campaign summarised their position:

> **The Veteran Submissions** [to the Ombudsman's investigation]…**at no stage, claimed financial detriment in comparison to those that did not commute, yet this was the comparison made by the Ombudsman.**
>
> The contention by Veteran Superannuants was, ALWAYS: **that as individuals they suffered severe financial detriment through the life-**

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62 Defence, Answers to questions on notice, received 4 June 2021, Question 1.

63 Defence, *Submission 39*, p. 4.

64 Commander Anthony Parkin (Rtd), *Submission 1*, p. 2; Mr Ian Bawden, *Submission 5*, p. 2; Mr Anthony Ryan, *Submission 7*, p. 1.

65 DFRDB COMMUTATION CAMPAIGN, *Submission 22*, p. 7. Emphasis in original.

66 DFRDB COMMUTATION CAMPAIGN, *Submission 22*, pp. 7-8. Emphasis in original.

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> **term impost of Retirement Pay Reductions, beyond what they would have, had they not commuted.**[67]

2.63 Another submitter argued:

> Every Member who chose to commute will suffer financial detriment when they reach their perceived Life Expectancy under [t]he scheme. Once this age is reached all money provided to the member as a result of [commutation] would have been paid back to the government in full. The continuation of these payments until the death of the member is to their …financial detriment. There is no reason [ex]cept to be a [source] of financial revenue to the government for these payments to continue past the accepted life expectancy.[68]

Commonwealth Ombudsman investigation

2.64 The Ombudsman considered what should occur to remedy the defective administration.

Engaging actuarial expertise

2.65 The Ombudsman engaged two expert actuaries, the Australian Government Actuary (AGA) and KPMG, to independently model a number of scenarios, ie. the financial results of commuting and not commuting, in order to determine 'whether those who were given misleading information were likely to have suffered overall financial loss as a result of their choice'.[69]

2.66 Some submissions questioned this modelling. For example, Mr Stone, the Campaign, asserted:

> The Ombudsman's inquiry accepted just 12 cases of the 55,000 data sets available from CSC. He used this speculatively and inappropriately to create a case whereby spurious financial modelling determined that none of the 55,000 superannuants suffered any financial detriment by accepting a commutation despite they are still paying the same amount as the first year they started reimbursing the Commonwealth. Yet, annually, still their retirement pay suffers reduction at the same rate of benefit as its first year benefit. Would any superannuant knowingly accept an open-ended debt that would grossly outweigh its benefit? I think not.[70]

2.67 The ADFRA also questioned the modelling stating that 'those who responded to the Ombudsman's investigation were not a valid sample of the total DFRDB recipient population'.[71]

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67 DFRDB COMMUTATION CAMPAIGN, *Submission 22*, p. 19. Emphasis in original.

68 Name withheld, *Submission 27*, p. [1].

69 Commonwealth Ombudsman, Investigation into the administration of the Defence Force Retirement and Death Benefits (DFRDB) Scheme, Report No. 06 of 2019, December 2019, Foreword.

70 *Proof Committee Hansard*, 20 May 2021, p. 2.

71 ADFRA, *Submission 36.2*, p. 1.

2.68 The Ombudsman explained how the modelling was undertaken:

> The modelling provided by both AGA and KPMG was factual, based on real-life scenarios with all assumptions chosen by our Office. Although we had regard to the actuaries analysis provided as part of their reports, the Office undertook its own independent analysis of the modelling results.[72]

2.69 The actuaries were asked to assume two investment scenarios for each case. The first scenario was based on the lump sum being invested in the purchase of a home (as based on interview this was likely to have been the most common use of the lump sum). The second scenario was based on the lump sum being placed in a term deposit. The actuaries were asked to use historical home loan and term deposit rates.[73]

2.70 The Ombudsman clarified that their modelling did not compare the hypothetical outcome, ie. if the law had permitted retirement pay to increase on reaching life expectancy factor age:

> While DFRDB members would undoubtedly be better off financially under this approach, it is not a suitable point of comparison. This is because, while disappointment and unmet expectations are legitimate causes for concern, particularly where they are the consequence of defective administration, they are unlikely to be financially compensable, in court proceedings, as a person was never entitled to this financial outcome.[74]

2.71 It was further explained:

> The modelling we commissioned is, in our view, a more accurate way of determining the likelihood of a person experiencing an actual loss (as opposed to financial disappointment) as the result of deciding to commute when compared to not commuting. It takes into account, using conservative assumptions, the economic benefits of both options.[75]

2.72 At the hearing Mr Manthorpe indicated his confidence 'in both the independence and the professional credibility of the actuaries who worked with us on this issue…'.[76]

2.73 Providing further detail about the approach, Mr Manthorpe stated:

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[72] Commonwealth Ombudsman, Investigation into the administration of the Defence Force Retirement and Death Benefits (DFRDB) Scheme, Report No. 06 of 2019, December 2019, p. 3. Note: Both firms were provided with relevant data from 12 de-identified real life cases and asked to model the two outcomes from the two options available under the DFRDB Act.

[73] Commonwealth Ombudsman, Investigation into the administration of the Defence Force Retirement and Death Benefits (DFRDB) Scheme, Report No. 06 of 2019, December 2019, p. 35.

[74] Commonwealth Ombudsman, Investigation into the administration of the Defence Force Retirement and Death Benefits (DFRDB) Scheme, Report No. 06 of 2019, December 2019, pp. 34-35.

[75] Commonwealth Ombudsman, Investigation into the administration of the Defence Force Retirement and Death Benefits (DFRDB) Scheme, Report No. 06 of 2019, December 2019, p. 35.

[76] *Proof Committee Hansard*, 20 May 2021, p. 26.

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> We looked at everybody's stories. As you know, we had thousands of people approach us, and we looked at, and considered, every single submission that was made to us. In terms of their actuarial modelling—and I think that's what you're getting at—we worked with the actuaries to identify 12 cases. I know I did use the word 'samples' a little while ago, but probably a better way to put it is that there were 12 cases that we thought provided a broadly representative and realistic set of circumstances to model whether people were or were not financially disadvantaged by the choice to commute. …[The list] was informed by people leaving the military at different times, leaving the military at different ages, or leaving the military having achieved different levels of rank and, therefore, salary. That then gave us the basis upon which to give the actuaries a set of cases to model to see how that played out over time.[77]

2.74 It was emphasised that they did not study 50,000 cases and '[i]ndeed, no actuary would; they would always choose a sample, or some cases or whatever to do a piece of modelling'.[78]

2.75 Mr Manthorpe further explained the approach taken to the modelling and the findings:

> We haven't gone and investigated 50,000 individual cases. We took a sample of cases that informed the actuarial modelling, and that sample was based on trying to get a range of scenarios—different ages, different ranks, different times at which they entered and left the military—to get a broad spectrum of possibilities to test whether the commutation option that they took was better or worse in the long run than not taking commutation. If that modelling had demonstrated that they were better off not taking commutation, if they'd been misled about what commutation meant and that had influenced them to take commutation, then you might have a widespread incidence of a case for compensation or some kind of reparation, but in the end that's not what the modelling demonstrated.[79]

2.76 The approach and results of the AGA and KPMG modelling are available from the Ombudsman's website.[80]

Commonwealth Ombudsman findings

2.77 The Ombudsman found that:

> In all of the scenarios we modelled, using conservative assumptions about how retiring members might have used the lump sum, commutation has resulted in a beneficial overall financial outcome for DFRDB members to date. This is particularly true for DFRDB members who retired in the years before 2010. While some of those who discharged in recent years may be able to make the case that at some time in the future they could be

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77 *Proof Committee Hansard*, 20 May 2021, p. 28.

78 Mr Michael Manthorpe, *Proof Committee Hansard*, 20 May 2021, p. 30.

79 *Proof Committee Hansard*, 20 May 2021, p. 26.

80 See https://www.ombudsman.gov.au/How-we-can-help/australian-defence-force/dfrdb accessed 8 April 2021.

> financially worse off having commuted, I am satisfied these decisions to commute were made after CSC improved its publications to explicitly advise that the commutation reduction is permanent.[81]

2.78 Defence indicated that the modelling undertaken by the Ombudsman 'demonstrated having early access to capital provided by commutation was generally beneficial to DFRDB members relative to the alternative of not commuting'.[82]

2.79 The Ombudsman concluded:

> I am satisfied the decision to commute is not likely to have, of itself, caused financial loss, relative to the only other option that was available at law. I have therefore concluded that it is not appropriate to recommend compensation in a broad sense.[83]

2.80 The Ombudsman pointed out that 'missing out on a benefit to which a person is not actually entitled under the law does not necessarily mean that the person has suffered financial detriment'.[84]

2.81 Summarising the findings, Mr Manthorpe told the committee:

> It is undoubtedly the case that the members concerned did not get what they were told they'd get. They got less than what they were told they'd get, but they got what they were entitled to, and what they were entitled to under the commutation option was, based on the modelling, highly likely to be better in the long run than the other option that was available.[85]

Consideration of compensation

2.82 The Ombudsman noted that 'there was abundant evidence of financial disappointment, frustration and unmet expectation' which was based 'on financial disappointment from not receiving the entitlement to which they believe they were entitled'.[86] However, the Ombudsman recognised that '[f]inancial disappointment and unrealised expectations are not compensable'…'This is because the person must suffer financial detriment as a

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81 Commonwealth Ombudsman, Investigation into the administration of the Defence Force Retirement and Death Benefits (DFRDB) Scheme, Report No. 06 of 2019, December 2019, Foreword.

82 Defence, *Submission 39*, p. 4.

83 Commonwealth Ombudsman, Investigation into the administration of the Defence Force Retirement and Death Benefits (DFRDB) Scheme, Report No. 06 of 2019, December 2019, Foreword.

84 Commonwealth Ombudsman, Investigation into the administration of the Defence Force Retirement and Death Benefits (DFRDB) Scheme, Report No. 06 of 2019, December 2019, Foreword.

85 *Proof Committee Hansard*, 20 May 2021, p. 26.

86 Commonwealth Ombudsman, Investigation into the administration of the Defence Force Retirement and Death Benefits (DFRDB) Scheme, Report No. 06 of 2019, December 2019, p. 34.

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result of a decision they made relying on the incorrect advice. Further, it must have been reasonable to rely on the incorrect advice, and they must have taken reasonable steps to minimise the loss'.[87]

2.83 The Ombudsman considered whether some form of financial reparation or ex gratia payment was necessary but decided not to do so because:

> First, on the basis of the modelling, to do so would unreasonably place the cohort who commuted in an even stronger financial position than those who correctly understood the operation of the scheme and decided not to commute, which in the long run appears to have been the less beneficial choice for most people. Similarly, it would provide an unjustified windfall at taxpayers' expense for those who did understand the scheme and chose to commute.
>
> Second, to do so would presume to contradict the intent of the Parliament that passed the legislation establishing the DFRDB scheme decades ago. It would of course be possible for the current Parliament and the current Government to consider whether the policy issue in question ought be re-opened in light of the analysis in this report.[88]

2.84 At the hearing, Mr Manthorpe summarised why he did not recommend compensation:

> …I stopped short of recommending that the government pay compensation or some form of reparation as, in my view, to do so would have: created new inequities between different groups; potentially produced an unjustified windfall for those who properly understood the scheme, at taxpayers' expense; and presumed to set aside what parliament had intended in the first place.[89]

2.85 Mr Manthorpe further stated:

> I would reiterate that, on a personal level, I have every sympathy with people who were misled about what they were going to get. Defence shouldn't have done that, and that's why, in my report, I recommended to the department, the CDF and the secretary that, at the very least, they apologise. Then the next question was: is there something else that should be done here? For the reasons I outlined in my report and have touched on already, I couldn't think of an additional remedy that would do anything other than put me in the position of suggesting that the rules of the scheme that were put in legislation 50 years ago needed to, in effect, be rewritten.[90]

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87 Commonwealth Ombudsman, Investigation into the administration of the Defence Force Retirement and Death Benefits (DFRDB) Scheme, Report No. 06 of 2019, December 2019, p. 33.

88 Commonwealth Ombudsman, Investigation into the administration of the Defence Force Retirement and Death Benefits (DFRDB) Scheme, Report No. 06 of 2019, December 2019, Foreword.

89 *Proof Committee Hansard*, 20 May 2021, p. 25.

90 *Proof Committee Hansard*, 20 May 2021, p. 27.

CDDA scheme option

2.86 It was however acknowledged that outlying cases of which the Ombudsman was not aware could not be ruled out and therefore the Scheme for Compensation for Detriment caused by Defective Administration (CDDA scheme) was seen as suitable for the consideration of any such cases. A list of considerations which would need to be satisfied as part of any such claim were also developed.[91]

2.87 The CDDA scheme, a policy owned by the Department of Finance,[92] is 'a discretionary mechanism available to non-corporate Commonwealth entities. It allows an entity to pay compensation when a person or organisation has suffered detriment as a result of the entity's defective administration, when there is no legal requirement to make a payment'. '[T]he non-corporate Commonwealth entity which is the subject of a CDDA Scheme claim is the entity responsible for considering and making a decision on that claim'.[93]

2.88 The CDDA scheme is managed by the Directorate of Special Financial Claims within Defence.[94] Defence advised that '[c]urrently no claims have been successful as claimants have been unable to demonstrate they have incurred a financial detriment due to this issue'.[95] Defence provided more detail on the claims to date:

> As at 12 May 2021, Defence had received 38 claims under the scheme. Thirty-six of them were assessed and were unsuccessful. Why the difference between the 38 and the 36? Two of the people who had put forward claims then had discussion and correspondence with the department and decided to not go ahead with their claims.[96]

2.89 Defence also reported that there have been 'telephone and email enquiries from a handful of others who did not choose to make a claim'.[97] On notice, Defence indicated that '[n]one of the claimants, to our knowledge, engaged a lawyer or other representative to assist them with their claim'.[98]

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91 Commonwealth Ombudsman, Investigation into the administration of the Defence Force Retirement and Death Benefits (DFRDB) Scheme, Report No. 06 of 2019, December 2019, Foreword.

92 Mr David Nockels, Department of Defence, *Proof Committee Hansard*, 20 May 2021, p. 16.

93 See https://www.finance.gov.au/individuals/act-grace-payments-waiver-debts-commonwealth-compensation-detriment-caused-defective-administration-cdda/scheme-compensation-detriment-caused-defective-administration-rmg-409 accessed 8 April 2021.

94 See https://www.defence.gov.au/Legal/Directorates/dsfc.asp accessed 8 April 2021.

95 Defence, *Submission 39*, p. 2 of covering letter.

96 Mr David Nockels, Department of Defence, *Proof Committee Hansard*, 20 May 2021, p. 16.

97 Defence, *Submission 39*, p. 5.

98 Defence, answer to question on notice, received 4 June 2021, question 10.

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2.90 While acknowledging the defective administration in the information supplied to members before 2004, Defence added that:

> However, there were cases where it was apparent or acknowledged that the member did know in advance of their election that the pension would not be restored to the pre-commutation amount when they reached the life expectancy factor age.[99]

2.91 Defence reported that:

> Generally, the claimants did not dispute they were better off having commuted than had they not commuted. Their complaint about the DFRDB scheme and the Ombudsman's conclusion was that the scheme was not as generous as they were led to believe it would be.[100]

2.92 Defence took the committee through how the CDDA scheme works and how applications are assessed:

> The first aspect that we look at is the question of whether there has been defective administration. In this case, Defence accepted the report of the Ombudsman as evidence the defective administration had occurred and that the members who commuted may have been subject to that defective administration. So the first aspect was considered to have been satisfied.
>
> The second aspect is the detriment aspect. The Ombudsman determined that, following the modelling that was completed by the Australian Government Actuary and by KPMG on behalf of the Ombudsman for the purposes of the report, in all of the circumstances that they looked at the members were financially better off having commuted than they would have been had they taken the alternative, which was not to commute and retain the full pension. The Ombudsman offered the opportunity to members who considered that their circumstances differed to come to the CDDA scheme and show how their circumstances were different. Of the 38 claims that Defence looked at, two of the claimants chose to withdraw their claim, acknowledging that their circumstances were not substantially different from those that the modelling was based on. Of the remaining 36, the decision-maker was not satisfied that the claimants' circumstances substantially differed.[101]

2.93 On notice, Defence provided additional detail regarding the criteria used to assess a claim:

> The claims were assessed against the criteria under the Compensation for Detriment caused by Defence Administration (CDDA) scheme (Resource Management Guide No. 409, May 2017), which requires that there has been defective administration causing direct financial loss.[102]

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99 Defence, *Submission 39*, p. 5.

100 Defence, *Submission 39*, p. 5.

101 Ms Donna Webster, Department of Defence, *Proof Committee Hansard*, 20 May 2021, p. 17.

102 Defence, answer to question on notice, received 4 June 2021, question 4.

2.94 Defence added that '[i]n all cases, Defence accepted there was defective administration in the form of incorrect or ambiguous advice about commutation under the Defence Force Retirement and Death Benefits (DFRDB) scheme'. Further, in relation to why claims were not successful:

> The Ombudsman did not find any model cases that showed financial loss resulting from defective administration. Defence invited claimants to explain how their situation differed from those modelled. All claimants asserted their loss was the Commonwealth's failure to restore the DFRDB pension to the pre-commutation amount, fully indexed, when they reached the life expectancy age, because that is what they had understood would happen. None of the claimants were able to establish that they had suffered actual financial loss.[103]

2.95 Defence summarised that for 'compensation to be payable under the CDDA scheme, claimants must be able to show that they have sustained detriment of some kind. The distinction between financial detriment and financial disappointment is addressed in the CDDA guidelines':

> …A claimant does not suffer financial detriment merely because they were correctly not granted a benefit after being advised that they would receive that benefit…[104]

2.96 When asked about whether a CDDA decision can be reviewed, Defence reported that there is an internal review option which 'two of the members who made a claim sought to take up'. They provided additional material which was reviewed 'but it did not change the decision-maker's determination that the members' circumstances didn't substantially differ from that which was presented in the modelling'.[105]

2.97 Defence noted that a second review option available is to request that the Commonwealth Ombudsman review the decision made by Defence 'to look at the way that Defence looked at the claims and to make any suggestions, where Defence may have considered matters erroneously.' However Defence reported that '[n]one of the claimants have taken up that second review option to date'.[106]

2.98 The Campaign noted the CDDA option 'where a case of Financial detriment could be sustained' but indicated that '[n]o compensation has been made to any claimant to our knowledge'.[107] It added that they believe it is 'a direct

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[103] Defence, answer to question on notice, received 4 June 2021, question 4.

[104] Defence, *Submission 39*, p. 6.

[105] Ms Donna Webster, Department of Defence, *Proof Committee Hansard*, 20 May 2021, p. 17.

[106] Ms Donna Webster, Department of Defence, *Proof Committee Hansard*, 20 May 2021, p. 17.

[107] DFRDB COMMUTATION CAMPAIGN, *Submission 22*, p. 4.

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outcome of the inappropriate financial modelling sanctioned by the Ombudsman that is counter to the claims of our case'.[108]

Defence engagement following the ombudsman's report

2.99 When asked how Defence engaged with DFRDB members following the Ombudsman's report, Mr David Nockels, First Assistant Secretary, People, Policy and Culture, Department of Defence, advised the committee that:

> One of the recommendations from the review by the Ombudsman was for the department, through the secretary and the Chief of the Defence Force, to issue an apology. That's how we engaged with DFRDB members post the review. That apology was embedded in the Ombudsman's review and findings; it's an annex to that. We also posted that on the Defence website and, within that, also gave options for people to contact Defence, if they so desired, to have a written apology letter go directly to them. That was the way we engaged with members post the review.[109]

2.100 Defence advised that it 'did not contact any veteran groups after the [Ombudsman's] investigation was complete. However, following the release of the Commonwealth Ombudsman's report, the Ombudsman advised Defence that copies of the report were sent out to individuals upon request, including to some ex-service organisations'.[110]

2.101 Mr Nockels told the committee that DFRDB members have continued to write to the department and the minister on these matters and this correspondence is responded to through the regular processes.[111]

Views of the Commonwealth Ombudsman's report

2.102 Mr Wade supported the analysis and findings of the Ombudsman's report stating that it 'provided a comprehensive and accurate analysis of the administration of the scheme in accordance with the DFRDB Act 1973 and the accuracy of information provided to DFRDB members by the DFRDB Authority and compliments the Terms of Reference for the Senate Inquiry'.[112]

2.103 Mr Wade added:

> The Ombudsman Report clearly demonstrated that there was no evidence of fraud, lies, coercion, deceit, deception, or maladministration by Defence

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[108] DFRDB COMMUTATION CAMPAIGN, *Submission 22*, p. 20. See also issues raised by DFWA, Answers to questions on notice from public hearing held in Canberra 20 May 2021, received 14 June 2021.

[109] *Proof Committee Hansard*, 20 ay 2021, p. 18.

[110] Defence, answers to questions on notice, received 4 June 2021, Question 2.

[111] *Proof Committee Hansard*, 20 May 2021, p. 18.

[112] Mr Colin Wade, *Submission 60*, p.[7].

> and the DFRDB Authority in the administration of the DFRDB scheme commutation provisions in accordance with the DFRDB Act 1973.[113]

2.104 Mr Wade also appreciated that 'some DFRDB members will never accept the Commonwealth Ombudsman and the AAT determination that: "a member who elects to commute has their retirement pay permanently reduced according to the statutory formula set out in s24(3)(b) of the DFRDB Act"'.[114]

2.105 Most submissions, however, expressed a general dissatisfaction about the process and findings of the investigation undertaken by the Ombudsman. For example, the Australian Army Training Team Vietnam Association (WA Branch) Inc stated that:

> In the Commonwealth Ombudsman's Report which was clearly flawed, there were findings that military members were misinformed but the Ombudsman made no recommendations for recompense or reversion to 100% of your military pension once reaching your Notional Retirement Age. Subsequent questions to the Ombudsman for methodology and evidence of his findings were ignored. In other words it was another ploy by the government to deceive military superannuants with no outcome.[115]

2.106 Mr John Snell provided his view:

> I have read the Ombudsman's consideration of these facts and note that he has taken a very legalistic view of the matter but has largely ignored the misapprehension that has resulted from the information promulgated by officials at the time. He appears happy for the reduced payment to continue for the remaining years of my life but he does not debate that I (and others like me) have repaid all of the advance through reduced fortnightly payments.[116]

2.107 Mr Peter Larard provided his view of the Ombudsman's report:

> I submitted to The Ombudsman some years ago on this matter in which I included critical observation that many of the questions circularised, to which the Ombudsman sought answers, were worded and structured indicating strongly that at least the Ombudsman staff who designed the questions had never intended The Ombudsman to find in favour of there being any problem! My opinion at the time was, and is now, that the designed purpose of The Ombudsman's inquiry was to dismiss the matter![117]

2.108 Others such as Mr Charles Myhill argued that the Ombudsman 'did not understand the military chain of command, placed undue emphasis on

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[113] Mr Colin Wade, *Submission 60*, p.[8].

[114] Mr Colin Wade, *Submission 60*, p.[8].

[115] Australian Army Training Team Vietnam Association (WA Branch) Inc, *Submission 17*, p. 2. See also Name withheld, *Submission 48*, p. 3; Mr Jim Nicholls, *Submission 56*, p. 2; Mr Terry Dillon, *Submission 57*, p. [1].

[116] Mr John Snell, *Submission 14*, p. 1. See also Mr Kenneth Park, *Submission 9*, p. 1.

[117] Mr Peter Larard, *Submission 20*, p. 2.

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brochures issued by CSC and ignored the misinformation provided by all levels of the military command structure. I was a solder trained to follow orders no matter in what form they were issued, this is discipline in its purest form'.[118]

2.109 The Campaign submitted that the Ombudsman 'failed to recognise' the submissions made to the inquiry by veterans in relation to the advice they received and 'instead accepted DFRDBA-CSC information, this being from the very organisation he was investigating for Mal-Administration'. In addition:

> The Ombudsman then went against his own Terms of Reference and accepted the spurious financial modelling, based on data of just 12 cases out of those of the **55,000** veteran superannuants, who ill-advisedly accepted a commutation.[119]

2.110 The Campaign felt that the Ombudsman's report was 'poorly presented and spuriously biased, and failed to factually address the issues'. Specifically that while acknowledging Defence failed in its administration that no reparations were recommended.[120]

2.111 Mr Clive Connor called the Ombudsman's report a 'farce and should be withdrawn by the Minister'.[121]

2.112 The DFWA submitted that the Ombudsman self-generated his own Terms of Reference which:

> in the opinion of most veterans were very narrow. Thus viewed by the veterans' community, the outcome was equally narrow. Many thought that yet another opportunity for a wider objective view was lost. And the perfunctory apologies by the Chief of the Defence Force, the Department of Defence Secretary and the Commonwealth Superannuation Corporation (CSC) did nothing to remedy the firm conclusion within the Ombudsman's report that there had been "defective administration" both of the implementation process of the DFRDB Scheme and the way it was subsequently operated.[122]

2.113 The Ombudsman emphasised in his report that he 'cannot be directed to undertaken an investigation, to arrive at a certain conclusion or on the scope of an investigation'.[123]

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[118] Mr Charles Myhill, *Submission 29*, p. [2].

[119] DFRDB COMMUTATION CAMPAIGN, *Submission 22*, pp. 4, 17. Emphasis in original.

[120] DFRDB COMMUTATION CAMPAIGN, *Submission 22*, p. 4.

[121] Mr Clive Connor, *Submission 23*, p. 2.

[122] DFWA, *Submission 54*, p. 9.

[123] Commonwealth Ombudsman, Investigation into the administration of the Defence Force Retirement and Death Benefits (DFRDB) Scheme, Report No. 06 of 2019, December 2019, p. 1.

2.114 The Ombudsman told the committee that following the publication of their report they received correspondence from some members 'criticising the scope of our investigation and expressing dissatisfaction that our report did not recommend that compensation be paid'. In addition '[s]ome members requested a review of our Office's report findings and asked us to reopen the issues considered. We considered whether to review the investigation and the report and decided not to do so'.[124]

2.115 The Ombudsman concluded:

> While we acknowledge the frustration and distress conveyed to our Office by many members throughout the investigation, as stated in our report, our assessment was, and still remains that DFRDB members received what they were entitled to, even if it fell short of what they were misinformed they would receive. Further, the actuarial modelling illustrates that members were generally better off choosing the commutation option, compared to the other option that was available at law.[125]

Further response from the Ombudsman

2.116 At the hearing, the Ombudsman responded to four criticisms of his report contained in submissions to the inquiry. First, in relation to allegations that the report was 'biased', Mr Manthorpe stated:

> I reject that assertion. I and my office considered the evidence that was put to us, fairly and in good faith, consistent with our legislative remit and our professional integrity. I brought an entirely open mind to the issues and was subject to no improper influence. The conclusions in the report were entirely my own.[126]

2.117 Second, while some submissions alleged the approach to be 'selective', Mr Manthorpe responded:

> To the contrary: we engaged comprehensively with the issues that were within our remit and indeed went further by providing an avenue whereby issues outside our remit could be aired.[127]

2.118 Third, in relation to consultations with Defence and CSC, but not with affected members, regarding the scope of the inquiry:

> There is nothing unusual about this. Whenever we undertake a major investigation of an issue in an agency we afford them an opportunity to comment on the scope of the investigation to ensure that it is logistically practical, well planned and soundly based. This process had no bearing on the core issues we considered. Moreover, we considered the issues raised

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124 Commonwealth Ombudsman, *Submission 52*, p. [5].

125 Commonwealth Ombudsman, *Submission 52*, p. [5].

126 *Proof Committee Hansard*, 20 May 2021, p. 25.

127 *Proof Committee Hansard*, 20 May 2021, p. 25.

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> in every submission that was put to us by scheme members, and we shaped our investigation and report accordingly.[128]

2.119 Finally, the criticism in some submissions questioning why the actuaries did not model a scenario whereby retirement pay reverted to the non-commutation rate at their life-expectancy-factor age. Mr Manthorpe responded:

> To that, I'd say that all investigations of this kind are iterative. They're a journey of discovery. Ultimately, we chose not to model this scenario. We came to the view that there had indeed been defective administration in the form of giving inaccurate information to members. It followed that what we needed to model was whether this defective administration was likely to have caused financial detriment—that is, we needed modelling that showed whether members were likely to have suffered actual financial loss as a result of choosing commutation, on incorrect advice, over the only other option that was available. To model the third option would have been to model what was and still is a legal and policy illusion that has no grounding in the legislation that this parliament passed nearly 50 years ago.[129]

2.120 Mr Manthorpe also addressed the criticism that the inquiry was paid for by Defence:

> I think somewhere, in some of the submissions, people assert that the inquiry wasn't properly independent because Defence paid for it. Let me address that point: yes, Defence paid for it, but somebody had to pay for it, and it was always going to be the taxpayers. It was quite a big inquiry, as you can see from the scale of submissions and so on. When we were asked to take it on, I said, 'Well, I'll take it on and look at the matters of administration, but someone's got to foot the bill.' That was a conversation I had with Defence, but I don't think that bears on the independence that I and my colleagues brought to bear. So they provided the funding.[130]

Responding to requests to review the investigation

2.121 Noting that he was asked to reopen the investigation, Mr Manthorpe explained in more detail to the committee why he decided not to do this:

> Essentially, it was because, when I looked at the further advice that people gave to me—I understand their disappointment with my report. What can I say? I looked at this issue in good faith and I came to the judgements that I came to. When requests came in to look again, to reopen the investigation and so on, I and my team looked at those requests and, for all of the requesting, I couldn't see—within the scope of the powers I have and the role I have as the Ombudsman, which is to look at matters of administration and make such recommendations as I see fit—a way back

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128 *Proof Committee Hansard*, 20 May 2021, p. 25.

129 *Proof Committee Hansard*, 20 May 2021, pp. 25-26.

130 *Proof Committee Hansard*, 20 May 2021, p. 29.

into the issues that was going to change the fundamentals of what I had concluded. So, in that context, I declined to do what they requested.[131]

[131] *Proof Committee Hansard*, 20 May 2021, p. 27.

Chapter 3
Design of the DFRDB scheme

3.1 A number of issues around the design of the DFRDB scheme were raised with the committee, including the views that: it did not live up to the commitment made to ADF personnel; it was not what was recommended by the Jess Committee; the permanently reduced pension as a result of commutation is unfair; the expectation of life factor tables used are seen as out of date; and indexation arrangements have issues, including the link to CPI, historical adjustments and the interaction with commutation. Submitters also questioned the parliamentary scrutiny of the bill setting up the scheme.

3.2 It should be noted that although DFRDB scheme design issues were raised with the Commonwealth Ombudsman, he clarified that 'those matters were outside the scope of my functions'. However, his report included a summary of them 'in recognition of the strength and volume in which those views were expressed'.[1] Mr Manthorpe discussed this aspect with the committee:

> …I think that some of the submitters made submissions to me, and are making submissions to you, that go to the policy design of the scheme: the rates of indexation, the age factors and whether the pension should have gone back up to the non-commutation rate when someone reached life expectancy. All those things are, in effect, wired into the legislation and, therefore, the policy that informed the legislation of the scheme. I appreciate that some of the submitters don't believe that those settings are adequate, but those are matters of policy; they're not matters of administration.[2]

Dissatisfaction with the design of the scheme

Promises made

3.3 It was put to the committee that the DFRDB scheme was put forward to the ADF as a beneficial scheme. For example, Mr Clinton McKenzie noted:

> The DFRDB scheme was not a 'soft promise' to ADF members and prospective ADF members. The DFRDB was an unequivocal commitment and actively promoted as a concrete benefit of ADF service…
>
> …
>
> Although I cannot remember the precise terms of much of the information provided to me about the DFRDB scheme before I enlisted, I do recall the 'upshot as if it were yesterday: "In return for at least 20 years of ADF service and compulsory deductions from your pay, you will be entitled to

1 *Proof Committee Hansard*, 20 May 2021, p, 25.

2 *Proof Committee Hansard*, 20 May 2021, p. 27.

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> comfortable retirement pay which, when you die, will accrue to your surviving spouse or orphans to keep them comfortable".[3]

3.4 Another submitter recalled that as a junior officer he understood that one of the purposes of the DFRDB scheme was 'to retain members in the ADF because of the attractiveness to receive a pension (no matter how small) after 20 years or more service'.[4]

Not the scheme recommended by the Jess Committee

3.5 Some submitters were of the view that the design of the DFRDB scheme is not what the Jess Committee recommended[5] and that the current design of the scheme emerged because of action taken by Commonwealth departments.

3.6 The Australian Defence Force Retirees Association (ADFRA) contended that the Jess Committee recommendations were not correctly translated into legislation; Treasury and Defence reduced the benefits through their representation on the legislation drafting committees; the legislation was not properly scrutinised; and parliament did not understand the outcomes of the legislation which was exploited by Treasury and Defence.[6]

3.7 Mr Herb Ellerbock, Secretary, ADFRA, told the committee:

> Most of the Jess committee's recommendations were opposed by Treasury, because the recommended provisions were deemed to be more generous than those provided in the Commonwealth Superannuation Scheme for public servants. Treasury's view was supported by the Department of Defence and upheld by the McMahon government, which effectively shelved the Jess committee report…
>
> As is evident in Hansard, service representation was excluded from the committee which drafted the DFRDB Act, and, in the absence of that representation, the drafting committee was able to incorporate in the DFRDB Act the first of an ongoing series of inconspicuous measures which significantly reduced the defined benefits set down by the Jess committee and adopted by the Whitlam government.[7]

3.8 The Defence Force Welfare Association (DFWA) argued that legislators need to correct the administration defects surrounding commutation as the failure to do so 'seems contrary not only to the spirit and intent of the 1973 Jess Committee Report leading to DFRDB but also to the parliamentary debate that

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3 Mr Clinton McKenzie, *Submission 30*, p. 3.

4 Name withheld, *Submission 48*, p. 2.

5 See for example Mr J.A Treadwell, *Submission 79*, pp. 5, 11.

6 ADFRA, *Submission 36*, p. 2. See also Commander Graham J Darcy RAN (Rtd), *Submission 12*, pp. 1-2. Note these claims are contained in a YouTube video by Mr Herb Ellerbock, Secretary, Australian Defence Force Retirees Association.

7 *Proof Committee Hansard*, 20 May 2021, p. 6.

passed the DFRDB Act, and to the information that was subsequently distributed to ADF members'.[8]

3.9 When asked about the Jess Committee report, Mr David Nockels, First Assistant Secretary, People, Policy and Culture, Defence, responded:

> I wouldn't comment directly on that, other than to say that I think that the scheme as it is now is what we have and have had. There have obviously been adjustments over time to that scheme, but that is the scheme with which we work. I personally wasn't around at the time of the Jess review, so I can't make comment on what ended up happening with the scheme versus what the Jess review was suggesting and whether there were interpretations or slight changes and nuancing around that. But the scheme is what the scheme is, and that's what we work with. We have done so for many years, including with adjustments to that scheme over the years.[9]

3.10 The Ombudsman also responded to a question on this issue:

> I know that some of the submissions we've got and some of the submissions you've got from aggrieved members essentially say that the legislation somehow didn't reflect the intent of a previous committee; there was a committee called the Jess committee way back before the legislation was passed. I understand those concerns. I understand people may feel that. But at the end of the day the legislation was passed by the parliament as it was constituted in the 1970s, and that's where we went…[10]

Drafting and Parliamentary scrutiny

3.11 Some submitters also argued that there was not sufficient parliamentary scrutiny of the legislation and parliament did not understand what it was voting on.[11]

3.12 Submitters, including Commander Darcy stated that the legislation became law with 'only cursory Parliamentary consideration'.[12]

3.13 The ADFRA also stressed that:

> 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.[13]

3.14 Mr Ellerbock, ADFRA, contended that:

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8 DFWA, *Submission 54*, p. 2. See also name withheld, *Submission 37*, p. 2.

9 Mr David Nockels, *Proof Committee Hansard*, 20 May 2021, p. 18.

10 *Proof Committee Hansard*, 20 May 2021, p. 29.

11 See for example, Name withheld, *Submission 32*, p. 3.

12 Commander Graham J Darcy RAN (Rtd), *Submission 12*, pp. 1-2. Note these claims are contained in a YouTube video by Mr Herb Ellerbock, Secretary, Australian Defence Force Retirees Association.

13 ADFRA, *Submission 36*, p. 2.

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> By not properly scrutinising the legislation, which affects many of us for more than 50 years of our lives, past parliaments have allowed bureaucrats to subvert the intent of the Jess committee and reduce the real value of our benefits by as much as 40 per cent. We look to this committee to recommend the restoration of our benefits.[14]

Permanently reduced pension

3.15 The permanent reduction to the pension and the information provided was the subject of Chapter 2. The DFWA was of the view that 'the principle of a reduced DFRDB superannuation pension is an appropriate one following a veteran electing to commute part of it. However, in the opinion of many there is more than a degree of unfairness about a legislated outcome that requires those veterans who live longer to effectively subsidise those who die earlier. The result is that the reduction in pension due to commutation is greater than it would have been if the pension reduction were based on "*the member's life expectancy at the date of commutation*", as claimed'.[15]

3.16 DFWA argued:

> There is little question that, due to the longer period of reduced pensions received by veterans, the Commonwealth 'pockets' far more than the commuted monies that were originally advanced. DFWA does not believe that this could have been the intent of the architects of the DFRDB Act 1973. It belies belief that the Legislators of the time designed a system to deliberately deny veterans a beneficial outcome by seeking to recover more than any amounts commuted. Evidence of this is illustrated by the use of 1960-62 Life Tables and not 1970-72 Life Tables available for the 1973 Act.[16]

3.17 The RSL noted that the '[c]ontinuation of the (reduced) post commutation pension beyond the period when the commutation amount has been repaid' is a source of dissatisfaction for members.[17] The was supported by Mr Clinton McKenzie who stated:

> The permanent reduction in the annual rate of commuted retirement pay beyond a member's 'Schedule 3 nominal life expectancy' has – along with matters like indexation – become a legitimate focal point of grievances – and, consequently, a focus of the response of governments and the Ombudsman.[18]

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14 *Proof Committee Hansard*, 20 May 2021, pp. 7-8.

15 DFWA, *Submission 54*, p. 3. Emphasis in the original.

16 DFWA, *Submission 54*, p. 3.

17 RSL, *Submission 53*, p. 2 of Annex A.

18 Mr Clinton McKenzie, *Submission 30*, p. 2.

3.18 Mr David Plummer contended that the permanently reduced pension 'is not what the architects of the scheme conceived or what the Parliament intended when the scheme was approved'.[19]

3.19 However, Mr Colin Wade noted that:

> There was never any intent in the legislation for retirement pay to be treat[ed] as a loan and the commutation payment reduction restored, should the member live beyond life expectancy and there is no justification for the government to effect change and amend the DFRDB Act 1973.[20]

3.20 Mr Wade confirmed that the intent of the DFRDB Legislation 'was to enable DFRDB members to retire from the ADF at a relatively young age and commute part of their retirement pay entitlements and receive a reduced retirement pay thereafter'. He added that [t]he DFRDB scheme provide[s] very generous, defined benefit superannuation entitlements for members and dependent spouses and families as intended in the legislation'.[21]

3.21 Defence noted that when the DFRDB Act 1973 was legislated, 'the commutation provisions were mirrored off the DFRB scheme'.[22] Defence also advised that:

> The permanent lifetime reduction to a DFRDB pension as a result of commutation is consistent with the arrangements in the other civilian and military superannuation schemes. In CSS, the Public Superannuation Scheme (PSS) and MSBS if a member chooses to take part of the benefit as a lump sum, the amount of their lifetime pension is permanently reduced from what it would have been had the member not taken a lump sum. The factors used to convert pensions into lump sums (or vice versa) in the CSS, PSS and MSBS have not been amended or reviewed since the schemes commenced and are considered as permanent design feature of the schemes.[23]

Commonwealth ombudsman investigation findings

3.22 The Ombudsman noted that some submitters to his investigation 'asserted that a permanent reduction is inconsistent with the Jess Report recommendation of a 'proportionate' reduction, and that therefore the Jess Report should take precedence'.[24]

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19 Mr David Plummer, *Submission 31*, p. [3].

20 Mr Colin Wade, *Submission 60*, p. [7].

21 Mr Colin Wade, *Submission 60*, p. [7].

22 Defence, *Submission 39*, p. 6.

23 Defence, *Submission 39*, p. 8.

24 Commonwealth Ombudsman, Investigation into the administration of the Defence Force Retirement and Death Benefits (DFRDB) Scheme, Report No. 06 of 2019, December 2019, p. 11.

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3.23 The Ombudsman noted that '[t]here is nothing in 24(3)(b) which creates a fixed time frame or end date for the reduction. Nor is there any other provision, in the DFRDB Act or any other legislation, which would cease the reduction'.[25]

3.24 The Ombudsman added that 'in our view the legal meaning is plain and not capable of any other interpretations. Placing limits on the benefits to be provided is not inconsistent with the purpose of the DFRDB Act, which must necessarily contain some limits on entitlements. What individual parliamentarians understood is not relevant. The DFRDB Act, as passed by parliament, requires a permanent reduction'.[26]

3.25 The Ombudsman also referred to the view of the Administrative Appeals Tribunal which considered 24(3) and 'found neither ambiguity nor obscurity in the provision'.[27]

3.26 However, a couple of submitters put forward cases attempting to argue there is uncertainty with some interpretations of the legislation.[28]

The use of expectation of life factor tables

3.27 Defence noted that Schedule 3 of the DFRDB Act 1973 provides for the 'Expectation of Life Factor'. This is 'an element of the commutation calculation, which is undertaken to determine a DFRDB member's lump sum and resultant pension benefit'. Defence noted that this is interchangeably known as Life Expectancy Factor or Life Expectancy Tables.[29]

3.28 If a member elects to commute, paragraph 24(3)(b) of the DFRDB Act contains a statutory process of calculating the resulting reduction to retirement pay:

> the commutation lump sum is divided by the person's 'expectation of life factor' to produce the annual reduction for commutation. The expectation of life factor is worked out according to their age and gender using a table in Schedule 3.[30]

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[25] Commonwealth Ombudsman, Investigation into the administration of the Defence Force Retirement and Death Benefits (DFRDB) Scheme, Report No. 06 of 2019, December 2019, p. 11.

[26] Commonwealth Ombudsman, Investigation into the administration of the Defence Force Retirement and Death Benefits (DFRDB) Scheme, Report No. 06 of 2019, December 2019, p. 12.

[27] Commonwealth Ombudsman, Investigation into the administration of the Defence Force Retirement and Death Benefits (DFRDB) Scheme, Report No. 06 of 2019, December 2019, p. 12. See also Mr Michael Manthorpe, Commonwealth Ombudsman, *Proof Committee Hansard*, 20 May 2021, p. 29.

[28] See Mr Clinton McKenzie, *Submission 30.1*, pp. [1-7]; Mr Bill Arden, *Submission 62*, pp. 1-5; Mr J. A Treadwell, *Submission 79*, p. 9.

[29] Defence , *Submission 39*, p. 7.

[30] Commonwealth Ombudsman, Investigation into the administration of the Defence Force Retirement and Death Benefits (DFRDB) Scheme, Report No. 06 of 2019, December 2019, p. 11.

3.29 Submitters pointed to the life expectancy tables in Schedule 3 of the DFRDB Act arguing they are inappropriate or out of date. For example, one submitter argued '…the latest Australian Bureau of Statistics (ABS) suggest that I could live for a further 7 years beyond the DFRDB life expectancy estimates'. This submitter also argued that '[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 fortnightly pension'.[31]

3.30 Mr Steven Kersnovske told the committee that '[c]learly the Life Expectancy Factor Tables were outdated from the start, never giving the opportunity for a true or fair service pension calculation to be achieved'.[32]

3.31 The Campaign referred to 'obsolete Life Expectancy data' alleging they were 'predicated to be in the Commonwealth's favour'.[33]

3.32 The DFWA saw the continued use of the life expectancy tables in the DFRDB Act as the 'root cause to the unfairness'. They stated that '[t]here is a clear 'wrong' in using such out-of-date Life Tables that few can even recall that they exist beyond a reminder from the Commonwealth Superannuation Corporation to those ADF members the subject of the **Defence Force Retirement & Death Benefits Act 1973** that year-by-passing year they continue to be silently disadvantage[d] by having their superannuation pension unfairly reduced'.[34]

3.33 The DFWA added that:

> The Ombudsman's report glossed over a key concern, namely that life tables more than half a century old continued to be used, even though many veterans and ex-service organisations made submissions on the matter. The 1960s life tables force veterans to accept a lower lifetime military superannuation pension than would "life expectancy on discharge" as it still advertised by the CSC.[35]

3.34 The RSL also pointed to the 'use of dated life expectancy tables which effectively shorten the commutation repayment period and hence reduce the residual pension'.[36]

3.35 Mr Peter Thornton alleged financial detriment as a result of the use of the tables in Schedule 3. Mr Thornton contends that 'the DFRDB Authority did not, ever, advise the Government or the Parliament of the day that the data

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31 Name withheld, *Submission 18*, p. 4.

32 Mr Steven Kersnovske, *Submission 47*, p. 2. See also Mr J.A Treadwell, *Submission 79*, p. 9; Mr Frank Aldred, *Submission 80*, p. 1.

33 DFRDB COMMUTATION CAMPAIGN, *Submission 22*, p. 11.

34 DFWA, *Submission 54*, p. 4. Emphasis in original.

35 DFWA, *Submission 54*, p. 9.

36 RSL, *Submission 53*, p. 2 of Annex A.

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contained within Schedule 3 was out of date and irrelevant; thereby perpetuating a nonfeasance by failing to exercise its Statutory and Fiduciary responsibilities'.[37] He argued that 'Parliament did not intend that the life expectancy data contained within Schedule 3 would remain as a "fixed" divisor in perpetuity' and submitted:

> Had the Parliament intended to have a "fixed" divisor, then surely it would have explicitly stated so in the wording at s24(3).[38]

3.36 In summary, Mr Thornton contended that 'based on the historical record, [he] remains of the firm opinion that the Parliament would have readily changed the life tables had it been properly briefed and advised to do so by the responsible Statutory authority – the DFRDB Authority'. He goes on to assert that the financial detriment comes from defective administration 'but not that of the Department of Defence…but instead that of the DFRDB Authority' who 'failed to properly advise the Government and Parliament of the day that the life expectancy tables became quickly out of date'. Mr Thornton maintains that:

> benefit recipients of the DFRDB scheme who separated from the ADF on or after 1975 have all sustained a financial detriment in the rate of the residual Retirement Pay, no matter if a member had commuted or not, because the contract entered into with the Commonwealth to purchase future benefits, as advertised, was breached with respect to the calculations pertaining to Commutation and life expectancy.[39]

3.37 Defence advised that [s]hould a member live for more that the Life Expectancy Factor years used in the calculation of their lump sum, the pension is not adjusted accordingly. No part of the lump sum is recovered from a deceased member's estate, should the recipient die before reaching the Life Expectancy Factor years used'.[40]

3.38 Defence noted that the AGA advised Defence 'that when the DFRDB scheme was introduced, the use of the 1960-1962 Australian Life Tables as a commutation factor was favourable to members relative to the alternative pension'.[41]

3.39 Defence confirmed that the expectation of life factor tables are part of the Act and so to change them would require legislative change[42] and there would be increased costs for the Commonwealth.[43] CSC also noted that '[a]s the DFRDB

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37 Mr Peter Thornton, *Submission 45*, p. 3.

38 Mr Peter Thornton, *Submission 45*, p. 2.

39 Mr Peter Thornton, *Submission 45*, p. 9. Emphasis in the original.

40 Defence, *Submission 39*, p. 7.

41 Defence, *Submission 39*, p. 7.

42 Mr David Nockels, *Proof Committee Hansard*, 20 May 2021, p. 19.

43 Defence, *Submission 39*, p. 7.

Scheme operates under legislation, any changes would have to be made by amending legislation passed by Federal Parliament'.[44]

Commonwealth Ombudsman investigation findings

3.40 The Ombudsman noted that the expectation of life factor is better described as a 'commutation divisor' as it is 'the divisor for the purposes of calculating a reduction to a person's retirement pay following commutation. It reported that 'these figures have been the same since the DFRDB Act commenced in 1973' and that members submitted that this is unfair given the increase in life expectancy since 1962.[45]

3.41 The Ombudsman noted that using later life expectancy figures was open to the government and parliament of the day, however:

> This was not the path chosen. This suggest that the scheme drafters never envisaged use of current tables, but rather, preferred a static commutation factor. With retrospect, if it had been formally named a 'commutation divisor' rather than a 'life expectancy' factor, it is possible that misunderstanding that ensued could have been avoided.[46]

Definition issues

3.42 The Campaign noted that the term commutation is not defined in the DFRDB Act.[47]

Commonwealth Ombudsman investigation findings

3.43 This issue was also raised with the Ombudsman. However, the Ombudsman did not view the lack of a definition of commutation in the DFRDB Act as a concern because 'not all terms used in legislation need to be specifically defined. Where terms are not defined in an Act, and some ambiguity arises, courts will look to whether there may be a common law definition, or their ordinary meaning is applied'. It was also pointed out that a definition is not required because the Act sets out the steps involved in commutation.[48]

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44 CSC, *Submission 50*, p. [2].

45 Commonwealth Ombudsman, Investigation into the administration of the Defence Force Retirement and Death Benefits (DFRDB) Scheme, Report No. 06 of 2019, December 2019, p. 51.

46 Commonwealth Ombudsman, Investigation into the administration of the Defence Force Retirement and Death Benefits (DFRDB) Scheme, Report No. 06 of 2019, December 2019, p. 52.

47 DFRDB COMMUTATION CAMPAIGN, *Submission 22*, pp. 3, 12. See also Mr Rodney Cox, *Submission 51*, p. 3.

48 Commonwealth Ombudsman, Investigation into the administration of the Defence Force Retirement and Death Benefits (DFRDB) Scheme, Report No. 06 of 2019, December 2019, pp. 12-13.

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Indexation

Defence

3.44 Defence indicated that since the introduction of the DFRDB scheme there have been a number of reviews to consider the most appropriate method of indexation for DFRDB members. The Defence submission details these reviews finishing with the most recent legislative change in 2014 where DFRDB and DFRB pensions for those over 55 are now indexed in the same way as age and service pensions.[49]

3.45 Many submitters raised dissatisfaction with the indexation arrangements[50] of the DFRDB scheme. These were concerns that: the indexation benchmarks are unfair or inadequate; previous indexation adjustments should be revisited; and about the interaction between commutation and indexation.

Concerns about the formula

3.46 A submitter pointed to the history of indexation starting with the report of the Jess Committee which noted:

> 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…and the proposal that adjustment be related to the Consumer Price Index. The Committee rejects the latter suggestion because it considers that the index does not fairly represent changes in general community standards.[51]

3.47 This submitter noted that'[d]espite the Jess Committee Report, the government of the day enacted the Defence Force (Retirement and Death Benefits Amendments) Act 1977 which related all adjustments to the CPI'.[52]

3.48 Mr Ellerbock, ADFRA, also noted:

> Regarding indexation, the Jess committee recommended that retired pay and invalid pay be adjusted annually so that relativity with average weekly earnings is maintained. The committee had rejected the consumer price index because, in its view, that index did not fairly represent changes in general community standards. But, because the method of pension updating in other Commonwealth pension schemes was then being

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[49] Defence, *Submission 39*, p.9.

[50] The annual or semi annual increase in the pension paid. It is applied in January and July each year.

[51] Joint Select Committee on Defence Forces Retirement Benefits Legislation, Report, 18 May 1972, p. 34.

[52] Name withheld, *Submission 18*, p. 2.

> revised, automatic adjustment was not incorporated in the original DFRDB Act…[53]

3.49 Mr Ellerbock added that the 1977 bill incorporated a 'double-edged benefit reduction measure':

> Firstly, it linked adjustments directly to the consumer price index, which had already been rejected by the Jess committee in 1972 and was found to be unsuitable by the Pollard review in 1973. Secondly, it excluded from the application of the CPI increases a part of the DFRDB benefits determined by a notional life expectancy factor. Furthermore, on the death of the recipient member that exclusion from indexation flows on to the benefits of the member's spouse and dependent children.[54]

3.50 Mr William Harrison stated that 'I also believed that my Super entitlements would be adjusted by/to the rate of inflation…not the Consumer Price Index…'.[55] Mr Clinton McKenzie noted that '[a]fter discharge from the ADF I watched as the 'buying power' of my DFRDB retirement pay eroded inexorably'…No independent, qualified expert says the CPI is an accurate measure of the real cost of living''.[56]

3.51 A submitter noted:

> …the continued use of the CPI for adjustments after the introduction of Monetary Policy generated a predictable reduction of DFRDB Pension value. This was [a] foreseeable outcome and should have been addressed by the DFRDB Authority. A new method of indexation was determined when the CPI adjustments proved inadequate to maintain living standards to adjust Old Age Pensions however DFRDB pensions continue on CPI adjustments and consequently declined in value for many years.[57]

3.52 The RSL noted a 'failure to maintain relativity with the Australian standard of living, through appropriate indexation'.[58] Another submitter argued that:

> The current methodology for the indexation rate of the pension only has the effect of making the financial matters worse. Current indexation is not keeping pace with the real cost of living increases we experience today.[59]

3.53 Mr Clive Conner submitted that:

> It was well known in 1973 that CPI was not a fair indication of the increases in cost of living, yet the Government persisted with this until 2014 when the Fair Indexation Bill was passed…[60]

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53 *Proof Committee Hansard*, 20 May 2021, p. 7.

54 *Proof Committee Hansard*, 20 May 2021, p. 7.

55 Mr William Harrison, *Submission 4*, p. 2.

56 Mr Clinton McKenzie, *Submission 30*, p. [5].

57 Name withheld, *Submission 33*, p. 3.

58 RSL, *Submission 53*, p. 2 of Annex A.

59 Name withheld, *Submission 42*, p. 2.

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3.54 Mr Ellerbock argued that the 2014 amendments 'did nothing to remedy the effects of unfair indexation from 1976 to 2014' and the DFRDB Act 'continues to unfairly index the benefits of recipients aged under 55 and it retains the formula which excludes from indexation a substantial part of our benefits'.[61]

3.55 The DFWA noted that the Defence Force Retirement Benefits Fair Indexation Act of 2014 'recognised at least one significant deficiency in that the pensions of DFRB/DFRDB superannuants over 55 would be indexed in the same way as age and service pensions'. Meaning that:

> the pensions would be indexed to the better of the Consumer Price Index (CPI), the Male Total Average Weekly Earnings (MTAWE), and the Pensioner and Beneficiaries Living Cost Index (PBLCI). After all, while the CPI had been once an accepted index to maintain a pension's value relative to national wages, it had lost its relevance in wage fixing. CPI had become an economic tool to measure inflation rather than living costs. It was not an index to ensure the purchasing power of superannuants was maintained, being the intent of the original enabling legislation to the Scheme.[62]

3.56 The DFWA added that:

> Until the passing of the Defence Force Retirements Benefits Fair Indexation Act, DFRB/DFRDB pensions stood out as being more harshly treated than almost every other long-term Commonwealth payment subject to regular indexing to maintain its value. Unfortunately, the Act by any fairness measure didn't go far enough. It somehow deliberately excluded the under 55 DFRDB retirees and those in receipt of DFRDB invalidity superannuation pensions.[63]

3.57 Mr Keith McIntosh set out his view in relation to indexation and called to have more choice:

> …Having the income stream pegged to the CPI indexation as it has evolved has seen a slow decline in value of this asset. It has gone from 8% in 1990 to 0% 2021. A rough way to compare this is, had I spent my entire working life in the ADF and retired on the rank I was when I actually retired with the seniority, I would be on a higher retirement income that I am now and this is having worked for 27 years in civilian street earning far more and salary sacrificing more to my civilian superannuation, than the same rank with 47 years in the ADF. How does that work. I am eligible to have a Centre link old age pension top up, something is definitely wrong here. I feel the DFRDB was not a good very good investment.[64]

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60 Mr Clive Connor, *Submission 23*, p. 2. See also Mr Charles Myhill, *Submission 29*, p. [1].

61 *Proof Committee Hansard*, 20 May 2021, p. 7.

62 DFWA, *Submission 54*, p. 2.

63 DFWA, *Submission 54*, p. 2.

64 Mr Keith McIntosh, *Submission 11*, p. 1.

3.58 Another submitter called on the government to ensure relativity is maintained for the retired soldier to the serving soldier.[65]

3.59 Mr Bert Hoebee urged the committee to also look at what he considers to be unfair indexation for MSBS recipients.[66]

3.60 In relation to indexation, Defence advised that:

> When automatic indexation was introduced in 1976 it was applied only to the 'notional rate of retirement pay' to reflect the employer funded part of the pension. The non-indexed portion of a pension reflects the employee funded (member contributions) part of the pension. This broadly replicates the indexation arrangements of the CSS and was consistent with the recommendations of the 1973 Pollard Review and the 1974 Melville & Pollard Review.[67]

Concerns about previous indexation adjustments

3.61 Submitters referred to previous legislated changes to indexation. A submitter recommended 'that the benefits deducted over the three years 1986 to 1989 be restored'. In addition this submitter argued that '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 until 2014'.[68]

3.62 That submitter argued that:

> 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.[69]

3.63 Another wrote that '[t]here is evidence that…DFRDB pensions, were not always CPI adjusted as per the legislation but discounted by 2% when inflation was high'.[70]

3.64 A submitter argued:

> The importance of legislation should be to maintain fair and equitable pension indexation to retain pension value. In particular, the arbitrary Government decisions to discount the CPI indexation when inflation was high and the Government introduction of Monetary Policy, (that allowed

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65 Name withheld, *Submission 2*, p. 4.

66 Mr Bert Hoebee, *Submission 77*, p. 1.

67 Defence, *Submission 39*, p. 10.

68 Name withheld, *Submission 18* p. 3.

69 Name withheld, *Submission 18*, p. 2.

70 Name withheld, *Submission 33*, p. 3.

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> interest rate[s] to be manipulat[ed] by the Reserve Bank), resulted in DFRDB pensions losing value.[71]

3.65 In looking at the question of the occasions when the full CPI indexation of the DFRDB and DFRB pensions was not paid, the Parliamentary Library noted in 2008:

> *The Superannuation and Other Benefits Legislation Amendment Act 1986* amended the legislation governing the operation of both the DFRDB and DFRB from the payday of 23 October 1986 to discount the 1986 pension increase by 2 per cent from 9.2 per cent to 7.2 per cent. This policy continued until 20 October 1989 (that is, the full CPI increases were not passed on to DFRDB pensioners). There was no later increase in the DFRDB pension to make up for this period of discounting.[72]

3.66 The Parliamentary Library noted that:

> These actions were undertaken as a budget measure in response to the unusually high rates of inflation of the period combined with a shortfall in government revenue. The rates of increase in CSS pensions were also discounted in the same way during this period.[73]

Interaction of indexation with commutation

3.67 Defence explained the interaction of indexation with commutation:

> If a member does not elect to commute or commutes less than four times the pension then indexation is only applied to the 'notional rate of retirement pay'. The 'notional rate of retirement pay' is the rate of pension that would be payable if the member had commuted four times the pension (which was the maximum amount that could be commuted at the time indexation arrangements were introduced).
>
> If a member does not elect to commute or commutes less than four times the pension there will be a non-indexed portion of the pension. If a member commutes four times or greater (maximum five times) the residual pension is fully indexed.[74]

3.68 Submitters raised the interaction of commutation and indexation. The Campaign submitted that there is inequitable indexation of commuted and uncommuted retirement pay:

> In respect to Commutation, the provisions of the DFRDB Authority were: that under INDEXATION policy, **the quantum to be indexed annually would only apply to the Retired Pay after Commutation**, irrespective of whether the Superannuant had Commuted or had Not Commuted.

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71 Name withheld, *Submission 33*, p. 4.

72 Leslie Nielson, Parliamentary Library, Research Paper no, 16, 2007-08, 'Military superannuation myths and reality', pp. 9-10.

73 Leslie Nielson, Parliamentary Library, Research Paper no, 16, 2007-08, 'Military superannuation myths and reality', p. 10.

74 Defence, *Submission 39*, p. 10.

> However, those that commuted are believed to be receiving disproportionate indexation, as would have applied, had they not commuted, consequently, superannuants that commuted are suffering further substantial financial detriment, to Retirement Pay.[75]

3.69 The Campaign added:

> The Exclusive Detailing of Commutation Policy from Veteran Superannuants by the DFRDBA, and the FALSE INFORMATION, as propagated officially by Defence, inter alia, countless (55,000) Veteran Superannuants were misled into accepting a Commutation. We therefore contend **that all DFRDB Superannuants, so duped and recognised as having received a Commutation, that, as at the time of reaching their Notional Life Expectancy point, be regarded as not having received a Commutation**.[76]

3.70 The Campaign put the view that 'regardless of whether a Veteran Superannuant Commutes, or does not Commute, their Retirement Pay should be exactly the same in both cases'.[77]

3.71 Mr Peter Larard stated:

> There is wide belief now that, for those who commuted, only a portion of the reduced pension is actually used for annual CPI (or other) pension indexation. Indeed! If so, how can there be any justification for basing indexation upon only a percentage of a reduced pension! There was certainly no knowledge advised or known of this matter, or any effect upon widows' Reversionary Pensions in 1974 or 1981.[78]

3.72 Mr Rodney Cox also submitted that 'Retirement Pay indexation, as applied to Commuted and Uncommuted Retirement Pay, places significant detriment on Retirement pay where I commuted, as opposed to, NOT commuting'.[79]

Commonwealth Ombudsman findings

3.73 The Ombudsman's report details the interaction between indexation and commutation. It was noted that '[i]n effect, the DFRDB Act operates to divide a person's annual retirement pay into two portions – one which is indexed and one which is not. The amount of these portions are connected to the amount the person can commute'. It was also noted that 'the indexed portion of retirement pay has remained at the amount of retirement pay which would be payable annually if a person had decided to commute four times the annual retirement pay entitlement, even though since 1983 a person can commute more than four times'. The Ombudsman summarised that:

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75 DFRDB COMMUTATION CAMPAIGN, *Submission 22*, p. 9. Emphasis in original.

76 DFRDB COMMUTATION CAMPAIGN, *Submission 22*, p. 10. Emphasis in original.

77 DFRDB COMMUTATION CAMPAIGN, *Submission 22*, p. 13.

78 Mr Pater Larard, *Submission 20*, p. 2.

79 Mr Rodney Cox, *Submission 51*, p. 3. Emphasis in original.

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> In effect, a person who elected to commute more than four times their annual retirement pay is exchanging a portion of their indexed retirement pay....This means that a person who commuted more than four times their annual retirement pay would be left with an annual pension less than the maximum available indexed retirement pay.'[80]

3.74 Therefore in relation to indexation:

> For people who did not commute, or who commuted an amount less than or equal to four times their annual retirement pay, they are receiving the full indexed retirement pay…However, where a person commutes more than four times their annual retirement pay, they are receiving less than the full indexed retirement pay. In this case, indexation is only applied to the actual pension paid. Therefore the indexation factor is applied to that lower amount.'[81]

3.75 It was further explained that:

> For people who commute up to four times the amount of their retirement pay, the difference between what they receive and what they would have received if they had not commuted (the 'commutation reduction amount') is fixed—it remains the same dollar amount from year to year throughout their life, unaffected by indexation.
>
> However, a person who commutes more than four times the amount of their retirement pay has a smaller amount of indexable retirement pay (as a result of the initial reduction). This means the difference between their retirement pay and the retirement pay they would have received if they had not commuted will grow over time in accordance with the indexation factor.[82]

3.76 The Ombudsman noted that the modelling undertaken by the AGA and KPMG took into account the indexation described in the DFRDB Act.[83]

3.77 While noting the complexity of indexation in the DFRDB Act, the Ombudsman was satisfied that indexation was properly applied to DFRDB pensions by the administrators. However, it noted that the information provided by CSC:

> did not advise the longer term consequences of electing to commute more than four times a person's retirement pay. In particular, this information could have made clearer that doing so has the effect of commuting a portion of a member's indexed retirement pay, which would in turn lower

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[80] Commonwealth Ombudsman, Investigation into the administration of the Defence Force Retirement and Death Benefits (DFRDB) Scheme, Report No. 06 of 2019, December 2019, pp. 46-47.

[81] Commonwealth Ombudsman, Investigation into the administration of the Defence Force Retirement and Death Benefits (DFRDB) Scheme, Report No. 06 of 2019, December 2019, p. 47.

[82] Commonwealth Ombudsman, Investigation into the administration of the Defence Force Retirement and Death Benefits (DFRDB) Scheme, Report No. 06 of 2019, December 2019, p. 50.

[83] Commonwealth Ombudsman, Investigation into the administration of the Defence Force Retirement and Death Benefits (DFRDB) Scheme, Report No. 06 of 2019, December 2019, p. 47.

> the amount by which their remaining annual retirement pay would grow through indexation.[84]

3.78 Further, in relation to the information provided by CSC:

> The provisions for indexation in the DFRDB Act are extremely complex which is not uncommon across Commonwealth law. This is why it is good administrative practice for agencies administering those complex laws to explain them in a way lay people can understand.[85]

3.79 It was added:

> While we acknowledge that the impact of indexation is unlikely to be the primary motivator to the decision to commute or not, it is still important that people have all relevant information in front of them when making a decision. The more complex a legislative scheme, the more critical it is that administrators of the scheme provide plain language explanations of how it operates.[86]

3.80 In relation to the views expressed that indexation arrangements should be changed, the Ombudsman noted that:

> Indexation arrangements more generally have been the subject of numerous government reviews and inquiries. There is no reason to believe that each of these issues are not the intended policy outcome following deliberate and considered government policy decisions.[87]

3.81 When asked about the scheme and indexation, Defence and CSC emphasised that it is their role to administer the scheme in accordance with the legislation and that the legislation itself is a matter for government.[88]

Other issues

Administration

3.82 Mr Brian Dirou expressed the view that the 'creation of an omnibus authority to manage multiple differing pension schemes has generated administrative shortcomings re the DFRDB pension scheme'. He outlined a number of these and suggested a 'dedicated website for DFRDB members could be created embracing a Summary of the Defence Force Retirement and Death Benefits

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[84] Commonwealth Ombudsman, Investigation into the administration of the Defence Force Retirement and Death Benefits (DFRDB) Scheme, Report No. 06 of 2019, December 2019, p. 50.

[85] Commonwealth Ombudsman, Investigation into the administration of the Defence Force Retirement and Death Benefits (DFRDB) Scheme, Report No. 06 of 2019, December 2019, p. 50.

[86] Commonwealth Ombudsman, Investigation into the administration of the Defence Force Retirement and Death Benefits (DFRDB) Scheme, Report No. 06 of 2019, December 2019, p. 50.

[87] Commonwealth Ombudsman, Investigation into the administration of the Defence Force Retirement and Death Benefits (DFRDB) Scheme, Report No. 06 of 2019, December 2019, p. 52.

[88] Mr David Nockels, Defence and Ms Alan Scheiffers, CSC, *Proof Committee Hansard*, 20 May 2021, pp. 18-19.

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Scheme and access to itemised detail of member DFRDB account history, to minimise need to navigate bureaucracy'.[89]

[89] Mr Brian Dirou, *Submission 46*, pp. 1, 3.

Chapter 4
Suggested changes and potential costs

4.1 This chapter summarises the suggestions made to the committee to address the design of the scheme including the issues focused around commutation and indexation as well as the potential costs.

What do submitters want to happen?

4.2 While there were differing views on exactly what should occur, overall, submitters called for the legislation to be changed to revise various aspects of the scheme arguing that:

- it was drafted contrary to the recommendations of the Jess Report;
- it was too complex and parliamentarians did not understand what they were voting on;
- the commutation arrangements are unfair and should be changed along with some form of compensation and backpay; and/or
- other design aspects of the scheme should be changed, eg. expectation of life factor tables should be updated and indexation adjusted.

4.3 The key suggestions are outlined below. Many of these suggestions were also put to the Ombudsman who noted 'it is clear from the submissions we received, that there is a high level of confusion and dissatisfaction with current policy settings as expressed through the statutory arrangements and many members are hoping for legislative reform'.[1]

Change the legislation to reflect the scheme outlined to them with reimbursement

4.4 A key wish of submitters is for the legislation to be amended to reflect what some were told about how commutation would work by Defence because they believe the current design of the scheme is unfair. They argue that the legislation should be changed to reflect that they accepted a lower pension rate to pay back the lump sum until a nominated life expectancy age and when the lump sum debt is cleared the pension should revert to the pre-commutation rate.[2]

4.5 Some argued this should involve reparations at least in part with most arguing that all monies in excess of reaching the expectation of life factor should be repaid.

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[1] Commonwealth Ombudsman, Investigation into the administration of the Defence Force Retirement and Death Benefits (DFRDB) Scheme, Report No. 06 of 2019, December 2019, p. 44.

[2] Mr Alan White, *Submission 6*, p. 1; Name withheld, *Submission 10*, p. 2.

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4.6 The DFRDB COMMUTATION CAMPAIGN (the Campaign) said that 'retrospective action in respect to the failure of both the DFRDBA and DEFENCE, through Mal-Administration, needs to be taken with appropriate reparations being made'. It added:

> We believe that all of those that accepted a Commutation did so under the false and inaccurate policy advice, as passed to them. Furthermore, very few would have accepted the Lump Sum benefit (provided under original Parliamentary guidance as a transition benefit post-Military Service) had they been aware of the Commutation policy of the DFRDBA.[3]

4.7 Mr Stone, Independent Advocate, the Campaign, emphasised that 'it's a matter of getting their own funds back that they were deceived into taking in the first place'.[4]

4.8 Accordingly, the Campaign argued that:

> …all those Veteran Superannuants induced to accept a Commutation, without the knowledge of the full financial impost commutation carried, under DFRDBA policy, should be unfettered from that policy, forthwith. Furthermore, that just-reparations should be paid to all affected Veteran Superannuants with a full return of all monies paid to the Commonwealth, in excess of the quantum received as a Lump Sum benefit, in opting for a Commutation.[5]

4.9 In summary the Campaign suggested that those who chose to commute 'be held to what their understanding of the matter was – that reductions in Retirement Pay would cease once they passed their National Life Expectancy Point…'.[6]

4.10 Mr Peter Larard also recommended reinstating retirement pay to the full amount, including backpay from the life expectancy date or at least 'some appropriately major recompense'.[7] Mr Charles Myhill indicated that he should be 'compensated for the overpayments I have made'.[8] Mr Paul McGregor also considered that there should be 'reimbursement of money paid since exceeding the notional life expectancy'.[9] Another submitter recommended 'that the Government acknowledge that the commutation arrangements are unfair and amend policy and legislation arrangements which would entitle me to my

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3 DFRDB COMMUTATION CAMPAIGN, *Submission 22*, p. 8. Emphasis in original.

4 *Proof Committee Hansard*, 20 May 2021, p. 3.

5 DFRDB COMMUTATION CAMPAIGN, *Submission 22*, p. 8.

6 DFRDB COMMUTATION CAMPAIGN, *Submission 22*, p. 16. See also Mr Steven Kersnovske, *Submission 47*, p. 3.

7 Mr Peter Larard, *Submission 20*, p. [2].

8 Mr Charles Myhill, *Submission 29*, p. 1.

9 Mr Paul McGregor, *Submission 41*, p. [2].

pre-commutation pension (appropriately indexed) upon reaching my life expectancy'.[10]

4.11 Another submitter recommended that the committee consider 'restoring full pension payments to those service personnel who as DFRDB members commuted a portion of their pension and reach or have reached the age at which they effectively 'repaid' their commutation amount'.[11]

4.12 The Australian Defence Force Retirees Association (ADFRA) is also seeking:

- legislative amendment to cease retirement pay and invalidity pay reduction after Notional Life Expectancy is reached';
- reimbursement of all retired pay and invalidity pay reductions after members reached their National Life Expectancy and
- restoration of the rate of all DFRDB Defined Benefits to a fair current value.[12]

4.13 However, the ADFRA stressed that they are 'not seeking the retrospective recovery of vast benefits already lost due to unfair indexation from the date of retirement to the present day'.[13]

4.14 Mr Michael Tehan suggested that '[a]ssuming the Committee agrees with the assertion that continuing payment of the pension at the reduced rate is unconscionable,…the rate of retirement pay is to be adjusted to the correct rate immediately; and, [m]embers are to be reimbursed a reasonable portion of the amount they have lost since the [c]ommutation value has been repaid'.[14]

4.15 The position was supported by others including Commander Graham J Darcy RAN (Rtd) who also recommended that the DFRDB Act be amended to 'remove the insidious wording which diminishes the benefits and restore those benefits to the levels which were set down by the Jess Committee and accepted by both Coalition and Labor Governments'.[15]

4.16 Mr David Plummer argued that '[a]s I believe that I have fully repaid my commuted amount, I should now be entitled to a total refund of the excessive payments deducted and my pension restored to my full pension entitlement, with restitution of full overpayment'. He added that the legislation should be amended to 'terminate retirement pay reduction, resulting from commutation,

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10 Name withheld, *Submission 18*, p. [6]

11 Name withheld, *Submission 35*, p. 5.

12 ADFRA, *Submission 36.2*, p. 3. See also Mr Herb Ellerbock, *Proof Committee Hansard*, 20 May 2021, p. 9.

13 ADFRA, *Submission 36.2*, p. 3. Emphasis in original.

14 Mr Michael Tehan, *Submission 59*, p. [2].

15 Commander Graham J Darcy RAN (Rtd), *Submission 12*, pp. 1-2.

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on the date on which the total retirement pay equates to the amount commuted, and restore pensions to full entitlement'.[16]

4.17 Another submitter argued that '[t]he Act requires amendment to ensure the full amount of retirement pay is restored once the contributor attains Life Expectancy – and the commutation amount has been repaid to the Commonwealth'.[17]

4.18 A further submitter argued that [t]he only remedial action that will reverse this absolutely inequitable situation is to remove that part of the legislation that stipulates that a reduction in pensions continues past the NLE age used to calculate the commutation in the first instance'.[18]

4.19 Mr Clive Connor also suggested repaying 'all recipients the amount of overpayment they have made with special taxation considerations and adjust their entitlement to full pre-commutation levels'.[19]

4.20 Noting the difficulties with 'so-called backpay', 'particularly as many DFRDB recipients are deceased', Mr Richard Usher suggested that 'from a given date – such as 1 July 2022 – DFRDB retirement pay, for those who have reached their life expectancy, and had 're-paid' the Commonwealth the full amount of their commutation, should increase to the correct value'.[20]

Potential costs

4.21 Looking at the cost of the remedies suggested by the Campaign, they responded:

> **How the Commonwealth should meet this cost is essentially for it to determine, however, we believe that the Commonwealth Superannuation Future's Fund has well sufficient resources, and these being specifically for superannuation purposes. Alternatively we suggest that as those Retirement Pay deductions have been credited to Consolidated Revenue, ongoing, and in some cases for decades, perhaps the Commonwealth could consider this is an appropriate source for their rightful payment.**[21]

4.22 The Campaign further suggested that 'if the funds previously outlaid by the Commonwealth, were now regarded as Military Transition Grants, that this would be consistent with general grant processes managed by the

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16 Mr David Plummer, *Submission 31*, pp. 4-5.

17 Name withheld, *Submission 32*, p. [3]. See also Mr Steven Kersnovske, *Submission 47*, p. 3.

18 Name withheld, *Submission 40*, p. [2].

19 Mr Clive Connor, *Submission 23*, p. 2.

20 Mr Richard Usher, *Submission 34*, p. 2.

21 DFRDB COMMUTATION CAMPAIGN, *Submission 22*, p. 16. Emphasis in original.

Commonwealth for a plethora of causes. **Furthermore, that this could bec[o]me a positive feature of future Military Transition arrangements**'.[22]

4.23 Mr Ellerbock, ADFRA, when asked about costs noted that 'every request for the appropriate information to allow me to do a fully detailed analysis of what you are just asking for now has been denied by the Commonwealth Superannuation Corporation—even to the point of quoting fine print in the Freedom of Information Act to prevent me from getting that information'. However, he indicated that he did have the personal details of some 650 members who commuted and on the basis of that information:

> Basically what I put in my submission is that the overpayment of DFRDB payments after life expectancy will run into hundreds of millions of dollars if it's allowed to go on. By the end of the 2020-21 financial year, some $40.7 million will have been overpaid in commutation. If it's allowed to run for the remainder of the period of this scheme, which will probably go out to 2060, that amount will be something in the order of $1.6 billion. That's an estimate based on the 650 members that I've got. That's the commutation estimate…[23]

4.24 ADFRA added that 'a small part of the annual earnings of the Future Fund, the primary purpose of which is to underwrite unfunded Commonwealth Defined Benefit schemes (of which DFRDB is one), would cover the cost of the outcomes we are seeking'.[24]

4.25 Mr Steven Kersnovske submitted that when the benefit of commutation has been repaid the benefit should revert to the full entitlement before the commutation was removed. He argued that [t]he small amount that each DFRDB recipient that decided to commute funds, stands to gain is insignificant and would have been no different to the amount they would receive should they not have commuted funds'.[25]

4.26 Mr Michael Tehan suggested that the cost to government of implementing the scheme described to them [where the rate of retirement pay is adjusted to the did not commute rate along with reimbursement since commutation repaid] 'will be offset by reduction in part pensions that many members draw from DVA or Centrelink when Income/Asset tests are applied to these adjustments and reimbursements'.[26]

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22 DRFDB COMMUTATION CAMPAIGN, *Submission 22*, p. 9. Emphasis in original.

23 *Proof Committee Hansard*, 20 May 2021, pp. 8-9.

24 ADFRA, *Submission 36.2*, p. 3.

25 Mr Steven Kersnovske, *Submission 47*, pp. 3-4.

26 Mr Michael Tehan, *Submission 59*, p. [2].

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Redesign the scheme

4.27 Several other design aspects were raised with the committee focussed on expectation of life factor tables and indexation.

Update expectation of life factor tables

4.28 The DFWA is seeking legislative change to address the life expectancy tables in the DFRDB Act:

> For almost six decades the Life Expectancy Tables in the 1973 DFRDB Act have unfairly remained the sole basis of calculating DFRDB pension outcomes to veterans of today'.[27]

4.29 The DFWA recommended that '[r]emedial action should reflect the understood intention that any pension reduction should be based on "*the members life expectancy at the date of commutation*"'.[28]

4.30 Mr Kel Ryan, President DFWA explained the proposal to the committee:

> Firstly, amend the DFRDB Act 1973 so that the applicable life expectancy is the one applying to a retiring DFRDB member on the date he or she elects to commute. The extant 1960-62 tables at schedule 3 are to be deleted. Secondly, create a simple program, or amend an existing program, in order to establish the correct DFRDB pension reduction for each existing and future DFRDB pensioner who commutes. All data elements—age, length of service and date of separation—already exist and are now used to calculate reductions. The only change would be to use the individual's correct life expectancy instead of the act's outdated 1960-62 life expectancy. Thirdly, adjust the DFRDB pensions, including reversionary pensions, of all living DFRDB pensioners in light of step 2….[29]

4.31 However, this suggestion by the DFWA was not supported by the Australian Defence Force Retirees Association arguing that the proposal would 'provide the least benefit for the majority who have retired the longest, and the greatest benefit, albeit still only small, for the 900 odd members who have not yet retired and the relative few most recently retired'.[30]

4.32 Mr Thornton also argued for a change to the tables in the DFRDB Act on the basis that the DFRDBA should have advised the government and Parliament

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27 DFWA, *Submission 54*, p. 2.

28 DFWA, *Submission 54*, p. 4. Emphasis in original. See also Mr Herb Ellerbock, *Proof Committee Hansard*, 20 May 2021, p. 12. Note: This was supported by The Royal Australian Armoured Corps Corporation, *Submission 63*, p. [2].

29 *Proof Committee Hansard*, 20 May 2021, p. 12. This proposal was supported by the RAAC Corporation Limited, *Submission 63*, p. 2; Name withheld, *Submission 75*, p. 1 and Mr Frank Aldred, *Submission 80*, p. 2.

30 ADFRA, *Submission 36.2*, p. 3.

that the data in schedule 3 was out of date and as a result financial detriment has been sustained by DFRDB members.[31]

4.33 It was also suggested to rename the tables to be a commutation divisor[32] as noted by the Ombudsman.[33]

Potential costs

4.34 The DFWA noted that the costs of their proposal [to update the life expectancy tables] requires actuarial study but that an effort was made in the DFWA paper 'Defence Force Retirement and Death Benefits Scheme – Commutation – A simple Solution' which estimates that the average annual increase in DFRDB pensions would be approximately 1.3 per cent.[34] At the hearing Mr Ryan further explained:

> Subject to actuarial confirmation, DFWA estimates that DFRDB pensions would rise by 1.3 per cent or, on average, about $400 per annum. The gross cost to the budget is estimated to be in the order of $20 million.[35]

4.35 Mr Ryan, DFWA, added:

> Even though the Commonwealth has profited greatly from living and deceased veterans because of the life expectancy issue, DFWA does not call for a lump sum back payment for any DFRDB pensioner. That would be fair to veterans without disadvantaging the taxpayer, but DFWA recognises the parlous state of Commonwealth finances due to the COVID-19 virus and is prepared, albeit reluctantly, to concede this issue. In this case, we recognise that pursuing lump sum repayments, however fair, would impose further bureaucratic and political delays on achieving an outcome for a veteran cohort that is dying off.[36]

Other suggestions

4.36 Mr Brian Dirou provided another suggestion in relation to lump sums:

> Considering commuted pensions have been calculated on nominal life expectancies that are being well exceeded in many cases, it would be reasonable to allow conversion to a lump sum after nominal life expectancy to enable pensioners funding availability to ensure adequate financial security for spouses/dependants. The Federal Government is allowing premature use of superannuation investment for other purposes, so why not DFRDB pensioners?[37]

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31 Mr Peter Thornton, *Submission 45*, p. 9.

32 Mr Clive Connor, *Submission 23*, p. 2.

33 Commonwealth Ombudsman, Investigation into the administration of the Defence Force Retirement and Death Benefits (DFRDB) Scheme, Report No. 06 of 2019, December 2019, p. 11.

34 DFWA, *Submission 54*, Enclosure 1.

35 *Proof Committee Hansard*, 20 May 2021, p. 12.

36 *Proof Committee Hansard*, 20 May 2021, pp. 12-13.

37 Mr Brian Dirou, *Submission 46*, p. 3. Emphasis in original.

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Indexation

4.37 The Campaign called for equality of treatment and argued:

> Where indexation is found not to have been consistent with the legislation, that equitable reparations should be made to each Veteran Superannuant, so affected, to fully restore their Retirement Pay reduction to an amount equivalent to that, that they should have received, had they not commuted. Also, that all losses from past reductions of Retirement Pay be paid in full and not taxed in a single year drawdown.[38]

4.38 Mr Herb Ellerbock, DFWA, told the committee:

> …the indexation issue remains a fraught one. The changes to indexation brought about in 2014 were very welcome, but they only applied to those aged 55 or greater as far as DFRDB pensioners were concerned. That indexation that applies to them is fair, and the government and, indeed, the parliament recognised that the former method of indexation, CPI alone, was unfair by definition, and that's why fair indexation was brought in. However, it was only brought in for those aged 55 or greater. Those aged under 55 still suffer from unfair indexation. And, similarly, for service people who are members of the following scheme, the Military Superannuation and Benefits Scheme, the employer portion of their scheme is only indexed to CPI, and the cost of that over the period of their time in service before they can receive a pension is very, very significant. It can be in the hundreds of thousands of dollars because of wrong indexation.[39]

4.39 Mr Ellerbock added:

> On a related issue, the people who, in our opinion, suffer most with wrong indexation are those on invalidity benefits. There are many thousands of DFRDB pensioners and others who are on invalidity benefits of one form or another. Their indexation is CPI at best, and they're the ones who suffer the most. It's difficult for us, as one of the speakers mentioned earlier, to extrapolate from that and say: 'Does this have mental health considerations—a propensity to suicide?' and these sorts of issues. But being treated as second-class citizens when you're already on an invalidity benefit, in our view, is something that the government should remedy and remedy very quickly.[40]

4.40 In summary Mr Ellberbock outlined the position of the DFWA in relation to indexation:

> We would like to see a recalculation of the base rates of entitlements, of benefits, based on fair indexation from the date of retirement to the present day, or certainly until 2014, when fair indexation was introduced. That is costly…[41]

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38 DFRDB COMMUTATION CAMPAIGN, *Submission 22*, p. 10.

39 *Proof Committee Hansard*, 20 May 2021, p. 14.

40 *Proof Committee Hansard*, 20 May 2021, pp. 14-15.

41 *Proof Committee Hansard*, 20 May 2021, p. 9.

4.41 The DFWA also submitted the 'inappropriateness of the CPI as the indexation measure for DFRDB pension adjustment has been recognised by the passing of the Defence Force Retirement Benefits Legislation Amendment (Fair Indexation) Act 2014'. It argued:

> Given the indexation was considered inappropriate for those over 55 years, DFWA considers that the time to redress the indexation wrong for the small and decreasing number of DFRDB recipients who are under 55 years of age is long overdue. Action should be initiated forthwith.[42]

4.42 Specifically the DFWA recommended:

> …the earliest possible amendment to the Fair Indexation Act so that all DFRDB pension recipients under 55 years and who were compulsorily discharged from the ADF on medical grounds could benefit from their pensions being indexed to the better movements in either the Consumer Price Index, the Male Total Average Weekly Earnings, and the Pensioner and Beneficiaries Living Cost Index.[43]

4.43 The RSL also noted that '[p]ensions indexed solely to CPI have lost value relative to present wage rates and living standards. Male Total Average Weekly Earnings (MTAWE) is seen as a more appropriate indexation basis'.[44]

4.44 Mr Kersnovske recommended that the partial indexation provisions be repealed. Also that the rates of all DFRDB Defined Benefits are restored to a Fair Current Value. That is, the rates those benefits would be now if;

- they had been adjusted per the 'fair' indexation method incorporated into the DFRDB Act; and
- the reduction of Retirement /Invalidity Benefits after commutation, had ceased on the date NLE is reached.[45]

4.45 Mr Paul McGregor called for a fair indexation method to be incorporated into the DFRDB Act.[46] Mr Clive Connor suggested that there is a need 'to recalculate for each recipient member the amount they had lost through unfair indexation and establish a new individual base line from the date the Legislation was passed'.[47] Mr Charles Myhill also suggested the Fair Indexation Bill 'should have resulted in a new individual base line that included the previous losses due to CPI'. He added that '[s]ince 2014 the Indexation arrangements are fair.[48]

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42 DFWA, *Submission 54*, p. 5.

43 DFWA, *Submission 54*, p. 5.

44 RSL, *Submission 53*, Attachment 1 of Annex A.

45 Mr Steven Kersnovske, *Submission 47*, p. 5.

46 Mr Paul McGregor, *Submission 41*, p. [2].

47 Mr Clive Connor, *Submission 23*, p. 2.

48 Mr Charles Myhill, *Submission 29*, pp. 1-2.

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4.46 Another submitter recommended '[r]edress, repay and backdate the Pension Adjustment approved in the Budget as part of the 2014 Fair Indexation Bill'.[49]

4.47 Mr David Plummer recommended to '[a]pply all indexation increases to the full retirement pension pay that would be payable had the member not commuted'.[50]

4.48 Another submitter suggested that '[t]he remedial action required is to recalculate DFRDB Pensions had the 2% discounting not occurred and implement an appropriate indexation system back dated to when Monetary Policy was introduced'.[51]

Potential costs

4.49 Regarding indexation Mr Herb Ellerbock, DFRA, told the committee, '[t]he indexation estimate, if it's allowed to go on until every member of this scheme is dead, will be somewhere between $11 billion and $12 billion'. He added that he has not costed the amount already lost to this point 'but I estimate that, on average, every member in the scheme now has lost in the order of 20 per cent of their defined benefits at this point in time'.[52]

4.50 Regarding the DFWA suggestion, in relation to cost, they submitted:

> As to cost, without any insight into the number of members involved in the under 55 cohort, a cost estimate could not be more than a subjective one. Intuitively, given the low numbers, the cost can only be a minimal one against a benefit that must be sizable.[53]

4.51 A submitter who wanted the legislation changed to reflect the incorrect information provided by Defence as well as implementation of a different indexing system, including the two per cent not passed on, submitted that '[t]he cost compared to recent Government initiatives like "Job Keeper" and "Job Seeker" would be miniscule'.[54]

Issues with these suggestions

4.52 The DFWA recognised that legislative action to retrospectively try to turn the scheme into what some DFRDB members understood as a result of the incorrect information provided by Defence would mean:

> The small number who did not commute would then have a valid argument that they should now be entitled to commute because the

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49 Name withheld, *Submission 25*, p. 4.

50 Mr David Plummer, *Submission 31*, p. 5.

51 Name withheld, *Submission 33*, p. [3].

52 *Proof Committee Hansard*, 20 May 2021, pp 8-9.

53 DFWA, *Submission 54*, p. 5.

54 Name withheld, *Submission 33*, p. 3.

> original conditions under which they made their decision had changed. They could claim financial detriment compared to others who did commute and are now to have their pensions increased.
>
> There would be a valid argument that the estates of ADF members who commuted, but died before reaching average life expectancy age, should pay off the outstanding amount. This would not be acceptable under any circumstances. Many of these estates would be held by ADF Members' widows/widowers who are now in receipt of [DFRDB] reversionary pensions based on 5/8 of what the members uncommuted pension would have been. This would not be accepted under any circumstances.[55]

4.53 The DFWA noted that there would be 4 classes of retirement pensioners:

- Those who commuted based on incorrect advice;
- Those who commuted based on correct advice;
- Those who did not commute based on correct advice; and
- Those who did not commute based on incorrect advice.[56]

4.54 The Ombudsman looked at these issues and pointed out in relation to reparations that this was not recommended because:

> …on the basis of the modelling, to do so would unreasonably place the cohort who commuted in an even stronger financial position than those who correctly understood the operation of the scheme and decided not to commute, which in the long run appears to have been the less beneficial choice for most people. Similarly, it would provide an unjustified windfall at taxpayers' expense for those who did not understand the scheme and chose to commute.
>
> Second, to do so would presume to contradict the intent of the Parliament that passed the legislation establishing the DFRDB scheme decades ago. It would of course be possible for the current Parliament and the current Government to consider whether the policy issues in question ought to be re-opened in light of the analysis in this report.[57]

4.55 In speaking about the potential for perverse outcomes to the committee Mr Manthorpe further explained:

> One is that there were people who understood how the scheme was intended to work. There was certainly a group of people, probably in their thousands, as my report says, who were misinformed. But there were other people who understood how it worked, so I found it difficult to make a recommendation that said the taxpayer should now go and give those people, who knew exactly what they'd signed up for, a further payment for something that happened decades ago. That's one issue that would have to be contemplated if there another scheme was put in place. I also thought

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55 DFWA, *Submission 54*, p. 7.

56 DFWA, *Submission 54*, pp. 7-8.

57 Commonwealth Ombudsman, Investigation into the administration of the Defence Force Retirement and Death Benefits (DFRDB) Scheme, Report No. 06 of 2019, December 2019, Foreward.

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> about the group who understood how the scheme worked and chose the other option—that is to say, they chose the higher pension but not taking the lump sum up-front. They would, I think, be rightly aggrieved if the other group got a further payout, but they didn't get anything even though they understood the scheme properly and they've ended up, if the actuarial modelling is reliable, in a position that is genuinely worse off than the group that commuted.
>
> When I turned my mind to all of those factors I thought perhaps there's some sort of reparation payment you could made. I make recommendations to Defence all the time about reparation payments for people who've suffered abuse in the Defence Force. That's a well structured arrangement scheme. But in this case, again I was struggling to ascertain who would be in and who would be out. How would you determine that? What would be a reasonable payment? In the end, I concluded that these are all policy questions and, if the aggrieved people want to continue to campaign for what they care about, that is fine; it is entirely their right. But they're in the end policy questions that go to the design of the legislation, which was created decades ago.[58]

4.56 Defence noted that in relation to the issues being raised and the DFRDB legislation 'there have been a range of changes over the many years, a lot of it around indexation and in response to a variety of inquiries or reviews commissioned by government, most recently…in 2014'.[59]

4.57 Defence reported that in 2019 the Australian Government Actuary provided advice to Defence that:

> any changes to the scheme itself, including life expectancy factors, indexation, or commutation arrangements would have significant immediate costs for Government, both prospective and retrospective. The Actuary also cautioned against making changes to the legislation in isolation without considering the scheme in its entirety due to the potential for unintended consequences.[60]

4.58 Following on from this statement, at the hearing, Defence was asked whether any costings had been carried out. After confirming that no costings had been undertaken, Defence was asked to do so and on notice advised:

> Without formal tasking outlining specific policy changes to the Defence Force Retirement and Death Benefits (DFRDB) scheme, Defence is unable to request formal costings from the Australian Government Actuary (AGA).[61]

4.59 Defence added:

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58 *Proof Committee Hansard*, 20 May 2021, p. 28.

59 *Proof Committee Hansard*, 20 May 2021, p. 19.

60 Defence, *Submission 39*, covering letter, p. 2.

61 Defence, answer to question on notice, received 4 June 2021, question 3.

> In Defence's submission to the Senate Inquiry, Defence stated that any change made to DFRDB would likely be at significant cost to the Commonwealth. This statement was informed by the costs involved in the last legislative change to the DFRDB scheme; that being the 2014 change in indexation methodology for pension recipients over the age of 55. As outlined in the Explanatory Memorandum to the *Defence Force Retirement Benefits Legislation Amendment (Fair Indexation) Act 2014*, the impact on the underlying cash costs for the period 2014-15 to 2017-18 was budgeted to be $162.2m and the unfunded liability at 1 July 2014 was estimated to increase by $5.1b.[62]

Other design issues

4.60 A smaller number of other design issues were raised including: effects on spouse and dependant benefits[63]; taxation[64]; notional retirement age penalty[65]; officer penalties[66]; and interaction with Centrelink benefits[67].

Other suggestions

More assistance with CDDA scheme

4.61 The DFWA pointed to the CCDA scheme for those cases where financial detriment can be shown, adding that '[s]upport could be provided to affected DFRDB pensioners to both prepare a claim and to appeal any adverse decisions'. It recommended the following options be considered where a member pursues compensation through the CDDA scheme and wished to appeal the decision:

- Compensation should include any professional costs expended in preparation of the claim.
- Compensation should include legal and other professional costs if a claimant successfully appeals an adverse finding.
- Where the claimant's appeal is unsuccessful, the Commonwealth should not apply for costs to be awarded against the veteran.[68]

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62 Defence, answer to question on notice, received 4 June 2021, question 3.

63 Mr Clive Connor, *Submission 23*, p. 2; Mr Peter Larard, *Submission 20*, p. 2; Mr Peter Thornton, *Submission 45*, p. 8; RSL, *Submission 53*, Annex A, p. [4]; Mr J.A. Treadwell, *Submission 79*, p. 16.

64 Name withheld, *Submission 25*, pp. 1-3; Name withheld, *Submission 35*, p. 5; DFWA, *Submission 54*, p. 22; Name withheld, *Submission 48*, p. 4.

65 Name withheld, *Submission 25*, p. 3; Name withheld, *Submission 35*, p. 4; Name withheld, *Submission 48*, p. 3.

66 Mr Frank Aldred, *Submission 80*, p. 2; DFWA, *Submission 54*, p. 22.

67 Name withheld, *Submission 25*, p. 3; RSL, *Submission 53*, Annex A, p. [8]; Mr Arthur Drury, Submission 76, p. 3.

68 DFWA, *Submission 54*, p. 8.

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Improving understanding

4.62 Mr Les Bunn noted the complexity of the DFRDB scheme and suggested that this complexity 'makes it practically impossible for a typical member such as myself to seek and understand aspects of the scheme which are of importance personally'. He added that through his recent attempts to gain information, he was provided with a table of data 'which gave me zero help'. Noting this outcome he went on to say that such outcomes make suggestions on how to improve communication between DFRDB members and the CSC 'very difficult if not impossible to formulate'. Mr Bunn concluded by saying that 'in my case the solution is relatively simple – continue corresponding and questioning until satisfied'.[69]

Website deficiencies

4.63 Mr Brian Dirou also suggested a 'dedicated website for DFRDB members could be created embracing a Summary of the Defence Force Retirement and Death Benefits Scheme and access to itemised detail of member DFRDB account history, to minimize need to navigate bureaucracy'.[70] Specifically Mr Dirou reported that data to calculate the residual pension payable to a spouse and member contributions history are not available.[71]

Education

4.64 A submitter suggested that:

> [a] formal information/education program should be provided to all inductees to the Australian Defence Force to describe, outline and detail the features and benefits of the current Defence Superannuation Scheme/s be it DFRDB, MSBS or Military Superannuation. The programs should be included as part of the normal induction process for both recruits and officer cadets. In addition there should be an ongoing program of updates for all Service Personnel, and not merely confine such information to Resettlement seminars prior to separation/discharge.[72]

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69 Mr Les Bunn, *Submission 28*, p. [2].

70 Mr Brian Dirou, *Submission 46*, p. 3.

71 Mr Brian Dirou, *Submission 46*, p. 2.

72 Name withheld, *Submission 25*, p. 4.

Chapter 5
Conclusions and Recommendations

5.1 This chapter contains the committee's conclusions and recommendations.

Provision of information

5.2 The terms of reference asks the committee to focus on the information provided to DFRDB members. The committee believes this issue was comprehensively addressed through the investigation undertaken by the Commonwealth Ombudsman. The Ombudsman found many DFRDB members were provided with incorrect information by Defence which led them to believe that their commuted pensions would increase once they reached their life expectancy factor age.

5.3 There is no dispute that this occurred, it has been recognised as defective administration by Defence and an apology has been issued by the Secretary of the Department of Defence and the Chief of the Defence Force.

5.4 It is also clear that contrary to claims that all DFRDB members received incorrect information, this was not the case with the Ombudsman finding that Defence provided some correct as well as incorrect information to members on the long term impact of commutation. The committee also notes that it did receive submissions where the submitters indicated that they had full knowledge of the operation of the legislation and this was also found by the Ombudsman.

5.5 There were submitters who felt the DFRDBA/CSC were also to blame for not properly communicating the correct understanding of commutation to DFRDB members or that the information about how the scheme operates was somehow covered up. However, the committee notes that the Ombudsman found that the information provided by DFRDBA/CSC was at all times correct but not sufficiently clear to correct the misunderstandings that many members had as a result of their interactions with Defence. In addition, it is worth noting that it was and is always open to members to contact the DFRDB Authority/CSC to clarify issues and the Ombudsman found that Defence handbooks encouraged this.

5.6 As there appeared to be confusion about the role of the DFRDBA/CSC the committee emphasises that the CSC administers the scheme in accordance with the legislation as agreed by the parliament and the legislation itself is a matter for government. The CSC does not make or change policy in regard to any of the super schemes that it administers.

5.7 It also seems clear to the committee from the evidence and the statements to the committee and the Ombudsman that the vast majority of DFRDB members

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would have chosen to commute even if they had known about the reduction in retirement pay as they needed the capital to purchase a home or business after leaving the ADF.

5.8 The data in the Ombudsman's report shows that even after this issue was clarified the numbers choosing to commute remained high at or above 85 per cent. This appears to be at odds with the claim that very few DFRDB members would have accepted the lump sum benefit had they been aware of the reduced pension.

5.9 Following on from the finding that Defence provided incorrect information, the Ombudsman then investigated the question of whether members who relied on this advice suffered financial detriment. In summary, the Ombudsman did not recommend any compensation in a broad sense.

5.10 The committee also notes a number of submissions raised concerns about the complexity of the DFRDB scheme and the difficulty in navigating bureaucracy to access information on it.[1] Some submissions proposed a formal education program on military superannuation schemes for ADF recruits and officer cadets, and ongoing updates for ADF personnel[2], as well as a dedicated website for members.[3]

Financial detriment

5.11 Despite the findings of the Commonwealth Ombudsman, some DFRDB members remain strongly of the view that they have suffered financial detriment based on their understanding at the time, which is actually a misunderstanding of how the scheme operates. In other words, the financial detriment is perceived rather than actual as it compares their current financial situation to a scheme that does not exist in law, ie claiming an actual loss as opposed to a financial disappointment.

5.12 As noted by the Ombudsman 'missing out on a benefit to which a person is not actually entitled under the law does not necessarily mean that the person has suffered financial detriment'.[4]

5.13 While this outcome is no doubt disappointing, to the committee, the most important question, as it was for the Ombudsman, is whether some DFRDB members suffered actual (as opposed to a perceived) financial detriment as a result of choosing to commute, based on the wrong advice from Defence.

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1 Mr Les Bunn, *Submission 28*, p. [2].

2 Name withheld, *Submission 25*, p. 4.

3 Mr Brian Dirou, *Submission 46*, p. 2-3.

4 Commonwealth Ombudsman, Investigation into the administration of the Defence Force Retirement and Death Benefits (DFRDB) Scheme, Report No. 06 of 2019, December 2019, Foreword.

5.14 The Ombudsman engaged two expert actuaries (the Australian Government Actuary and KPMG) which found commutation has resulted in a beneficial overall financial outcome for DFRDB members to date. This was based on the real life scenarios they ran which used conservative assumptions. The Ombudsman also undertook its own independent analysis of the modelling results.

5.15 While some submitters questioned the findings of the Ombudsman's investigation and the modelling undertaken, the committee does not question the professionalism of the Ombudsman or the actuaries engaged. Indeed it appears that by engaging two actuaries and conducting its own analysis, the Ombudsman took great care to answer this most important question about actual financial detriment.

5.16 In addition, the Ombudsman went a step further, acknowledging there may be outlying cases with circumstances they were not aware of at the time of the investigation. To address this possibility there is a process for DFRDB members to apply for compensation through the Compensation for Detriment caused by Defective Administration (CDDA) scheme.

5.17 The committee notes that in the case of financial loss, the overarching principle used by the CDDA scheme to determine the appropriate level of compensation is to restore the claimant to the position they would have been in had the defective administration not occurred. However, the committee considers that where financial detriment as a result of defective administration can be shown that there is a case for the government to consider modest reparations or an ex-gratia style payment to recognise this.

5.18 The committee notes that currently, no CDDA claims by DFDRB scheme members have been successful. Therefore, more support may be required to assist DFRDB members to access the CDDA scheme and appeal any adverse decisions.[5]

5.19 Further, the committee considers that for DFRDB members who were unsuccessful in their claims and any appeals under the CDDA scheme, some form of reparation payment may be appropriate as a fall back. This is broadly consistent with an option considered by the Ombudsman and discussed by him in the inquiry public hearing. This could operate along the lines of existing government reparation payment schemes, including for those who have suffered abuse in the Australian Defence Force.[6]

5.20 These payments would also recognise the government's moral obligation to address the confusion and distress suffered by DFRDB members as a result of

---

[5] DFWA, *Submission 54*, p. 8.

[6] *Proof Committee Hansard*, 20 May 2021, p. 28. See https://www.dva.gov.au/health-and-treatment/injury-or-health-treatments/support-if-you-were-abused accessed 21 June 2021

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defective administration. This could involve a streamlined and simplified application process for complainants.

Recommendation 1

5.21 The committee recommends that the Australian Government consider ways to improve members' understanding of DFRDB and other military superannuation schemes. This could include additional information and education for ADF recruits and officer cadets, and ongoing updates for ADF personnel. It could also comprise a dedicated website or webpage for members, including a summary of the scheme and information on a member's contributions history and any residual pension payable.

Recommendation 2

5.22 The committee recommends that the Australian Government consider more assistance for DFRDB members to make claims under the CDDA scheme and appeal any adverse decisions or a separate reparation payments scheme for DFRDB members who are unsuccessful under the CDDA scheme to recognise the government's moral obligation to address any confusion and distress caused by defective administration. Where a CDDA claim was successful, compensation could include any professional costs expended in preparation of the claim, and legal and other professional costs if a claimant successfully appealed an adverse finding. Further, where the claimant's CDDA appeal was unsuccessful, the Commonwealth should consider not applying for costs to be awarded against the claimant.

5.23 Given the criticism of the Ombudsman report in submissions, it is worth emphasising that the focus for the Ombudsman was, consistent with his remit, on the administration of the scheme and not the policy and design issues raised with him (see below). The committee also understands the Ombudsman could only look at financial detriment in relation to the DFRDB scheme in existence, not the scheme promoted to DFRDB members that does not exist in legislation.

Parliamentary Scrutiny

5.24 The Ombudsman and the committee received evidence questioning whether parliament understood what it was voting for and arguing that it should have been passing legislation that reflected all the findings of the Jess report.

5.25 The committee does not question whether parliament understood what they were voting for when they passed the DFRDB Act. The parliament deals with complex legislation all the time. The committee also notes that in relation to the Jess report, it is up to government to accept, reject or modify the recommendations in committee reports when bringing forward legislation.

Design of the scheme

5.26 In essence the issues raised with the committee centre on the design of the DFRDB scheme. DFRDB members believe that the scheme currently in legislation is either not what was recommended to government at the time the legislation was put in place or that regardless of that, it is unfair in a number of areas including the permanent reduction to retirement pay, use of life expectancy factor tables and indexation.

5.27 There was no consensus in the suggestions to the committee on a way forward on these issues. However, it is the case that the suggestions would all require the legislation to be amended as they all deal with policy settings determined by government.

5.28 Changing the legislation is an option open to the government of the day. However, the Ombudsman cautioned that the government should have regard to the potential impact on other members, namely those who did not commute or those who transferred to other schemes. There are a number of issues with this option which would:

- place the cohort who chose to commute in an even stronger position than those who decided not to commute;
- provide an unjustified windfall at taxpayer's expense for those who did understand the scheme and chose to commute; and
- presume to contradict the intent of the parliament.

5.29 As pointed out by the Ombudsman, if further changes are made to the DFRDB scheme, this may cause unfairness to members who decided not to commute. It may also cause unfairness to other current and former ADF members, for example, those who chose to move to the MSBS scheme in the early 1990s based on the understanding that the scheme was closing and would not be significantly reformed. Changes may also affect people in other military or civilian schemes who would also call for the same options, treatment and reimbursement.

Senator Kimberley Kitching
Chair

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Appendix 1
Submissions and answers to questions on notice

1 Cmdr Anthony Parkin (Rtd)
2 *Name Withheld*
3 Mr Neville Madden
4 Mr William Harrison
5 Mr Ian Bawden
6 Mr Alan White
7 Mr Anthony Ryan
8 Mr William Krause
9 Mr Kenneth Park
10 *Name Withheld*
11 Mr Keith Mackintosh
12 Commander Graham J Darcy RAN (Rtd)
13 Mr Clive Dennett
14 Mr John Snell
15 Mr Graham Morris
16 Mr Bruce Campbell
17 AATTV Association WA Branch
18 *Name Withheld*
19 W G Ritchie AM RAN (Rtd)
20 Mr Peter Larard
21 *Name Withheld*
22 DFRDB COMMUTATION CAMPAIGN
- 22.1 Supplementary to submission 22
- 22.2 Supplementary to submission 22

23 Mr Clive Connor
24 Mr Robert Richards
25 *Name Withheld*
26 *Name Withheld*
27 *Name Withheld*
28 Mr Leslie Bunn
29 Mr Charles Myhill
30 Mr Clinton McKenzie
- 30.1 Supplementary to submission 30

31 Mr David Plummer
32 *Name Withheld*
33 *Name Withheld*
34 Mr Richard Usher OAM
35 *Name Withheld*

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36 Australian Defence Force Retirees Association (ADFRA) Inc.
- 36.1 Supplementary to submission 36
- 36.2 Supplementary to submission 36
- 36.3 Supplementary to submission 36
- 36.4 Supplementary to submission 36

37 *Name Withheld*
38 Defence Force Welfare Association (WA Branch) Inc
39 Department of Defence
40 *Name Withheld*
41 Mr Paul McGregor
42 *Name Withheld*
43 *Name Withheld*
44 *Name Withheld*
45 Mr Peter Thornton
46 Mr Brian Dirou
47 Mr Steve Kersnovske
48 *Name Withheld*
49 Vietnam Veterans' Association of Australia
50 Commonwealth Superannuation Corporation
51 Mr Rodney Cox
52 Commonwealth Ombudsman
53 Returned & Services League of Australia
54 Defence Force Welfare Association
55 Mr Martin Smith
56 Mr Jim Nicholls
57 Mr Terry Dillon OAM
58 *Name Withheld*
59 Mr Michael Tehan
60 Mr Colin Wade
61 Mr Tom Williams
62 Mr Bill Arden
63 Royal Australian Armoured Corps Corporation
64 *Confidential*
65 *Confidential*
66 *Confidential*
67 *Confidential*
68 *Confidential*
69 *Confidential*
70 *Confidential*
71 *Confidential*
72 *Confidential*
73 Mr Greg Decker
74 Mr Phillip Boobyer

75 *Name Withheld*
76 Mr Arthur Drury
77 Mr Bert Hoebee
78 Ms Petronella Campbell
- 78.1 Supplementary to submission 78

79 Mr J.A. Treadwell AFC OAM
- 79.1 Supplementary to submission 79
- 79.2 Supplementary to submission 79

80 Mr Frank Aldred
81 Mr Mick Dunn
82 Mr Terry Ward

Answers to Question on Notice

1 Commonwealth Superannuation Corporation - Answers to questions on notice from public hearing held in Canberra 20 May 2021 (received 26 May 2021)
2 Department of Defence - Answers to questions on notice from public hearing held in Canberra 20 May 2021 (received 4 June 2021)
3 Defence Force Welfare Association - Answers to questions on notice from public hearing held in Canberra 20 May 2021 (received 14 June 2021)

Appendix 2
Public hearing and witnesses

Thursday, 20 May 2021
Committee Room 2S1
and via videoconference
Parliament House
Canberra

DFRDB COMMUTATION CAMPAIGN

- Mr Ken Stone, Independent Advocate

Australian Defence Force Retirees Association Inc.

- Mr Herb Ellerbock, Secretary

Defence Force Welfare Association

- Mr Kel Ryan, National President
- Mr Win Fowles, Vice President, QLD Branch

Department of Defence

- Mr David Nockels, First Assistant Secretary, People, Policy and Culture
- Ms Donna Webster, Acting Director Employment Law and Discretionary Claims

Commonwealth Superannuation Corporation

- Ms Alana Scheiffers, General Counsel

Office of the Commonwealth Ombudsman

- Mr Michael Manthorpe, Commonwealth Ombudsman
- Mr David Fintan, Senior Assistant Ombudsman

Australian Government

Australian Government Response to the Senate Foreign Affairs, Defence and Trade References Committee:

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

1 OCTOBER 2021

Recommendation 1
The committee recommends that the Australian Government consider ways to improve members' understanding of DFRDB and other military superannuation schemes. This could include additional information and education for ADF recruits and officer cadets, and ongoing updates for ADF personnel. It could also comprise a dedicated website or webpage for members, including a summary of the scheme and information on a member's contributions history and any residual pension payable.

The Australian Government **supports** Recommendation 1 of the Senate Foreign Affairs, Defence and Trade Committee's findings. The Australian Government notes that the Department of Defence has implemented a continuous improvement approach to the education of Australian Defence Force (ADF) members on financial matters including their understanding of the DFRDB and other military superannuation arrangements. This is done through a variety of mediums including: Defence's Pay and Conditions website, and the information and education services provided by the ADF Financial Services Consumer Centre and the Commonwealth Superannuation Corporation (CSC).

In 2006 the Chief of the Defence Force established the ADF Financial Services Consumer Centre (ADF Consumer). ADF Consumer operates pursuant to a charter from the Chief of Defence Force in support of the Australian Government's National Financial Capability Strategy. They administer and deliver Defence's financial literacy education service for ADF members and their families. Their aim is to help ADF members and their families become more financially capable. This includes providing a range of information regarding the DFRDB, Military Superannuation and Benefits Scheme and ADF Super, in consultation with CSC.

ADF Consumer works closely with CSC and delivers seminars to ADF members in different stages of their service, such as at initial training and transition to civilian life. In an average year, ADF Consumer delivers around 150 seminars on various financial topics for approximately 15,000 members. In addition, CSC's member education team provides on-base presentations to ADF members which provide superannuation scheme overviews and free individual member consultation to all ADF members.

In 2020–21 CSC delivered 231 seminars throughout the year, 150 of which were live webinars (due to COVID travel restrictions) and 4,000 one-on-one consultations to individual members.

Recommendation 2

The committee recommends that the Australian Government consider more assistance for DFRDB members to make claims under the Compensation for Detriment caused by Defective Administration (CDDA) scheme and appeal any adverse decisions or a separate reparation payments scheme for DFRDB members who are unsuccessful under the CDDA scheme to recognise the government's moral obligation to address any confusion and distress caused by defective administration. Where a CDDA claim was successful, compensation could include any professional costs expended in preparation of the claim, and legal and other professional costs if a claimant successfully appealed an adverse finding. Further, where the claimant's CDDA appeal was unsuccessful, the Commonwealth should consider not applying for costs to be awarded against the claimant.

The Australian Government **partially supports** Recommendation 2 of the Senate Committee's findings.

With regards to the Committee's recommendation about a separate reparation payments scheme for DFRDB members who are unsuccessful under the CDDA scheme, the Australian Government suggests that any such scheme would create perverse outcomes to different groups of DFRDB members. The Commonwealth Ombudsman, Mr Michael Manthorpe, outlined this issue in his public hearing statement on 20 May 2021 to the Senate Committee:

> *"... I stopped short of recommending that the government pay compensation or some form of reparation as, in my view, to do so would have: created new inequities between different groups; potentially produced an unjustified windfall for those who properly understood the scheme, at taxpayers' expense; and presumed to set aside what parliament had intended in the first place."*

The Committee suggests a range of recommendations regarding the CDDA scheme.

The Australian Government supports this aspect of Recommendation 2. For members who believe they have sustained financial detriment as a result of their decision to commute, the Department of Defence has implemented an approach involving a tailored CDDA claim form intended to direct members' attention to the issues critical to the determination of their claim. Also, when claims are acknowledged, members receive a personalised email responding to the specific issues arising in their claim. Members are also given the name and contact details of a specific case manager who is available to discuss the claim with them, or correspond with them, depending on their preference.

It is noted that both the Commonwealth Ombudsman and the Committee report indicate that it is unlikely a member has suffered a financial detriment and therefore the likelihood of any member being successful appears to be limited.

The Committee report stated that:

> *"5.11 Despite the findings of the Commonwealth Ombudsman, some DFRDB members remain strongly of the view that they have suffered financial detriment based on their understanding at the time, which is actually a misunderstanding of how the scheme operates. In other words, the financial detriment is perceived rather*

than actual as it compares their current financial situation to a scheme that does not exist in law, ie claiming an actual loss as opposed to a financial disappointment."

There is a balance to be struck when dealing with claimants, between giving them the assistance they need to put their best case forward, and also managing their expectations. This is necessary to ensure that claimants are not given unrealistic expectations about their prospects for success. The Department of Defence has found to date that some members have been misinformed about the Ombudsman's report and the Committee's conclusions, and have been encouraged to claim based on a false factual foundation. As the Ombudsman put it in his report:

"It would do a disservice to falsely raise hopes of compensation among the members. Futile claims result merely in further inconvenience and frustration to the member, and an unnecessary use of public resources for assessment processes."

If claimants disagree with specific aspects of the decision or present new evidence, their decision will be reviewed internally by a different decision-maker.

Subject to the rules in the CDDA Guidelines published by the Department of Finance, payment of professional costs for successful claims is an issue that Defence could consider on a case by case basis. In fact, claimants generally do not need professional advice to make a claim. Their argument is generally straightforward so there is no legal or financial complexity which requires specialist assistance.

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COMMONWEALTH OMBUDSMAN

Investigation into the administration of the Defence Force Retirement and Death Benefits (DFRDB) scheme

December 2019

Report by the Commonwealth Ombudsman,
Michael Manthorpe, under the *Ombudsman Act 1976*

REPORT NO. 06 | 2019

FOREWORD

In April 2019 I was approached by the Hon Darren Chester MP, Minister for Veterans and Defence Personnel and asked if I would look into the administration of the commutation provisions contained in the Defence Force Retirement and Death Benefits (DFRDB) scheme. I decided to do so under the Own Motion powers contained in the *Ombudsman Act 1976.*

'Commutation' refers to eligible retiring Defence Force members having the choice to take their benefits as a pension, or they could opt to commute a part of their pension into a lump sum and access a reduced pension.

It is important to note that there have only ever been two options available to DFRDB members: namely, to commute, or not to commute. DFRDB members reported being told that commutation was a loan to be repaid over their life expectancy. Such information is incorrect. At law, commutation is not a loan, but a permanent exchange of one type of entitlement for another. The result is a permanent reduction to retirement pay.

Many DFRDB members, likely numbering in the thousands, were provided incorrect information by Defence personnel who were responsible for providing advice about the workings of the scheme. Those DFRDB members were led to believe, incorrectly, that their commuted pensions would increase once they reached their life expectancy factor age. The absence of clear guidelines and instructions to staff led to this incorrect information being provided, which resulted in a misunderstanding of the basic design of the scheme. In my view, this amounted to defective administration by Defence.

The incorrect information created the idea that there was a hybrid option, i.e. a lump sum, plus a reduced pension, and that the pension would revert to the higher rate when the 'loan' represented by the lump sum was 'paid off'. However, at law this option did not exist. It was not what the Parliament intended and, despite the raised expectations of some members, it was illusory. Most members did, in fact, choose to commute. Some members did so on the basis of the incorrect advice, while others did so based on a correct understanding of the scheme.

The information provided by the DFRDB Authority (now the Commonwealth Superannuation Corporation (CSC)) was at all times correct. However, while correct, the information was not sufficiently clear to correct the misunderstanding that many members had from their interactions with Defence. With the benefit of hindsight, I can now see how this information could have been clearer, as is the case with CSC's current documents.

While these errors have now been fixed, I have turned my mind to what should happen to remedy the defective administration.

Although disappointing and frustrating, missing out on a benefit to which a person is not actually entitled under the law does not necessarily mean that the person suffered financial detriment. As a matter of principle, compensation should only be paid where poor administrative practices cause actual financial loss.

I wanted to determine whether those who were given misleading information were likely to have suffered overall financial loss as a result of their choice. I engaged two expert actuaries, the Australian Government Actuary (AGA) and KPMG to independently model a number of

scenarios to compare the real financial results of commuting and not commuting—that is, the two options that were actually available.

In all of the scenarios we modelled, using conservative assumptions about how retiring members might have used the lump sum, commutation has resulted in a beneficial overall financial outcome for DFRDB members to date. This is particularly true for DFRDB members who retired in the years before 2010. While some of those who discharged in recent years may be able to make the case that at some time in the future they could be financially worse off having commuted, I am satisfied these decisions to commute were made after CSC improved its publications to explicitly advise that the commutation reduction is permanent.

I am satisfied the decision to commute is not likely to have, of itself, caused financial loss, relative to the only other option that was available at law. I have therefore concluded that it is not appropriate to recommend compensation in a broad sense.

Although unlikely, I cannot rule out that there may be outlying cases with circumstances of which we are not aware. The Scheme for Compensation for Detriment caused by Defective Administration (CDDA scheme) is suitable for any such cases to be considered. However, to avoid giving false hope to individuals or creating unnecessary process for agencies, I have included a list of considerations which we suggest would need to be satisfied as part of any such claim.

Nevertheless, I acknowledge the disappointment, frustration and anger experienced by DFRDB members whose expectations were falsely raised. Even though the modelling suggests that they did not suffer financial detriment by commuting, relative to the other available option, it is undoubtedly the case that they experienced perceived detriment relative to what they had been told would occur. I have therefore recommended that the Secretary of the Department of Defence and Chief of the Defence Force apologise for the defective administration that occurred and for the disappointment members have experienced. I am pleased that my recommendation has been accepted, and I have included a copy of the apology letter as an appendix to the report

For completeness, I also considered whether, in light of the raised expectations and subsequent disappointment, the Government should provide some form of financial reparation or *ex gratia* payment to impacted DFRDB members. Such a payment could, theoretically, go some way towards addressing the perceived financial detriment between the commutation option and what members were informed would occur.

However, I have decided to stop short of making such a recommendation. There are two reasons for this. First, on the basis of the modelling, to do so would unreasonably place the cohort who commuted in an even stronger financial position than those who correctly understood the operation of the scheme and decided not to commute, which in the long run appears to have been the less beneficial choice for most people. Similarly, it would provide an unjustified windfall at taxpayers' expense for those who did understand the scheme and chose to commute.

Second, to do so would presume to contradict the intent of the Parliament that passed the legislation establishing the DFRDB scheme decades ago. It would of course be possible for the current Parliament and the current Government to consider whether the policy issue in question ought be re-opened in light of the analysis in this report.

For my part, while I have considerable sympathy for the thousands of members who were misled, my judgement is that to seek to compensate for that now through a reparation payment would invoke the old adage that two wrongs do not make a right.

I am satisfied that CSC's current material is now clear, but have recommended some changes to its correspondence to ensure relevant information is front and centre.

Of course, it is not CSC's role to provide financial advice, and I would not want it to. Equally, I would not want any person to understand this report as advocating one course of action over another for DFRDB members yet to make a commutation decision. As always, people should consider their own personal circumstances, and seek independent financial advice, before making decisions with significant financial consequences.

Instead, my recommendations go to two core principles of good public administration—the public should have all relevant information at their disposal to enable informed decision-making, and the importance of written procedural guidance and training to ensure accurate information is provided.

Some DFRDB members also argued for more beneficial options or scenarios to be applied, which are not currently available under the *Defence Force Retirement and Death Benefits Act 1973*. My power to investigate extends only to determining whether the law was correctly administered, not what might have been if Parliament had passed different laws. However, as these views were keenly felt, and people took the time to provide them to me, I have reflected those concerns in a separate part at the end of this report. The Government may wish to turn its mind to the policy questions articulated here, or otherwise make its position on these issues clear.

I wish to express my sincere thanks to each person who took time to share their views, and particularly to those who kept, and then supplied to us, contemporaneous documentary evidence dating back some 40 years. I also extend my thanks to the CSC and Defence staff who were responsive and co-operative, particularly noting our requests often sought significant amounts of information going back many decades.

Finally I thank my staff who worked tirelessly, impartially and professionally to consider the issues canvassed in this report.

Michael Manthorpe PSM
Commonwealth Ombudsman

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Part 1: INTRODUCTION AND SCOPE OF INVESTIGATION

Background

1.1. On 25 March 2019 the Minister for Veterans' Affairs and Defence Personnel (the Minister), the Hon Darren Chester MP, together with the Assistant Minister for Treasury and Finance, Senator the Hon Zed Seselja, announced an independent inquiry into the Defence Force Retirement and Death Benefits (DFRDB) scheme.

1.2. On 5 April 2019, the Minister wrote to the Ombudsman asking that he consider undertaking an investigation into the DFRDB scheme. The Minister indicated his intention that the inquiry he announced would examine the accuracy of the information provided about commutation by the scheme administrators and relevant departments to DFRDB members.

1.3. The Minister indicated that he considered the Ombudsman, who is also the Defence Force Ombudsman, was well placed to investigate the issues and that his view was supported by the members of the Ex-Service Organisations Round Table (ESORT) held by the Department of Veterans' Affairs.

1.4. After considering the request, on 10 April 2019 the Ombudsman, Michael Manthorpe PSM, wrote to the Minister and advised that he had decided, pursuant to s 5(1)(b) of the Ombudsman Act, to commence an own motion investigation into the accuracy of information provided to DFRDB members by scheme administrators and relevant departments about commutation of retirement pay.

Ombudsman's powers

1.5. The Office of the Commonwealth Ombudsman (the Office) was established to investigate complaints and provide independent oversight of public administration by Australian Government agencies and certain private sector businesses. The Ombudsman makes recommendations to improve government administration.

1.6. The Ombudsman cannot be directed to undertake an investigation, to arrive at a certain conclusion or on the scope of an investigation. Rather, the Ombudsman decides what is in or out of scope of his investigations in accordance with his statutory function as set out in the *Ombudsman Act 1976*.

1.7. The Ombudsman's role is limited to investigating 'action that relates to a matter of administration'.[1] Accordingly, our focus is on the administration or implementation of legislation and policy, by officials in government departments and statutory agencies.

Scope

1.8. For this reason, the Ombudsman limited the scope of this investigation to the administration of the DFRDB Scheme, and particularly the issue of commutation. The primary focus of the investigation is the accuracy of information provided to DFRDB members. We set out the following questions to guide our investigation:

[1] Section 5(1)(b) of the *Ombudsman Act 1976,* which relates to own motion investigations.

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- What information was provided to DFRDB members about the effects of commutation on future retirement pay entitlement?
- Was this information inaccurate, inadequate, ambiguous or misleading? If so:
    - what were the consequences?
    - what remedial action (if any) should be taken?
- Were retirement payments indexed as required by legislation? If not, what remedial action (if any) should be taken?

1.9. The following issues go to the nature of the legislation passed by parliament and matters of government policy, and therefore are out of scope of this investigation:

- Whether legislation is fair and just, including provisions for:
    - use of certain life expectancy tables
    - permanency of reductions to commuted pensions
    - indexation arrangements.
- Whether government ought to take different policy decisions or make amendments to legislation.

1.10. While these matters are not within scope, the submissions we received indicated a high level of dissatisfaction with current policy settings, as expressed through the statutory arrangements. A section has therefore been included to summarise the out of scope issues arising in the submissions received. There was also evidence of confusion among DFRDB members about how DFRDB legislation works. We have endeavoured to provide clarification on the operation of the legislation.

Methodology

1.11. The administration of DFRDB was the subject of significant media and public interest immediately prior to the commencement of the investigation. Further, with some 53,163 DFRDB members, the majority of whom elected to commute their retirement pay, public interest in this investigation was high among this group. Accordingly, the Ombudsman invited submissions from DFRDB members and the public to inform the investigation.

1.12. A submission form was provided to guide contributions, but submissions were accepted in any format. The submission process opened on 20 May 2019 and closed on 30 June 2019, although all information received after this date was accepted and reviewed. In total, the Office received 3,436 submissions during the course of the investigation.

1.13. The Office also contacted stakeholder groups and interested veterans who had been advocating on this issue to ensure they were aware of the investigation and our call for public submissions. These stakeholder groups encouraged DFRDB members to make individual submissions. The Department of Veterans' Affairs also provided information about the investigation on its website and through the ESORT.

1.14. The Office met with stakeholder groups with a particular interest in this issue. We also interviewed more than 30 people, identified through submissions and other documents, who we felt could provide information of value to our investigation. Interviews were conducted by phone or in person where appropriate.

1.15. For the purposes of informing the investigation about the effects of commutation on the DFRDB cohort, the Office commissioned external actuarial modelling from two sources, the Australian Government Actuary (AGA) and KPMG.

1.16. The modelling provided by both AGA and KPMG was factual, based on real-life scenarios with all assumptions chosen by our Office. Although we had regard to the actuaries analysis provided as part of their reports, the Office undertook its own independent analysis of the modelling results.

1.17. The Office also issued multiple sets of questions and requests for information to the Department of Defence (Defence) and Commonwealth Superannuation Corporation (CSC) under s 8 of the Ombudsman Act. The Office met regularly with these agencies to obtain and clarify information and provide updates on the investigation progress. The Office formally asked the Department of Veterans' Affairs whether it had ever provided advice on the DFRDB Scheme. In response, DVA confirmed that its practice has always been to refer questions about commutation to CSC (Appendix B).

1.18. During the early stages of the investigation the Office also met with the Australian National Audit Office and the Productivity Commission.

1.19. In accordance with s 15 of the *Ombudsman Act 1976*, the Office provided a copy of the draft report to the Chief of the Defence Force, the Secretary of Defence and the Chief Executive Officer of CSC. Their responses, along with the apology from Defence, are published at Appendices C, D and E.

1.20. The Office thanks those staff from Defence, CSC and all other agencies who provided information to this investigation. Agencies were at all times responsive to our requests for information and their cooperation is appreciated.

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Important terms

1.21. Some of the terms below are taken from the *Defence Force Retirement and Death Benefits Act 1973* (DFRDB Act). We have also adopted some simpler terms and phrases than those used in the legislation if it made it easier to explain complex concepts in plain English. A glossary with other terms used in the report can be found at Appendix G.

Figure 1—Important terms

Commutation	Commutation is an exchange of part of a DFRDB member's future retirement pay for an immediate lump sum.
Minimum service period	The minimum service period required for eligibility for retirement pay is 20 years of effective service (or 15 years of effective service if the person has achieved the retiring age for their rank).
Retirement pay	Retirement pay is the pension component of DFRDB entitlements. It is worked out as a percentage of the annual rate of pay at discharge (the percentage is based on number of complete years of service).
Pre-commutation amount	The pre-commutation amount is the annual rate of retirement pay to which a person is entitled, prior to any decision to commute, and is the amount a person will receive if they do not decide to commute. Retirement pay does not revert to the pre commutation rate when a DFRDB member reaches their life expectancy factor age.
Maximum commutation amount *and* Maximum commutation factor	The maximum commutation amount is the maximum amount a person may elect to commute. It is calculated by multiplying the person's annual retirement pay before commutation by their maximum commutation factor. The maximum commutation factor was four until 30 June 1983, when it began increasing by increments of 0.05 each year until it reached the current maximum of five on 1 July 2002. This means the maximum amount a person may elect to commute, depending on the year they discharge, is between four to five times their annual retirement pay before commutation.
Commutation divisor *and* Life expectancy factor age	The commutation divisor is based on a person's gender and age at retirement, used in the statutory formula for working out a person's commutation reduction. The DFRDB Act calls it the 'expectation of life factor' and some submitters know it as the 'notional life expectancy factor'. This is because the commutation divisor is based on the 1960-1962 life expectancy tables. A person's life expectancy factor age is their life expectancy age *as it was in 1962*. This figure has been fixed in the Act since 1973. It is therefore lower than current Australian Bureau of Statistics life expectancy figures.
Commutation reduction	The commutation reduction is the amount by which the starting rate of a person's retirement pay is permanently reduced if they elect to commute. The amount of the commutation reduction depends on how much the person elected to commute and their commutation divisor.
Retirement benefit	The retirement benefit is the total DFRDB benefits payable to a person in retirement (including commutation lump sum and retirement pay pension).

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Part 2: BACKGROUND ON THE DFRDB SCHEME

History of the DFRDB

2.1. Prior to the DFRDB scheme commencing the Defence Forces Retirement Benefits (DFRB) scheme operated to provide retirement benefits to members of the Australian Defence Force (ADF).

2.2. The DFRB scheme was a specially designed pension arrangement which differed from other public sector superannuation schemes to accommodate the particular needs of the ADF.[2] For example:

- retirement pensions were based on rank, took into account earlier retiring ages and were designed to supplement civil employment earnings
- commutation provided access to capital for relatively young retirees who were transitioning to civilian life.

2.3. In 1972 the Joint Select Committee on the DFRB scheme, known as the 'Jess Committee', made 20 recommendations, leading to the introduction of a new scheme 'to provide an annuity type benefit as a supplement to civilian earnings for those retiring early and as a means of support for members in later life'.[3] The Committee made recommendations to simplify the scheme and make it easier for members to understand, observing:

> the difficulty is that the present scheme defies explanation in simple terms. We cannot over-emphasise the importance we attach to having a scheme in which contributions and benefits are capable of simple explanation to the members of the scheme. [4]

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.[6]

2.5. Other beneficial changes that were recommended included capping contributions at 5.5 per cent of salary and annual indexation to maintain relativity with average weekly earnings.[7]

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[2] Defence Forces Retirement Benefits Board, July 1970, *D.F.R.B Booklet*, p. 3.
[3] Joint Select Committee on Defence Forces Retirement Benefits Legislation, May 1972, Parliamentary Paper No 74, ('Jess Report'), p. 31.
[4] Jess Report, p. 47. The Committee also considered that an advisory and counselling service would not be necessary for the proposed DFRDB scheme because of its relative simplicity.
[5] Jess Report, para. 106, p. 30.
[6] Jess Report, recommendation 14(a), p. 3, and commentary at para. 112, p. 31.
[7] Jess Report, recommendations 4 and 6, p. 1.

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2.6. The DFRDB Act passed Parliament and received Royal Assent in 1973. Commencement of most of the substantive provisions of the DFRDB Act was backdated retrospectively to 1 October 1972.

2.7. The scheme was closed to new members from October 1991 following the Cole Review (1990)[8] as it no longer met the needs of the ADF. The Cole Review observed that while DFRDB provides 'a generous benefit' to those who serve the minimum service period (generally at least 20 years), there is no employer benefit payable and no return on contributions for people who discharge before the minimum service period. This meant it no longer met community standards, which by that time had changed in line with major superannuation reforms. Further, the scheme did not encourage members to serve beyond 20 years, resulting in the loss of experienced ADF members in the 20–22 years of service bracket.[9]

2.8. The Podger Review (2007)[10] considered the DFRDB, Military Superannuation Benefits Scheme (MSBS) and the proposal for a new contemporary scheme in the context of the unique nature of military service, ADF demographics and the wider Australian superannuation framework. It recommended the government consider indexing DFRDB retirement pay for members over 55 to the same benchmark as age pensions.[11] The government gave effect to this recommendation in 2014.[12]

Important concepts explained

What is the DFRDB scheme?

2.9. The DFRDB scheme creates a statutory entitlement to a defined benefit, part of which may be commuted, for ADF members who were required to participate in the scheme.

2.10. It commenced on 1 October 1972. All ADF members were required to contribute to the scheme. Contributors to the predecessor scheme, the Defence Force Retirement Benefits (DFRB) scheme, including members with active service in conflicts such as Vietnam, Korea, Indonesia and Malaysia, were also rolled into the DFRDB scheme with appropriate protections against detriment. The scheme has been closed to new members[13] since 1 October 1991 and closed to re-entering members since 1 July 2016.

2.11. The scheme was originally overseen by the DFRDB Authority and then from 2011, by CSC. While the day to day payments under the scheme were made by various agencies,[14] we

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[8] Defence Force Retirement and Death Benefits Scheme Review Committee, June 1990, Department of the Senate Paper No. 870 ('Cole Report').
[9] Cole Report, p. 3.
[10] Department of Defence, December 2007, Report of the Review of Military Superannuation Arrangements ('Podger Report').
[11] Department of Finance and Deregulation, December 2008, Review of Pension indexation Arrangements in Australian Government Civilian and Military Superannuation Schemes ('Matthews Report'), p. 47.
[12] *Defence Force Retirement Benefits Legislation Amendment (Fair Indexation) Act 2014*.
[13] Although the scheme was closed, a retiree could elect to return to the scheme as a contributor if they returned to the ADF on an engagement to undertake continuous full-time service (DFRDB Act, s 61B). Section 61B was subsequently repealed by the *Defence Legislation Amendment (Superannuation and ADF Cover) Act 2015*.
[14] Australian Government Retirement Benefits Office (1970s), then Retirement Benefits Office (1980s) then ComSuper from the 1990s until it merged into CSC on 1 July 2015.

have focussed on the DFRDB Authority and CSC, as these agencies were responsible for scheme information and materials and presented at retirement seminars.

2.12. The main features of the scheme are as follows:

- Compulsory[15] member contributions are paid into the Australian Government Consolidated Revenue Fund (CRF). All DFRDB entitlements are paid from the CRF.
- The compulsory contribution is 5.5 per cent of the member's salary.[16]
- Members may be entitled to retirement pay when they are discharged if they have served for the minimum service period, being either:
    - 20 years of effective service, or
    - 15 years' effective service if they have already reached the retiring age for their rank.[17]
- Retirement pay is calculated using a statutory formula based on salary at retirement and complete years of service (not the amount contributed).
- Members who are not eligible for retirement pay when they are discharged are refunded their contributions.[18]
- Members eligible for retirement pay also have the option to commute a portion of that pension into a lump sum.[19]
- Prior to 1 July 1983 the maximum amount a member could commute was the equivalent of 4 times their annual retirement pay. This figure was incrementally raised over 20 years from 1 July 1983, and the maximum commutation amount has been the equivalent of 5 times their annual retirement pay since 1 July 2002.[20]
- A member has 12 months from discharge to exercise their election to commute.[21]
- A member who elects to commute has their retirement pay permanently reduced according to the statutory formula set out in s 24(3)(b) of the DFRDB Act. The commutation divisor used in this formula has at all times been the *Commutation of retirement pay and Class C invalidity Pay—expectation of life factor* which is Schedule 3 of the DFRDB Act.
- Pensions are indexed according to a statutory formula.[22]

2.13. As a statutory defined benefit scheme, DFRDB is different to standard superannuation schemes.

2.14. For example, eligible DFRDB members receive indexed retirement pay for life. The rate of retirement pay is set by a legislative formula and is not affected by market performance. By

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[15] DFRDB Act, s 17—Contributions by members of scheme.
[16] DFRDB Act, s 19—Amount of fortnightly contributions.
[17] That is, the rank held immediately before their retirement—DFRDB Act s 23(1)(b)(ii).
[18] DFRDB Act, s 56—Refund of contributions. In some limited circumstances, members not eligible for retirement pay could instead apply to have their entitlements preserved on discharge.
[19] DFRDB Act, s 23—Entitlement to retirement pay; s 24—Commutation of retirement pay.
[20] *Defence Legislation Amendment Act 1984*.
[21] DFRDB Act, s 24(1AA).
[22] In addition to entitlements under the DFRDB Act, a one-off lump sum 'productivity benefit' is also payable, irrespective of whether the person elects to commute or not, under a ministerial determination made under s 52(1) of the *Defence Act 1903*.

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contrast, the rate and duration of a superannuation pension product will be affected by factors such as how much the member contributed, fund performance and prevailing economic conditions (meaning a person may run out of superannuation before the end of their life).

2.15. Further, eligible DFRDB members may elect to commute part of their retirement pay entitlement into a lump sum at the time of their discharge regardless of their age (which could have been as early as age 36), or further employment. By contrast, superannuation members generally cannot access their funds until they have both reached their preservation age (which varies between age 55 and 60[23]) and retired from the workforce.

2.16. As recommended by the Jess Committee, the scheme is 'unfunded'. This means there is no 'fund' held by a trustee. Rather, the government pays for the scheme from its consolidated revenue fund as liabilities fall due. Member contributions also go into consolidated revenue. The money from contributions is therefore not invested on behalf of the member—it is, in effect, no longer the member's money.

2.17. However, no retirement benefits are paid if the member discharges before reaching the eligible effective service period. Instead, an amount equal to their contributions is refunded to them.[24]

2.18. This creates an incentive to remain in the ADF for at least the minimum service period (generally 20 years), because the benefits of retirement pay are considerable relative to a refund of contributions. It also incentivises discharging at or shortly after the 20 year mark by providing access to capital for retiring members, who may have several decades of working life remaining, and need to transition to civilian life and employment.

What is commutation?

2.19. Commutation refers to a member's entitlement to receive a lump sum payment at the point of discharge, in exchange for a permanently reduced retirement pay.

2.20. Commutation was a feature of the DFRB scheme as well as the DFRDB scheme, but arrangements differ in the two schemes. Under the DFRB Act, commutation was only payable in limited circumstances, which required examination of what the member proposed to spend the lump sum on. The DFRB Board had discretion to approve or deny an application to commute a portion of a pension.

2.21. However, under the DFRDB Act, commutation is not restricted by any discretionary approval process and there are no limitations on the proposed use of commutation funds. Rather, commutation is available to each person discharging from the ADF who is eligible for retirement pay under the scheme. During our investigation, however, we heard that the commuted amount was very often used to help a member set themselves up for life, for example by buying a house. Indeed, we saw a recording of a presentation delivered by a DFRDB Authority staff member, in which this was suggested as an appropriate use for the lump sum.

2.22. The DFRDB Act prescribes the requirements for eligibility, the election process, and the effect a commutation election will have on future retirement pay. This means if a member

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[23] See Australian Taxation Office information available at https://www.ato.gov.au/rates/key-superannuation-rates-and-thresholds/?page=11, accessed 19 November 2019.

[24] Some DFRDB members, who left the ADF and were not eligible for retirement pay, may have also been eligible to receive a superannuation guarantee top up, and a gratuity, depending on their length of service and when they left the ADF.

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meets these statutory criteria, their election to commute cannot be refused and must be paid in accordance with the legislation.

2.23. Equally, it means that the administrator has no discretion to decide *not* to reduce retirement pay in the manner required by the DFRDB Act.

2.24. While available as of right to all members who meet the minimum service period, receiving commutation requires an active choice to be made. To receive a commutation lump sum, members needed to fill in a commutation election form[25] and submit it to CSC within 3 months before retirement, or in the 12 months after discharge.

The legal situation

2.25. A DFRDB member's statutory right to commute is found in s 24(1) of the DFRDB Act:

> 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.

2.26. Eligibility to commute is therefore contingent on also meeting the requirements for retirement pay. Section 23 states, relevantly:

> (1) A contributing member is entitled, on the member's retirement, to retirement pay ….. if:
>
> (a) the member retires and is not entitled to invalidity benefit; and
>
> (b) on the member's retirement:
>
> (i) the member's total period of effective service is not less than 20 years; or
>
> (ii) the member's total period of effective service is not less than 15 years and the member has attained the retiring age for the rank held by the member immediately before the member's retirement.

2.27. Thus contributing members who have met the minimum period of effective service (the minimum service period) will generally[26] also have a statutory right to elect to commute.

2.28. The **rate of retirement pay** is a percentage of the person's salary immediately before discharge. Percentages depend on the number of complete years of effective service and are set out in a table in Schedule 1 of the DFRDB Act.[27] For example, a member retiring with 20 complete years of effective service will receive retirement pay at a rate of 35 per cent of their salary at discharge. The rate increases with each additional year of completed service until 40

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[25] Currently form D21 https://www.csc.gov.au/Search/?terms=dfrdb%20commutation%20election%20form.

[26] There are several qualifications to this broad right to commute. Section 23(1)(a) provides that members who are eligible for an invalidity benefit may not commute; ss 24(1A) and (1B) exclude certain former invalidity pay recipients. A person who elected to commute on their initial discharge, who subsequently re-entered the ADF and discharges, is also prohibited from commuting again.

[27] DFRDB Act, s 23(2); Schedule 1—Retirement pay expressed as a percentage of annual rate of pay.

years' service when the retiree will receive retirement pay at a rate of 76.5 per cent of their salary at discharge.[28]

2.29. Subsection 24(1AA) places a **time limit** on the election to commute. A notice to commute must generally be given either in the three months before, or the 12 months after discharge.

2.30. Subsection 24(2) requires the member to **specify the amount** they wish to commute in their election notice (i.e. on the form). The maximum amount a member can commute (including any earlier commutation payments) is equal to their annual retirement pay, multiplied by the maximum commutation factor.[29] When the scheme commenced in 1972, the maximum commutation factor was four times their annual retirement pay. Between 1 July 1983 and 30 June 2002 the maximum amount a member could commute was increased by 0.05 each year, with the result that the amount increased from 4 to 5 times the member's annual retirement pay.[30] So for example, in August 1987, the maximum amount a member could commute was 4.25 times their annual retirement pay.

2.31. Subsections 24(3) and (4) explain the steps to be taken if a commutation election is made:

> (3) Where a person makes an election under this section, then…:
>
> > (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. (*emphasis added*)

2.32. The substance of this wording has not changed since commencement of the scheme in 1972.[31]

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[28] However, there is a penalty rate reduction, for members with 20 years effective service, if they retire at their own request or following disciplinary action, before reaching the notional retiring age for their rank (Schedule 2). The retirement pay reduction is three per cent (3 per cent) for every year that their actual age is below the notional retiring age (s 23(3)-(4)).
[29] DFRDB Act, s 24(2A).
[30] *Defence Legislation Amendment Act 1984* introducing s 24(2B).
[31] This wording has not changed since commencement of the scheme in 1972, except for adding references to s 24(8) and (9) and s 98K—neither of which are directly relevant for present purposes (s 24(8) and 24(9) relate to certain situations where a person has a surcharge debt with the tax office and s 98K relates to certain situations where a person held an acting or temporary rank on retirement).

2.33. Subsection 24(3)(a) means that if a member elects to commute, CSC has no discretion to refuse, and must pay the commutation lump sum. Paragraph 24(3)(b) contains a statutory process for calculating the resulting reduction to retirement pay: the commutation lump sum is divided by the person's 'expectation of life factor' to produce the annual reduction for commutation. The expectation of life factor is worked out according to their age and gender using a table in Schedule 3.[32] For the purposes of this report, we refer to the expectation of life factor as the 'commutation divisor'.

2.34. Importantly, subsection 24(3)(b) specifies that the reduction commences **'on and after the date the election takes effect',** which is the later of the day CSC receives the election notice, or the date of retirement.[33]

2.35. The words 'on and after' are used in legislation[34] to indicate that a legislated outcome is to commence and continue. If the words 'on or after' are used without being qualified by a fixed time frame or end date the legislated outcome will continue forever, unless another legislated outcome displaces it, for example due to:

- another legislative provision (which may be in the same or another act), comes into operation, or
- parliament amending the provision, e.g. to insert a fixed time frame.

2.36. Where it is intended that a legislated outcome will be for a fixed time frame, this will be specifically included by drafters, with phrases such as:

- for a period of six months commencing on and after [date/event]
- on and after [date/event] until such time as the person reaches [age]
- on and after [date/event] until a date to be determined by [decision maker][35]

2.37. In subsection 24(3)(b), the commutation reduction commences 'on and after' the election takes effect. There is nothing in 24(3)(b) which creates a fixed time frame or end date for the reduction. Nor is there any other provision, in the DFRDB Act or any other legislation, which would cease the reduction.

2.38. It was submitted to us that the complexity of the 1973 Bill meant that parliamentarians did not properly understand what they were voting on and that the commutation provision had been interpreted contrary to the intentions of the Jess Report, and the parliament. Some submitters asserted that a permanent reduction is inconsistent with the Jess Report recommendation of a 'proportionate' reduction, and that therefore the Jess Report should take precedence.

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[32] DFRDB Act, Schedule 3—Commutation of retirement pay and Class C invalidity pay—expectation of life factor.
[33] DFRDB Act, s 24(4).
[34] It is used, for example, throughout the *Acts Interpretation Act 1901*.
[35] An example of this can be found in the *Social Security (Administration) Act 1999* (SSAA). The Secretary may decide that a social security pension is not payable in situations where a person fails to comply with a reasonable requirement to attend the department (SSAA, s 64(1)). This in turn results in suspension (SSAA, s 80). However, the Secretary may later reverse the decision about payability 'on and after a date specified by the Secretary' (SSAA, s 64(4)). This means that the pension will again become payable indefinitely, unless a situation arises to trigger another legislated suspension or cancellation outcome (e.g. due to death, gaining employment, or again failing to attend the department).

2.39. Where the meaning of a provision is unclear or ambiguous, or the plain meaning appears inconsistent with the purpose of the DFRDB Act, it may be appropriate to look to extrinsic materials to ascertain the intention of parliament (such as explanatory memoranda and reading speeches).

2.40. However, that is not the case here. Although it may be difficult for a lay person to read subsection 24(3) and understand its meaning, in our view the legal meaning is plain and not capable of any other interpretation. Placing limits on the benefits to be provided is not inconsistent with the purpose of the DFRDB Act, which must necessarily contain some limits on entitlements. What individual parliamentarians understood is not relevant.[36] The DFRDB Act, as passed by parliament, requires a permanent reduction.

2.41. This was also the view of the Administrative Appeals Tribunal (AAT), which considered s 24(3) in the case of *Reynolds and Defence Force Retirement and Death Benefits Authority*.[37] In the case, the AAT found 'neither ambiguity nor obscurity' in the provision:

> [I]t is not reasonable to say that the phrase 'amount payable….on and after the day on which the election takes effect….' has a limitation based on the life expectancy factor used in a calculation to arrive at the amount. In the opinion of the Tribunal such an interpretation is simply untenable and would be counter to the plain words of the provision.[38]

2.42. The Office therefore considers that CSC was correct in its interpretation that s 24(3)(b) results in a permanent reduction to pension following commutation.

Commutation—definition and interpretation issues

2.43. Some submitters also raised concerns that the term 'commutation' is not defined in the DFRDB Act, and that the scheme administrators failed to effectively communicate its meaning to members.

2.44. The Office agrees that failure to effectively communicate the meaning of commutation to people is a matter for concern. This investigation has been focussed on what Defence and CSC information was provided about the meaning of commutation, and its effect on retirement pay.

2.45. However, the fact that the term commutation is not defined in the 'definitions' section of the DFRDB Act is not of itself a concern. This is because not all terms used in legislation need to be specifically defined.

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[36] The High Court observed in *Zheng v Cai* [2009] HCA 52 at [28]: '*It has been said that to attribute an intention to the legislature is to apply something of a fiction. However,* ***what is involved here is not the attribution of a collective mental state to legislators****. That would be a misleading use of metaphor. Rather, judicial findings as to legislative intention are an expression of the constitutional relationship between the arms of government with respect to the making, interpretation and application of laws. …. the preferred construction by the court of the statute in question is reached by the application of rules of interpretation accepted by all arms of government in the system of representative democracy* (emphasis added). This view was reaffirmed in *Lacey v Attorney General* [2011] HCA 10: ***The purpose of a statute is not something which exists outside the statute****. It resides in its text and structure, albeit it may be identified by reference to common law and statutory rules of construction* (emphasis added) at [43-44].
[37] [2001] AATA 599 ('Reynolds').
[38] Reynolds at [15].

2.46. Where terms are not defined in an Act, and some ambiguity arises, courts will look to whether there may be a common law definition, or their ordinary meaning is applied.[39]

2.47. The DFRDB Act's commutation provisions are not ambiguous from a legal point of view, even though its meaning may not be immediately apparent to a lay person. A definition of the word commutation is not required, because the DFRDB Act comprehensively sets out the steps involved in commutation, including eligibility, calculating the commutation and permanently reducing retirement pay using the formula in the statute.

2.48. However, as a matter of good administration, even if a term is not defined in an Act it will often be appropriate for an administrator to provide a plain English definition of legislated concepts for people affected by the legislation. For example, the DFRDB Authority could have provided a plain English definition of commutation which clearly explained the permanence of future retirement pay reductions.

2.49. Given a decision to commute will involve weighing the benefits and risks of taking an early lump sum against a permanent reduction to retirement pay, it was important that members be provided with sufficient information to either make an informed decision or alert them to the need to obtain further information or advice.

[39] Although there is no need for a specific definition of commutation in the DFRDB Act, we note that commutation, as set out in s 24, is not inconsistent with the ordinary or legal definition of the word 'commutation'. Commutation is defined in a number of leading dictionaries, including the Collins English Dictionary, the Oxford English Dictionary and the Butterworths Australian Legal Dictionary, as involving a substitution or exchange of one thing for another. In legal terms, commutation often involves substitution of a greater thing for a lesser one. Thus, for a convict whose sentence of hanging is commuted to a sentence of seven years deportation, commuting a sentence means reducing it. It is therefore consistent with legal and ordinary meanings of commutation, that members who commute may receive less in the lump sum commutation itself than the total amount of retirement pay reductions over their actual lifetime.

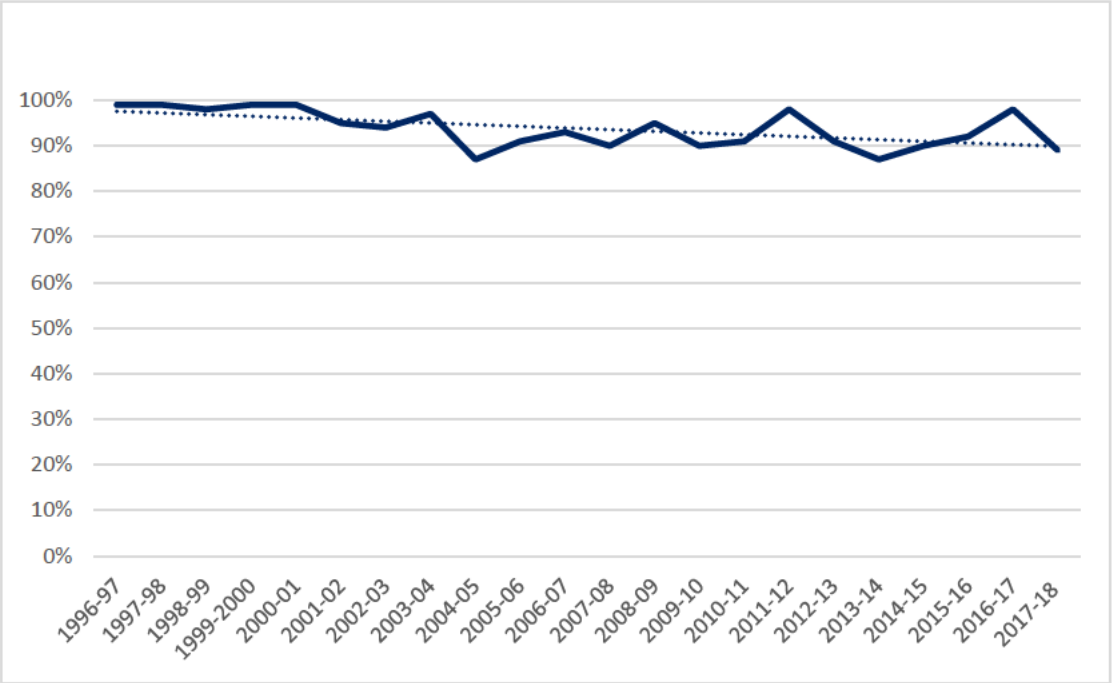
Part 3: Issues arising out of Investigation—Commutation

Commutation data

3.1. At 30 June 2019 the DFRDB had 53,163 members, of whom 39,400 are receiving retirement pay and 12,549 are receiving either a reversionary or invalidity pension.[40] A further 1,214 contributing members are yet to discharge from the ADF.

3.2. The majority of people who were eligible to commute[41] chose to do so. We noticed that the uptake of commutation has dropped slightly in recent years, but still remains high (at or above 85 per cent) as Figure 2 shows.

Figure 2—Commutation as a percentage of eligible retirement exits



3.3. Some stakeholders suggested that the downturn in the number of people electing to commute coincided with the publication of more explicit information about the 'permanency' of the reduction of post commutation retirement pay in CSC documents from 2004.[42] This was pointed to as evidence that people would not have commuted had they always been aware that the reduction was permanent.

3.4. There does appear to have been a decrease in commutation since 2001, particularly in 2004 (although 86 per cent of eligible members still decided to commute). It is worth noting that the AAT decision in Reynolds was also handed down in 2001, making it clear that

[40] A reversionary pension is payable on the death of a retirement pay recipient to an eligible spouse or child.
[41] All retirement, redundancy and Invalidity C benefits where a commutation election was possible.
[42] The first explicit mention of the commutation reduction being permanent was contained in the June 2004 edition of the Retirement Benefits information sheet (discussed at para. 1.95).

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retirement pay cannot revert to the pre commutation rates once life expectancy factor age is achieved.

3.5. It is also important to note that while there is a downward trend, there have also been peaks as well. There may also be other reasons why commutation rates may have been dropping in recent years. Without purporting to be an exhaustive list, reasons could include the following:

- Lower interest rates, particularly since around the year 2000, may have reduced the attractiveness of receiving a lump sum payment on discharge from the ADF, when compared to the maximum indexed pension.

- Other schemes may have affected the rate of uptake including the introduction of the Defence Home Ownership Assistance Scheme[43] on 1 July 2008 which extended access to subsidised home loans to serving members. As more members became eligible to access a subsidised home loan under other schemes, there may have been less need for members to access a commutation lump sum.

- As the scheme has been closed since 1991, members who discharged recently have longer periods of service, are from higher ranks and are receiving higher salaries than members who discharged in the 1970s through to the 1990s. A discharging DFRDB member is now more likely to be closer to conventional retirement age—with less need for a lump sum, and a higher age meaning a lower commutation divisor (and so a greater reduction in retirement pay).

- It is also possible that changes to superannuation and tax legislation may also have had an impact on the uptake, depending on a person's personal circumstances.

What DFRDB scheme members told us

3.6. The office received 3,436 submissions during the course of the investigation, with a relatively even spread across the three Defence services. Concerns raised in the submissions fell broadly into three categories:

- Concern that members had been misled to believe that the reduction to their retirement pay was temporary, and would cease on reaching life expectancy factor age. Members asserted that they had relied on this information, to their detriment.
- Dissatisfaction with the DFRDB Act provisions which make the reduction permanent. These submitters argued government should take steps to ensure the scheme operates as it had been represented to them (i.e. amend the DFRDB Act so that reduction ceases on reaching life expectancy factor age).
- Assertions that the reduction amount is increasing each year following indexation.

3.7. Some submitters felt that CSC, in applying a permanent reduction, had misinterpreted the commutation provisions in the DFRDB Act. We also heard concerns about the absence of a definition of commutation in the DFRDB Act, and concerns about CSC's interpretation of the commutation provision.

[43] *Defence Home Ownership Assistance Scheme Act 2008.*

3.8. However, most submitters were primarily concerned with what they perceived to be inaccurate information from Defence and CSC's predecessors about the permanent effect commutation would have on their retirement pay.

Submission data

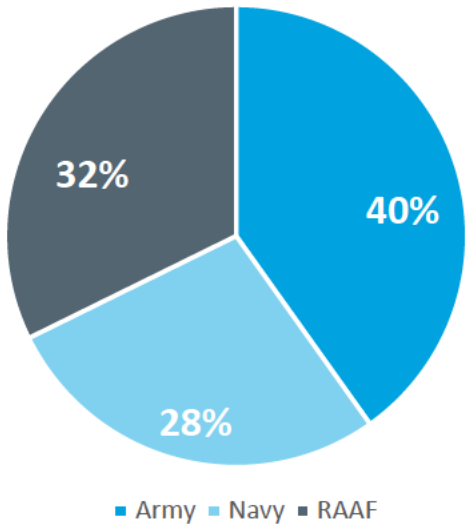
3.9. The 3,436 submissions consisted of 2,694 substantive tailored submissions and 739 standard form statutory declarations.

3.10. Of the substantive submissions, 97 per cent of submitters told us they had elected to commute. Less than 2 per cent told us they decided not to commute.[44]

3.11. The statutory declarations were not prepared specifically for this investigation. However we treated them as if they were submissions and have extracted from them information relevant to the investigation.

3.12. There was an even spread of submissions from across the three Defence services, of those submitters who identified their service[45] (see Figure 3). The reported experiences were also broadly consistent across the three Defence services.

Figure 3—Submissions by service

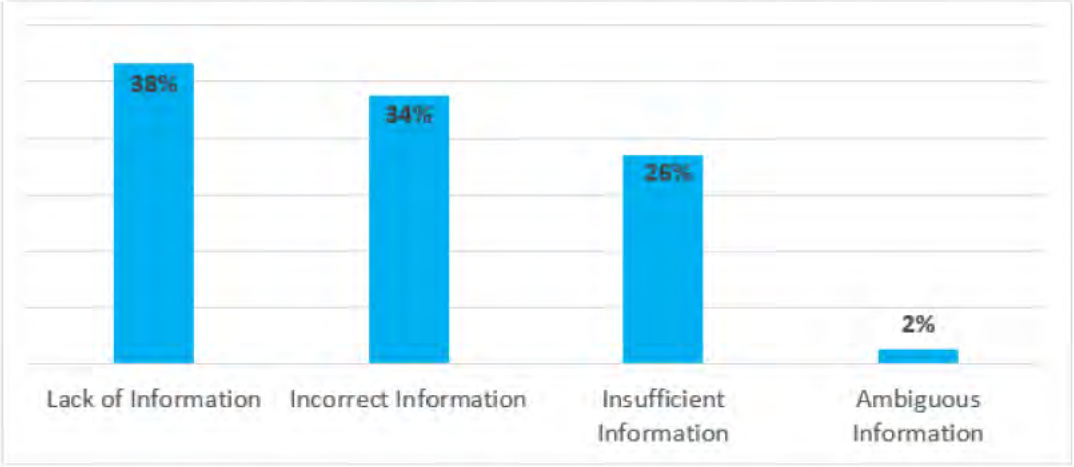


3.13. Eighty nine percent of submitters identified an issue with the information they were provided, or were not provided, about commutation. Of these, 60 per cent said they received insufficient information or incorrect information. Only a small proportion, about 2 per cent, identified ambiguity or inaccessibility being their primary issue. The statutory declarations (26

[44] The remaining submissions did not indicate whether they had commuted or not.
[45] Twenty three per cent of total submissions were statutory declarations which did not clearly identify a service.

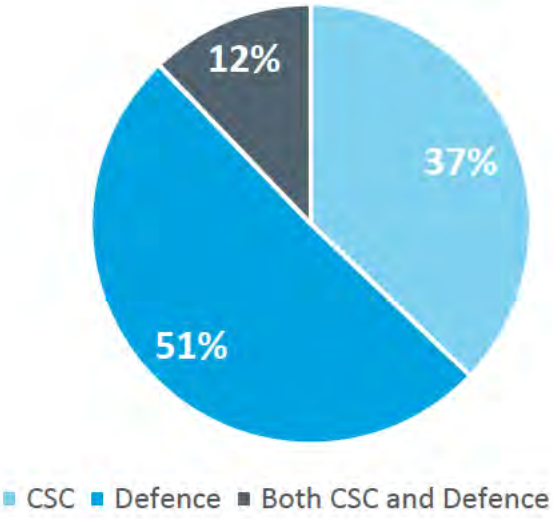
per cent) indicated that the information provided by the DFRDB Authority was insufficient (see Figure 4).

Figure 4—Primary commutation issue (where primary issue was specified)



3.14. Of those who told us where the information came from, 51 per cent said Defence, 37 per cent said CSC (or the DFRDB Authority, as it was at the time) and 12 per cent said both (see Figure 5):

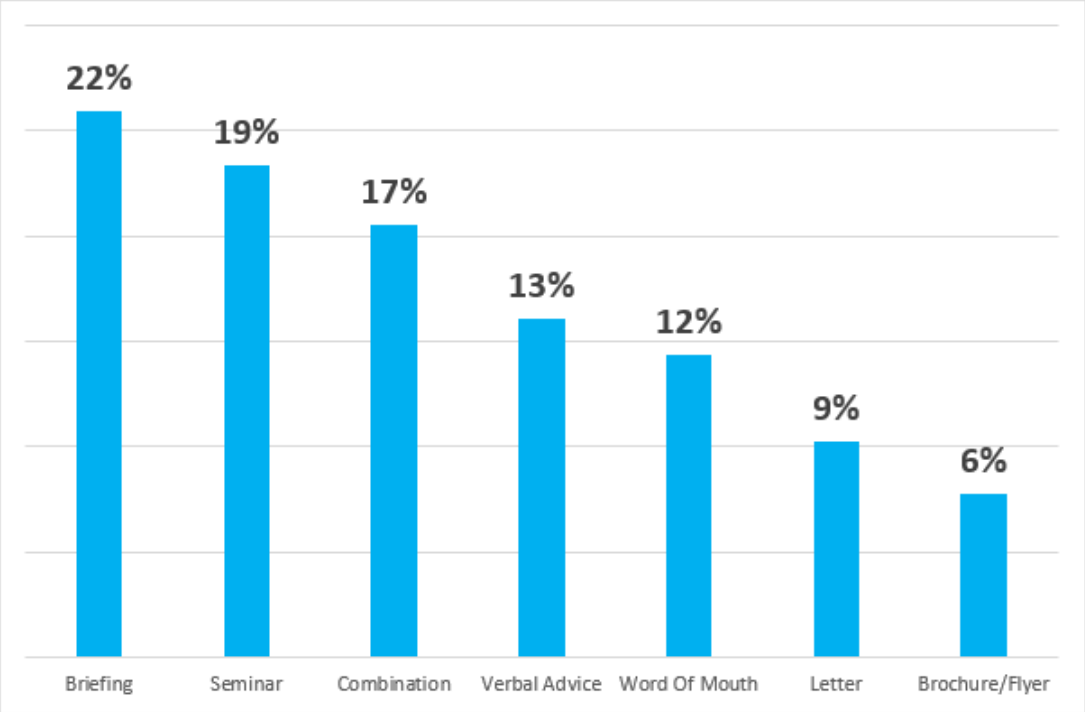
Figure 5—Commutation information source



3.15. Seventy one per cent of people who identified their information source said it came from a briefing, seminar, verbal advice or a combination of sources. Mediums such as letters, brochures and handbooks were identified, but as less common sources of information (see Figure 6).

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Figure 6—Common information mediums[46]



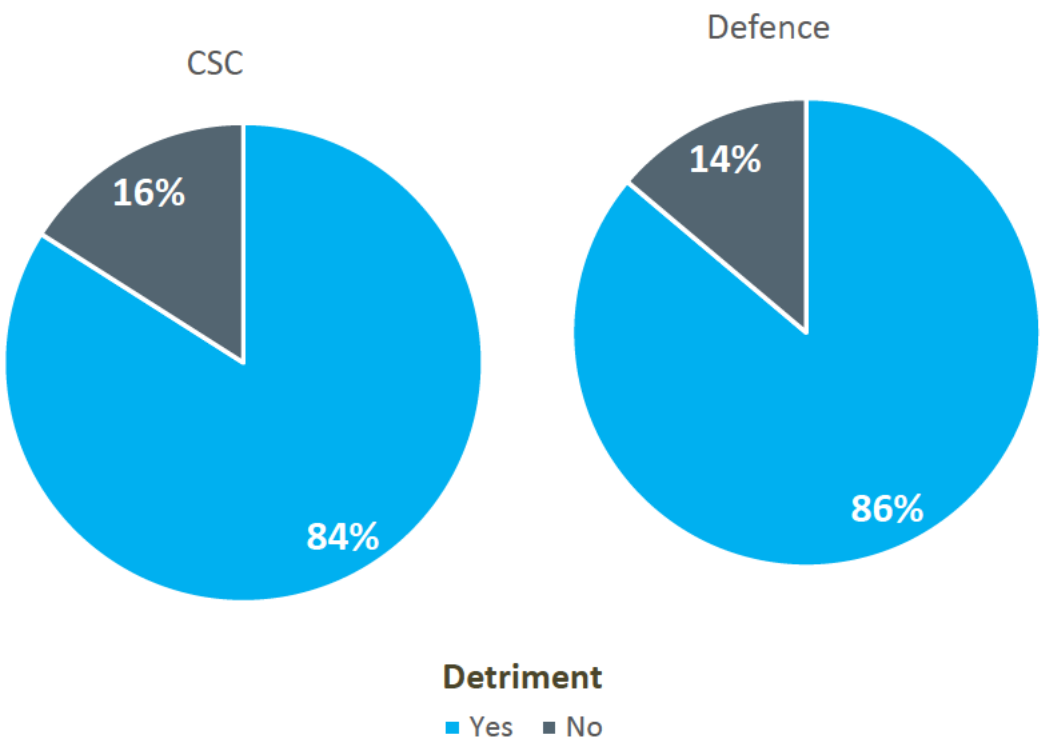
3.16. Overall 81 per cent of submitters provided information that either clearly stated, or from which we could imply, they considered themselves financially worse off than they expected they would be on reaching life expectancy factor age.[47] However, almost all of the reported financial 'detriment' related to the higher amount members felt they should have been paid after reaching life expectancy factor age. A small number of people (less than 10 total) also considered they had experienced non-financial 'detriment' (for example, exacerbation of existing depression).

3.17. Eighty six percent of people who identified Defence as their information source reported experiencing financial 'detriment', a slightly higher percentage than where the source of information was CSC or the DFRDB Authority (84 per cent, see Figure 7).

[46] The chart represents 98 per cent of information sources identified. The remaining 2 per cent included various other sources.

[47] The submission form asked 'Do you believe that reliance on this information caused you detriment? If yes please provide a very brief description'. Our investigation team assessed from the description what type of detriment we understood them to mean.

Figure 7—Submitters who identified their information source, by whether they experienced detriment



3.18. Forty six per cent of submitters could not recall when they received the information about commutation. Of those who could, 81 per cent told us it was within 12 months of their retirement date. However, for some submitters there was a large gap in the period between when they received information about commutation and their date of retirement of more than 12 months or in some cases, more than 10 years.

3.19. Only a small proportion of submitters (around 12 percent) had obtained independent financial advice before deciding to commute. Based on our conversations with individual submitters, it appears likely that some who said they received financial advice may have been referring to conversations with private sector financial representatives who attended seminars, about investment strategies for the lump sum.

What agencies told us

3.20. CSC asserted that comprehensive material about commutation was issued over the years, including circulars, letters and publications. CSC provided a large quantity of historical documents of this kind.

3.21. CSC considers that there was consistency and uniformity in the message conveyed by the previous administrators of the DFRB and DFRDB schemes. It said that for each scheme, the message was that a person who commuted their pension to a lump sum would not have their pension restored if they outlived their life expectancy factor age.

3.22. CSC asserted that this was made explicitly clear in scheme literature, benefit application form instructions and in material provided by the DFRDB Authority to Defence. It asserted it had been explicit in its communication from commencement of the scheme, with the use of wording that said the commuted portion 'cannot be restored' and that retirement pay will reduce 'on and after' or 'from' the time the election is received, or will reduce 'thereafter'.

3.23. In reference to the RAAF Personnel Handbook which was the subject of recent media attention, CSC said that it had been unaware of the contents of this handbook prior to the media attention and it held no records that indicated that the DFRDB Authority was aware of this publication either.

3.24. Defence provided a large quantity of historical information, including publications, explanatory memoranda and reports, Ministerial responses and Pay and Administration Branch documents.

3.25. Defence advised it is possible that Army members were required to provide information to transitioning members, but what that information was can no longer be ascertained. Navy found no material indicating that staff were required to brief on the DFRDB in the course of their duties.

3.26. Defence advised the Air Force's Directorate of Personal Services 'had responsibility for DFRDB matters, including consultation on legislative changes, representation as part of the DFRDB Authority and drafting/clearing general information news articles …. (notably, with disclaimers to consult the DFRDB Authority for official advice)'. Defence also noted that, at that time, there would have been no restriction on the Directorate proffering advice in response to DFRDB issues raised with them directly.

What we found

Current communication

3.27. The current 'Retirement Benefits' factsheet published by CSC clearly and explicitly advises members that a commuted pension does not revert to the pre-commutation rate on reaching life expectancy factor age. It reads:

> There are some other things you should know about commutation. One of them is that once the conversion has been made the portion you commute cannot be restored **regardless of you exceeding your life expectancy** (see Table 2 on the next

> page). Also, your retirement pay will be reduced from the date your commutation takes effect (*emphasis added.* [48]

3.28. The earliest occurrence of this explicit messaging is in the **June 2004** edition of the Retirement Benefits factsheet, which stated:

> commutation gives you the option of converting part of your retirement pay to a lump sum ... once the conversion has been made the portion you commute cannot be restored **regardless of you exceeding your life expectancy** (*emphasis added*).[49]

3.29. Similarly, the current 'DFRDB Book' entitled 'About Your Scheme'[50] explains that the reduction is permanent. It highlights this information by applying visual markers and bold green font to signify the importance of this information:

> Note: Commutation of a benefit results in a **permanent reduction** in your retirement benefit based on your life expectancy, see factors at Table 3 on page 15. Your retirement benefit will not be set to the pre-commutation rate, even if you attain or exceed your life expectancy (*original emphasis*).

3.30. The earliest occurrence of this precise 'permanent reduction' wording appears to be in the 2007 edition of the DFRDB Book.

3.31. The addition of the words 'regardless of you exceeding your life expectancy' and 'permanent reduction' significantly improved CSC's communication about this issue to DFRDB members. In our view, this wording serves to remove any reasonable misunderstanding about the permanence of the commutation reduction. The only reasonable conclusion a reader can draw, *even if they received incorrect information from another source*, is that the reduction will be permanent and continue regardless of the age they achieve.

3.32. Both the Factsheet and the DFRDB Book are readily available on the CSC website and can be conveniently found.

3.33. We saw examples of submitters receiving current CSC information who said they understand the reduction is permanent.[51]

Mr A is a current serving member of the Royal Australian Navy (RAN). He intends to discharge in the near future and plans to commute a portion of his retirement benefit into a lump upon retirement.

Mr A has obtained information from the CSC website, CSC DFRDB fact sheets and has attended a Transition Seminar. Mr A has also met with a CSC representative. From the information provided about his DFRDB entitlements, Mr A understands that he can commute a portion of his retirement benefit as a lump sum and his retirement pay will be permanently reduced.[52]

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[48] Factsheet DB04 06/14 at https://www.csc.gov.au/Members/Advice-and-resources/Factsheets-and-publications/?dfrdb, accessed 20 August 2019.
[49] CSC response document p. 175.
[50] At https://www.csc.gov.au/Members/Advice-and-resources/Factsheets-and-publications/?dfrdb, accessed 20 August 2019.
[51] These submitters made submissions on the basis they consider the scheme design is unfair (i.e. that while acknowledging the reduction *is* permanent, they don't believe it *should be*).
[52] Submission 676.

3.34. CSC provided copies of current letters sent immediately prior to and after commutation. While correct, these letters do not use the improved language contained in brochures and the DFRDB Book to warn about the permanency of the commutation reduction to retirement pay, although the letter sent prior to commutation does refer the reader to scheme literature. CSC also sends copies of the factsheet/brochure to members on request.

3.35. Similarly, the current form for members to elect to commute[53] does not use the improved language used in brochures and the DFRDB book to warn that there will be a 'permanent' reduction in retirement pay if a person elects to commute. Like the letters, the form also recommends readers read the DFRDB book, with text on the first page under the headings 'Important information about this form' and 'Before you use this form'.

3.36. Defence advised that the ADF does not provide specific commutation information to DFRDB members but refers people to CSC for information and advice. Defence records show that CSC continues to present at Defence Community Organisation transition seminars. ADF transition coaches draw attention to transition resources but do not give advice.

Historical Defence communication

3.37. As part of this investigation we looked closely at what historical information was provided to staff and members about the consequences of commutation, and whether this information was accurate and adequate in the circumstances.

3.38. There are numerous examples of incorrect written and verbal information being disseminated within Defence from commencement of the scheme in 1973 onwards. This information helped create and reinforce a relatively widespread misunderstanding among DFRDB members that the retirement pay reduction due to commutation would cease on reaching life expectancy factor age.

3.39. For example, the Navy News incorrectly described commutation as a 'loan' to be 'repaid':

> Many people separate from the Service just for the commutation. When family expenses are high, the prospect of a considerable amount of money can be enticing, but commutation is not designed to help you meet your expenses. Its purpose is to provide **an interest-free loan** to help you settle into a new career when your relatively short career in the service is over (*emphasis added*).[54]

3.40. A number of ADF handbooks also incorrectly described commutation as a loan to be repaid over a person's life expectancy. For example, the RAAF Personnel Information Handbook read:

> When you receive retired pay (ie, pension) you will have the right to 'commute'. This means that you are able to **borrow** an amount equal to several times your retired pay at the time of your discharge and **repay that amount over your life expectancy** (*emphasis added*).[55]

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[53] Form D20, at https://www.csc.gov.au/Members/Advice-and-resources/Forms/, accessed 20 August 2019.
[54] Navy News, 8 October 1982, p. 17.
[55] RAAF Personnel Information Handbook, February 1993, p. 92. This wording remained substantially the same in all versions of the RAAF handbook we received, up to and including the 6th edition (1993).

3.41. In April 2008, Comsuper wrote to one submitter (who had drawn its attention to the incorrect statement in the RAAF Personnel Information Handbook) to advise that it had contacted Defence and been assured this information had now been removed.

3.42. Similar wording appears in the Royal Australian Navy Pre-Discharge Handbook (June 1988), supplied by a submitter:

> If you commute, your annual pension will be reduced accordingly so that the commuted amount is **'repaid' over your remaining life expectancy** (*emphasis added*).

3.43. Other Defence publications we have seen either did not mention the commutation reduction at all, or where they did, did not address the issue of the permanence or otherwise of the reduction to retirement pay.

3.44. However, we did find examples where Defence had clarified this point. For example, in an 'Official Reply' from the Acting Assistant Secretary, Defence Industrial, Mr Peter Skinner, published in the Army News in December 1988:

> Commutation is a lump sum advanced to a retiree and 'repaid' through a reduced pension. The number of years over which these payments are made is calculated by referring to the DFRDB Act……Should the member die at this average age the equation would be considered square. However few retirees actually die at this age, causing most to either fall short of, or extend beyond this theoretical commitment. The reason no attempt is made to adjust for this is that the present result is considered fair for the great majority of members. Thus if a serviceman dies shortly after retirement, his widow is not asked to repay the balance of her husband's commutation. By the same philosophy, **retirees fortunate to live beyond expectancy are not granted an increased pension from that point onward'** (*emphasis added*).

3.45. We also interviewed a number of former ADF members whose role had involved providing information about the DFRDB scheme during the discharge process. These former ADF members said they had provided incorrect information to thousands of discharging DFRDB members.

Mr B worked in a discharge unit explaining entitlements and assisting with resettlement. Other than the DFRDB brochure and on the job training from his predecessor, he received no training or guidance on the scheme. Mr B said that, in accordance with what his predecessor trained him to say, he told members commutation was an advance on their pension and once paid back, the member would go back onto a full pension. He explained that he in turn trained the person who replaced him to do the same.

Mr B said he spoke about the DFRDB at a resettlement seminar again explaining that the pension would go back up once the commutation was paid off. Mr B said he was responsible for 17 staff, all of whom were providing the same incorrect information.

Mr B estimated this incorrect information would have been provided to around 1500 people who went through his discharge unit during his employment there in two separate periods totalling four years in the 1970s and 80s.[56]

[56] Submission 1354.

3.46. A number of the former ADF members we spoke to provided similar accounts:

> Mr C worked in the financial area of the RAAF for 20 years. He spoke at retirement seminars and says he was involved in the discharge of thousands of members. He says he told people they would pay their commutation back until they reached life expectancy, then the pension would go back to the normal full rate because they had paid the commutation back.
>
> Mr C was in the service when the DFRB transitioned to DFRDB. He said he remembered that the DFRB literature had provided a warning, but he recalled that the DFRDB brochure did not say the reduction continued after life expectancy.
>
> He said he and other advisers received no training on the DFRDB, but if he had a question he would ring the DFRDB Authority. He said he thought the scheme was simple. He thought it made sense that the pension would revert to the full amount on reaching life expectancy, because this is what happens when a person actually dies (the members dependents receive a portion of the full pension, as if the member had never commuted).[57]

3.47. Other submitters expressed a similar view to Mr C. The fact the pension reverts to the pre-commutation amount for calculating *spouse benefits* when a member dies[58] led them to assume this reversion also occurred on reaching life expectancy factor age.

3.48. Defence said it also spoke with former ADF members who had worked as former administrative clerks responsible for discharge. They said their role had included providing information on DFRDB and how to fill in forms, answering questions and who to contact. They also conceded there was no formal training and information passed from more experienced, longer serving clerks.

3.49. Former ADF members we spoke to who told us they developed documents and presentations about the DFRDB scheme described clearance processes which involved superior officers checking their speaking notes for seminars, but none could recollect information being sent to DFRDB Authority prior to publication or presentation.

3.50. One former DFRDB Authority staff member we interviewed recalled that the three Defence services had a representative on the DFRDB Authority Board, who could act as a conduit for information between the agencies, but was unable to recollect specific examples of Defence information being reviewed by the DFRDB Authority.

3.51. While there was incorrect information provided by some handbooks we saw and by ADF members we interviewed, the handbooks also encouraged people to contact DFRDB Authority, as did some of the former ADF members we spoke with.

3.52. The Office also received video footage of two Defence retirement seminars.[59] The videos record the information provided by DFRDB Authority staff invited to speak at the seminars. Both speakers give correct information that retirement pay will not go back up on reaching life expectancy factor age. In the first video, the issue is not addressed in detail until an audience member specifically asks a question about it. In the second, while the speaker is

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[57] Submission 2525.
[58] Eligible dependents are entitled to five eighths (62.5 per cent) of the DFRDB member's pension, calculated using the pension rate that would have applied had the member not commuted.
[59] While not precisely dated, information in the videos indicate that they were likely recorded in 1984 and 1989 respectively.

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explaining a worked example, he initially states that the repayment is over the life expectancy period, but later corrects this statement.

3.53. Based on interviews with submitters, it appears that some people misunderstood the information provided at resettlement seminars, and spread the misunderstanding to colleagues during conversations with their peers when they returned to their units.

Historical DFRDB Authority Communication

Operational guidelines

3.54. In addition to the video footage described above, we examined contemporaneous copies of CSC brochures, forms, and letters from 1973 to present, examples of which were provided by CSC and individual submitters. We also had regard to how commutation had been explained in the predecessor DFRB scheme literature.

3.55. The DFRB book included a warning about the effects of commutation on a pension under that scheme:

> 251. Every pensioner should think carefully before relinquishing portion (*sic*) of his continuing pension entitlement to obtain an immediate lump sum payment. Factors such as the following are significant:
>
> > Once commutation is approved, the **relevant portion of the pension** is cancelled and **cannot be restored subsequently** (*emphasis added*).[60]

3.56. At the commencement of the scheme in 1973, the DFRDB Authority issued a circular to all Defence service agencies,[61] explaining how the scheme would operate. This circular clearly explained the permanence of the commutation reduction:

> Although a life expectancy factor is used, **full retirement pay is not restored should the member live beyond normal life expectancy**. By the same token, should the member die before attaining the expected age, no attempt is made to recover the amount of the lump sum outstanding from the dependents or the estate (*emphasis added*).[62]

3.57. In our view, the inclusion of this paragraph when explaining the new scheme in 1973 demonstrates an awareness by the DFRDB Authority that what happens after reaching life expectancy factor age might be an issue on which people would seek clarification, or not otherwise immediately understand to be the case.

3.58. We were not provided with any other internal DFRDB guidelines, other than the first issue of the DFRDB Manual compiled by the Australian Government Retirement Benefits Office in 1983. This manual stated:

> A member who commutes has his or her pension reduced. **The reduced pension cannot be restored during the member's lifetime.** The reduction is calculated

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[60] Defence Forces Retirement Benefits Board, July 1970, DFRB Booklet, para. 251, p. 94.
[61] Prior to their amalgamation into the Department of Defence on 30 November 1973, the Department of the Navy, Department of the Army and Department of Air Force were responsible for the administration and finances of the Royal Australian Navy, the Australian Army and the Royal Australian Air Force respectively.
[62] DFRDB Authority, August 1973, Defence Force Retirement and Death Benefits Scheme Circular, issued to all service departments, p. 17.

> according to life expectancy. Effectively, the member notionally repays the commutation lump sum by recovery from pension (*emphasis added*).[63]

3.59. Due to the passage of time, there were no other internal (staff only) DFRDB Authority or Defence procedural guidelines that could be provided to the investigation.

3.60. Based on our interviews with former ADF members and DFRDB Authority staff there does not appear to have been sufficient training or instruction (if any) that staff in either organisation should proactively and specifically explain to members that full retirement pay is not restored should the member live beyond their life expectancy factor age. Despite what appears to be an absence of guidance to proactively provide such advice, we are satisfied that DFRDB Authority staff were aware of how the legislation works, and would provide correct information if a specific question about duration of the reduction came up.

Brochures

3.61. At commencement of the scheme, DFRDB Authority produced a brochure on transfer arrangements which explained:

> the annual rate of retirement pay is reduced by an amount which is calculated by dividing the lump sum amount received, by the retired members life expectancy.[64]

3.62. In 1975, another brochure described commutation as the option:

> to receive a lump sum **prepayment** of a portion of future payments and a **reduced benefit thereafter** (*emphasis added*).[65]

3.63. Like the DFRDB Act itself, these brochures say that retirement pay is reduced, and do not indicate any end date to the reduction. In 1975, the use of the word 'thereafter' also indicates that the reduction is continuing. It also refers to commutation as a 'prepayment' of a portion of future payments. However, neither brochure explicitly states that the reduction will continue after reaching life expectancy factor age.

3.64. Similar wording was used in brochures until the early 2000s. The Retirement Benefits leaflet continued to describe the election as an option to receive a 'lump sum prepayment' and that 'your reduced retirement pay following commutation is determined in accordance with your life expectancy on the date the election is received'.[66] From July 1995 the Retirement Benefits leaflet also stated 'the portion you commute cannot be restored'.

Forms

3.65. The original 1973 form required members to sign an acknowledgement:

> I realise that under the provisions of Section 24 future retirement pay payments will be reduce as a consequence of this election **on and from** the date the election is received by the Authority (*emphasis added*).

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[63] Australian Government Retirement Benefits Office, 1983, DFRDB Manual, para. 6.3.
[64] DFRDB Authority Brochure, October 1972, Transfer to the new scheme of existing contributors as at 1 October 1972, p. 2.
[65] DFRDB Authority Brochure, June 1975, Preservation of Rights, p. 12.
[66] For example letters we received dated December 1981, January 1985, 1987, September 1989.

3.66. The form also contained the relevant extract from s 24 explaining calculation of the reduction 'on and after the day on which the election takes effect'.

3.67. The acknowledgement and extract of s 24 were removed from the forms in 1978. However, from 1978 the form was accompanied by 'Explanatory Notes' which explained that the member should obtain a brochure on retirement benefits from their unit or the DFRDB authority and stated:

> Commutation is a conversion of a portion of future retirement pay payments to a one time lump sum. Once the conversion is made the portion commuted **cannot be restored during the member's lifetime** (*emphasis added*).

3.68. As discussed in the analysis section below, members told us that they understood that 'cannot be restored' meant that the election to commute could not be reversed.

3.69. Forms were often accompanied by a printout of the commutation calculation and future rate of retirement pay.

Letters

3.70. There are two categories of letters to members that were examined during this investigation. The first is letters that were sent to a person who contacted the DFRDB Authority prior to discharge, and the second is the letter sent to members after discharge and the election to commute had been made.

3.71. The DFRDB Authority provided a service where members could contact the DFRDB Authority to ask for detailed information about their retirement benefits. This could be done by telephone, in writing, or in person.

3.72. The DFRDB Authority would provide information about entitlements, including a letter setting out calculations which explained how much a person would receive if they decided to commute and the amount of retirement pay they would receive.

3.73. These letters used phrases such as:

> Retirement pay is reduced with effect from [date]….
>
> Retirement pay thereafter would be at the rate of [$amount] per annum
>
> Reduced retirement pay following commutation - [$amount]

3.74. Letters sent to a person following discharge were similar, using phrases such as:

> Your election to commute became effective on [date] and accordingly your retirement pay entitlement is reduced from that date to [$amount] per annum.

Analysis

3.75. Although the passage of time means many corroborative historical records are no longer available, we are satisfied that the former ADF members and DFRDB Authority staff we interviewed were credible and the information they provided to us was reliable.

3.76. We are satisfied that some information about the long term impact of commutation on retirement pay provided by some Defence publications and former Defence personnel (in

administrative roles) was incorrect. While the scale of dissemination of incorrect information cannot be known, it is likely that the count of members who received incorrect information numbers in the thousands.

3.77. The DFRDB Authority brochures, forms and letters did not explicitly state that the reduction would be permanent, nor did they suggest that the reader obtain independent financial advice prior to making their election to commute. They mirrored the 'on and after' language in the legislation, explaining only that there would be a reduction in retirement pay after commutation. It appears a similar approach was taken in the verbal advice that was provided by the DFRDB Authority.

3.78. This meant the member had to impute meaning from what was **not** said.

3.79. To receive the correct message, members had to understand that the absence of language limiting the period for reduction meant the reduction was permanent. This is possible where the member is experienced in reading technical or legal language, but is harder for members whose skills lay elsewhere, and harder still if they have already received incorrect information which has influenced their views.

3.80. We were told by some submitters we spoke to that the absence of an end date did not alert them to the fact that the pension reduction was permanent. We understand this was because they either assumed, or had been led to believe, that the year they reached life expectancy factor age was their 'end date'. In effect, they understood 'thereafter' meant during what they thought was the 'repayment period'. Others told us it simply did not occur to them to think beyond life expectancy—perhaps not surprising given retirees were as young as 36 so life expectancy factor age could be many decades into the future.

3.81. This understanding of the word 'thereafter' appears to have been shared by the authors of the RAAF Handbook which, after describing commutation as being an amount you borrow and repay over your normal life expectancy, says that 'this is achieved by paying you a lump sum, and a reduced amount of retired pay **thereafter**' (emphasis added).

3.82. The absence of explicit information was compounded by the use of words capable of misinterpretation. It appears likely some members may have misunderstood the use of the word 'prepayment' to mean a fixed amount in the nature of an advance or loan to be repaid.

3.83. Use of the word 'prepayment' without a fuller explanation was also, with retrospect, unfortunate. Commutation is not a simple prepayment similar to a loan or advance. It is an exchange of one type of entitlement for another.

3.84. We interviewed 20 people who had attached copies of letters to their submissions. Only three of the people we spoke to understood the letter to be saying that the reduction was permanent, and of these:

- two had already known the reduction was permanent when they read the letter
- the other was the only one of the 20 who had no prior understanding (they had not previously heard or thought about the effect of commutation) when they read the letter.

3.85. The remaining 17 said they did not understand from the letter that the reduction would be permanent, as the example of Mr D shows:

> Mr D served in the Royal Australian Navy (RAN) and discharged in 1983 where he chose to commute a portion of his retirement benefit. Prior to commuting Mr D received a letter in 1982 from the DFRDB Authority which detailed his entitlements and retirement pay.
>
> Mr D stated there was nothing contained in the letter that made him think his retirement pay wouldn't go back up eventually. The use of the words 'reduced with effect from that date' and similar in the letter, did not cause him concern, as he did not interpret them as meaning a permanent reduction.
>
> Mr D stated that the use of life expectancy tables made him not worry about the length of the reduction. He said "by using life expectancy figures in the calculation, it gave me the impression it would go back to normal." Prior to receiving the letter, Mr D already held an understanding that his pension would revert at some stage. As far as he was concerned the letter appeared straight forward and answered all the questions he had at the time. [67]

3.86. Members we spoke to also indicated that they misunderstood the warning that 'the portion you commute cannot be restored'[68] as meaning only that they could not reverse their decision to commute. They said they did not realise that it meant the pension would not be restored on reaching life expectancy factor age.

> Mr E interpreted the phrase "once the conversion is made the portion commuted cannot be restored" as, once you sign up to it, that sets the agreement in stone and changes to the agreement won't be accepted. [69]

3.87. In our view, at least for some members, these interpretations were influenced or reinforced by the misunderstanding they already had following incorrect information from Defence publications, staff involved in discharge, and their peers (including members returning from resettlement seminars).

3.88. However we also saw examples of relatively financially astute members (who did not have a misunderstanding of the nature of commutation when they received information about entitlements) yet still misinterpreted the DFRDB Authority information. This is illustrated in the example of Mr F:

> Mr F was a commissioned officer in the RAAF who discharged and commuted his retirement pay in 2002. Mr F already owned his home outright at the time he discharged and says he was therefore ambivalent about whether he should commute or not, having no immediate need for a lump sum and was primarily concerned at the time with maximising future retirement income.
>
> He attended a retirement seminar. He heard from a DFRDB speaker and spoke with the financial advisor present. Mr F says that he listened to the explanations about the scheme and read the brochure materials carefully. He said the DFRDB presenter did not specifically state that the pension would go back up on reaching life expectancy factor age, however this is how

[67] Submission 2459.
[68] As it happens, since 1988 the decision to commute *can* be reversed in some circumstances. The DFRDB Act, s128A, states that a person can apply to CSC to cancel the election within three months after making the election (or such further period as CSC may allow in special circumstances).
[69] Submission 858.

he had understood commutation, putting together the information he had received about it being like a loan and the fact it was worked out using life expectancy tables.

At the time, he put his commutation into his superannuation fund. He currently directs all of his remaining retirement pay into superannuation. He thinks, with hindsight, he may have decided instead to 'trickle invest' the full pension, rather than taking and investing a commutation lump sum. He is unsure whether he has suffered an overall financial benefit or detriment.[70]

3.89. Having considered the documentation and personal statements from individuals, we are satisfied that Defence at times provided incorrect information to members.

3.90. We are satisfied the information provided by DFRDB Authority was correct. However, prior to 2004, when the words 'regardless of you exceeding your life expectancy' were added, followed by the addition of the word 'permanent' in 2007, the stand alone statement that the pension 'cannot be restored' was, as illustrated above, often misunderstood.

3.91. It also appears likely this information was rarely given in verbal DFRDB presentations and discussion, as the question was not often asked by members and DFRDB staff had not been directed to include explicit explanations on this issue.

[70] Submission 1756.

Did this amount to defective or deficient administration?

3.92. The Commonwealth government process for compensating loss caused by poor government administration is the *Scheme for Compensation for Detriment caused by Defective Administration* (CDDA).

3.93. The purpose of the scheme is to provide a mechanism for government to compensate people who have experienced detriment as a result of defective or deficient administration.

3.94. The principles underpinning the CDDA are a useful guide for our analysis in this case. This is because CDDA focuses on whether there is a moral obligation to pay compensation in situations where legal compensation is not payable.

3.95. The CDDA scheme cannot compensate financial disappointment or unmet expectations.[71] Nor can it be used to make payments that would effectively override a legislated cap on a statutory entitlement.[72] As a matter of principle, this means compensation cannot be used to pay members the pre-commutation rate of retirement pay after reaching life expectancy factor age, because to do so would involve paying members more retirement pay to which they are entitled under the legislation.

3.96. However, if a person suffered a financial or economic loss as a result of defective administration, the CDDA scheme principles would suggest that compensation may be appropriate.

3.97. In considering whether, as a matter of principle, compensation ought to be paid, the first question to answer is whether there was any defective administration.

3.98. Giving advice to a person that was, in all circumstances, incorrect or ambiguous may amount to defective or deficient administration.[73]

3.99. Administration can also be defective if there is an unreasonable failure to give a person proper advice that was within an agency's power and knowledge to give.[74]

Defence

3.100. While Defence was not directly responsible for administration of the DFRDB scheme, there can be no doubt that people understood Defence personnel, particularly those involved in the discharge process or from the Directorate of Service Conditions, to be speaking authoritatively and providing definitive advice. This is illustrated by submission comments such as the following:

> The explanation at the seminar was that we could 'borrow' this money as a commutation and then pay it back over a protracted period of time and then revert back to our normal pension after the commutation had been repaid……..The information offered was insufficient for me to realise that I was about to enter into

[71] Department of Finance, November 2018, Scheme for Compensation for Detriment caused by Defective Administration Resource Management Guide No 409 ('CDDA Guideline 409'), para. 57.
[72] CDDA Guideline 409, para. 24.
[73] CDDA Guideline 409, para. 17.
[74] As above.

> a never-ending debt. It was not 'sold' by professional 'spin doctors' but by a uniformed officer in whom I had complete confidence and trust.[75]

3.101. Defence personnel provided information to DFRDB members about the longer term impacts of commutation on retirement pay. Some of this information was incomplete or misleading, enabling people to reasonably draw the wrong conclusion. Some information provided was simply wrong, including information that retirement pay would be restored to the pre commutation amount on reaching life expectancy factor age.

3.102. We were not provided with internal guidelines given to DFRDB Authority staff or Defence personnel working in discharge or other relevant areas. While this may be because they have been lost due to the passage of time, our discussions with former staff working in these areas suggest it may be because such written policy guidance never existed. Whatever the reason, we have seen examples of Defence handbooks with information that is plainly misleading.

3.103. Further, although we have not seen any written documents from Defence that used the phrase to the effect of 'your pension will be restored', we have spoken with former discharge workers who confirm they did provide this exact advice, understanding it to be true. We can say that the incorrect information provided was not an isolated incident, or only attributable to one or two individuals.

3.104. It appears the *absence* of clear policies, good records and adequate process enabled incorrect information to be provided. The Defence personnel whose job it was to provide information to DFRDB members were not given adequate information or training which would have ensured that only accurate information was provided.

3.105. Information provided by the DFRDB Authority in a Circular to Defence at the commencement of the scheme in 1973 explicitly addressed this issue, stating:

> Although a life expectancy factor is used, full retirement pay is not restored should the member live beyond normal life expectancy.

3.106. Appropriate policies and guidance should have been in place within Defence to ensure only accurate information was provided, particularly when the correct information had been provided to Defence by the DFRDB Authority at the commencement of the scheme.

3.107. Defence is to be commended for its decision to host retirement seminars and provide discharge services to ensure that its personnel were well informed of their rights and entitlements on discharge. However, in doing so, it was incumbent upon Defence, both the ADF and the department, to ensure accuracy in the information provided.

3.108. Defence's practices were not sufficiently rigorous to ensure this accuracy. We find that Defence was responsible for allowing the incorrect information to be provided. We are satisfied that the deficient practices that allowed this to occur amount to defective administration by Defence.

CSC/DFRDB Authority

3.109. In contrast, we did not identify any information provided by the DFRDB Authority that was incorrect, either in its written materials or in its verbal briefings. Although not as clear as

[75] Submission 1150.

subsequent publications, which used the word 'permanent' or referenced the reduction 'not being restored regardless of you exceeding your life expectancy', we do not think the information was ambiguous, in the sense that it was capable of two meanings. Like the legislation itself, when read correctly, the meaning was unambiguous.

3.110. Overall, the DFRDB Authority provided a high quality and accessible information service which meant members could contact the DFRDB Authority at any time to seek and clarify their understanding of any aspect of the scheme.

3.111. Information about these long term consequences was centrally relevant information for members making decisions about whether, when and how much to commute. With the benefit of hindsight, the DFRDB Authority could have used clearer language to explain the long-term impacts of commutation on retirement pay from the commencement of the scheme. In our view, the misunderstanding that ensued may have been avoided if it had included in its brochures the same clear language currently found in the DFRDB Book, or even the level of detail found in its 1973 circular to agencies.

3.112. However, while it would have been preferable if the brochures and information provided by the DFRDB Authority had been clearer on this issue, the information it provided was in fact correct.

3.113. For this reason, while we can point to better practice with the benefit of hindsight, we do not find that the DFRDB Authority's conduct amounted to defective administration or was otherwise wrong.

Did the defective administration result in detriment?

3.114. Defective administration does not automatically mean compensation is payable to the people affected. For compensation to be payable a person must have suffered 'detriment' which was directly caused by the defective administration.

3.115. Having found defective administration on the part of Defence, the second question to consider is whether the defective administration caused any detriment.

What can constitute detriment?

3.116. Detriment is the amount of quantifiable financial loss caused by the defective administration.[76] **Financial disappointment and unrealised expectations are not compensable**. For example, a person will not be eligible for compensation if they are incorrectly granted a pension, and are disappointed when their pension is later cancelled.

3.117. This is because the person must suffer a **financial detriment** as a result of a decision they made relying on the incorrect advice. Further, it must have been reasonable to rely on the incorrect advice, and they must have taken reasonable steps to minimise the loss.

3.118. Where it is impractical to demonstrate part or all of the quantifiable loss, the decision-maker assessing whether compensation should be paid may make whatever assumptions as to the amount as are reasonable and necessary in all the circumstances.[77]

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[76] While the CDDA scheme and other compensation processes can address detriment stemming from personal injury or damage to property, we have not received any information alleging either of these types of detriment.
[77] CDDA Guideline 409, para. 55.

Financial detriment and the initial decision to commute

3.119. For most people, the relevant decision they made relying on the incorrect information was the decision of whether or not to commute. We therefore had to consider: did the incorrect information influence members to commute, and if so, did members suffer a detriment as a result of their decision to commute?

3.120. As part of our interviews with some DFRDB members, we specifically explored whether they would have commuted even if they had known at the time that the reduction would be permanent. With very few exceptions, we were told they would have still commuted, because at the time they needed access to capital, for example to purchase a home or business.

3.121. Some members said in their submissions they would not have elected to commute, but only a handful pointed to specific alternative course of action they felt they would have taken, as the following case studies illustrate.

Mr G discharged in 1992. He says he invested half his commutation into a franchise business, and put the remaining half into superannuation. He said 'If I had known that my retirement pay would be reduced for life I would simply have borrowed the funds to purchase the business, and received my full retirement pay. If I had followed this course I believe that I would be much better off financially today'.[78]

Mr H stated '…. the vital factor that I would be paying the lower pension for the rest of my life would have been of huge significance. I was buying a home after years of postings and occupying poor quality married quarters - If I had known that vital information I could have made enquiries to a bank for advice on a housing loan, repayment details, etc., I would at least have known that there was an end to bank repayments and it would have been an important comparison with commutation arrangements'[79]

3.122. In our view, it is likely many submitters would have commuted, even if they had received correct information about its permanent effect on retirement pay. However, there may be some submitters who, having less immediate need of a lump sum, may have otherwise decided not to commute their retirement pay.

3.123. While there was abundant evidence of financial disappointment, frustration and unmet expectations, this was based on financial disappointment from not receiving the entitlement *to which they believe they were entitled* (i.e. a restored pre-commutation amount) as opposed to the entitlement permitted by law.

3.124. The submitters who asserted they would not have chosen to commute if they had understood the reduction was permanent claimed they would have been better off financially not commuting.

3.125. To test this claim, we sought financial modelling of the two outcomes available under the law (that is, to commute with a permanent reduction, or to not commute and maintain a higher retirement pay).

3.126. Our modelling does not compare the hypothetical outcome if the law had permitted retirement pay to increase on reaching life expectancy factor age. While DFRDB members would undoubtedly be better off financially under this approach, it is not a suitable point of

[78] Submission 2402.
[79] Submission 1285.

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comparison. This is because, while disappointment and unmet expectations are legitimate causes for concern, particularly where they are the consequence of defective administration, they are unlikely to be financially compensable, in court proceedings, as a person was never entitled to this financial outcome.

3.127. As proof of financial loss, some submitters provided the results of an online tool that had been developed by and circulated among DFRDB members, known as the DFRDB Loss Calculator Version 2.[80] However, the calculator does not compare the two available legal scenarios (commuting or not commuting). Rather, it compares actual benefits received to the benefits that would be received if the law was changed (see further Part 5).

3.128. The modelling we commissioned is, in our view, a more accurate way of determining the likelihood of a person experiencing an actual loss (as opposed to financial disappointment) as the result of deciding to commute when compared to not commuting. It takes into account, using conservative assumptions, the economic benefits of both options.

Modelling financial outcomes of the two available options

3.129. The Office commissioned external modelling from two sources, the Australian Government Actuary (AGA) and KPMG. Both firms were provided with relevant data from 12 de-identified real life cases[81] and asked to model and compare the financial outcomes which flowed from the two options available under the DFRDB Act:

- commutation, with reduced retirement pay (which is what occurred in all 12 cases)
- no commutation and higher retirement pay.

3.130. To compare the options that were available under the DFRDB Act, we asked the actuaries to assume two investment scenarios for each case.

3.131. The first scenario is based on the lump sum being invested in **the purchase of a home** (thereby saving mortgage interest which would otherwise be payable on that lump sum amount). According to the submissions received, interviews we conducted and historical presentations we viewed, this is likely to have been the most common use of the lump sum.

3.132. The second scenario is based on the lump sum being placed in **a term deposit**. It is important to consider detriment in the context of likely financial outcomes for people who were not savvy investors. While it stands to reason that some financially astute members would have achieved better investment returns than others, we wanted to understand the likely returns for a member with no relevant financial skills or capital investment experience.

3.133. We therefore sought to model outcomes for conservative human behaviour and economic circumstances. The actuaries were instructed to use actual historical term deposit and home loan rates, and to assume the current historically low rates (four percent for home loans and two percent for term deposits) would continue into the future.

3.134. A person who commutes would start with a higher initial lump sum. We therefore asked the actuaries to consider how this sum grew relative to a person who received no lump

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[80] The calculator is published on the Australian Defence Force Retirees Association website at https://www.adfra.org/ref.php, accessed 21 October 2019.

[81] The sample was selected to include at least one commissioned officer and other rank members from each service, one retiree from each decade since 1973, one third females, a range of ages on retirement and lengths of service.

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sum but a higher annual pension. We asked the actuaries to indicate the 'break-even' points in the various scenarios. This is the point at which a person, with hindsight, may have been better off had they not commuted.

3.135. Given the conservative assumptions we have used, it is likely that the real-life 'break-even' age for many people would be considerably higher than the result of the modelling. This is because the outcomes do not take into account the other benefits of commutation which may have been associated with use of the lump sum, including:

- capital gains to property or the increase in value of assets purchased with the lump sum
- income streams from the purchase of income generating assets, superannuation or businesses
- beneficial taxation treatment—all outcomes are in gross figures (i.e. before tax) and ignore all tax implications.[82]

3.136. Although the financial modelling used real-life figures, we are not suggesting it represents the outcomes for any particular individual. The modelling does not take into account situations where a member diminished the value of their lump sum by spending or investing it in a way that lost value (or indeed invested it to result in a significant *increase* in value).

3.137. Equally, modelling cannot account for non-financial benefits able to be obtained from a lump sum, such as education (some submitters told us they used the lump sum to fund their children's education), health or other lifestyle benefits. It also does not take into account the possibility that the commutation could have been spent or invested in a way that delivered even lower returns than simply putting the lump sum in the bank. In such a case, the financial loss is clearly due to spending or investment choices, rather than the decision to commute.

Results of the modelling

3.138. AGA's and KPMG's reports have been published in full on our website along with this report. Each report contains a detailed explanation of the scenario, methodology and assumptions used to produce each set of outcomes.

3.139. The results of the two sets of modelling are different. This is because the two actuaries have used slightly different interest rates and different methodology.

3.140. For example, AGA has compared only the portion of a person's retirement pay that was commutable (and therefore comparing it being taken as a lump sum with it being provided on an annual basis). This is because that part of the pension that was *not* taken as a lump sum is available to the member regardless of whether they commuted or not. By taking this approach, the modelling is only comparing the outcome of taking the commutable amount as a lump sum

[82] This was done because tax scenarios are different for every individual and tax laws have changed regularly since the commencement of the DFRDB scheme. As a result it would have required too many assumptions to be meaningfully modelled in bulk. However, for most people, ignoring tax implications also ignores significant financial benefits that come from commutation (for example, prior to 1 July 1983, only 5 per cent of a person's commutation was taxed compared to all of their pension). As there are no limits to use of the lump sum, a person could choose to invest it in a way that attracts beneficial taxation treatment or concessions.

to taking it in fortnightly instalments. In contrast, KPMG has considered the full pension received in both scenarios.

3.141. There are also difference in how the actuaries have modelled the outcomes for the purchase of a home. KPMG's methodology is based on the savings which result from investing the lump sum in a home loan being the equivalent of a person 'earning' at home loan interest rates on the lump sum amount.

3.142. The AGA methodology (which is explained in detail in its report) involved calculating the lower repayments which would be made if a person was able to borrow less for their home loan because they had access to the lump sum. The AGA modelled the effect of depositing the amount equal to the difference in repayments into a term deposit (thereby earning term deposit interest rates), from which they withdrew the commutation reduction amount annually. That is, in either scenario, the person has access to the same commutation reduction amount, either through drawing down on this account or by receiving this sum annually as part of their pension payment.

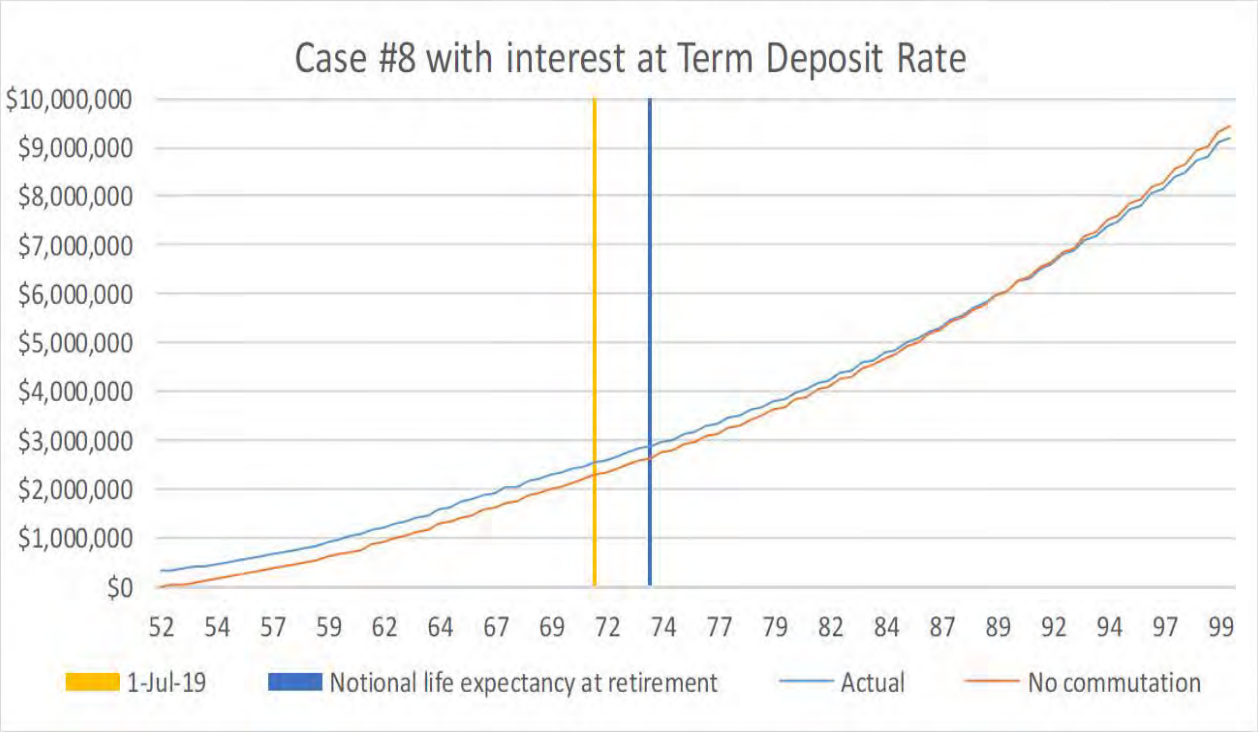
3.143. The AGA modelling further assumes that once the home loan is paid off after 25 years no further savings payments are made into the account (although the account would continue to earn term deposit interest). The commutation reduction amount continues to be withdrawn annually until the account has a zero balance. The 'break-even' point occurs when the account balance reaches zero.

3.144. Despite these differences in methodology, both sets of modelling produce broadly consistent overall results. Both sets of modelling suggests people would have been better off financially commuting if they exercised even a very conservative investment strategy. Further, the modelling does not identify any cohort of people who commuted prior to CSC clarifying its information, who experienced actual financial loss, compared to the other available option.

3.145. To illustrate this, Figure 8 shows the term deposit rate modelling completed by KPMG for one set of figures ('case #8'). It shows the 'break-even' point (where the orange and blue lines intersect) as being age 89.

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Figure 8—KPMG modelling outcome—Case #8 Term deposit scenario[83]

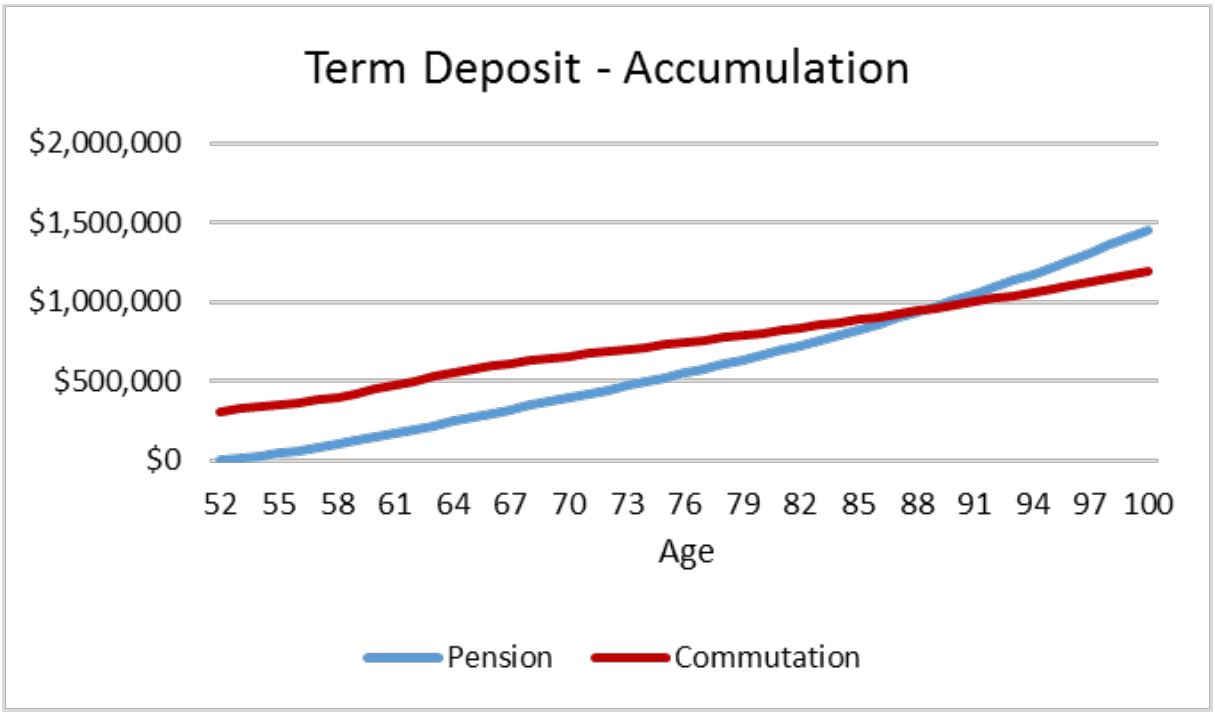


3.146. Figure 9 below shows the term deposit rate modelling completed by the AGA for the same set of figures. It shows the 'break-even' point (where the red and blue lines intersect) as being age 88.

[83] KPMG report, p. 25.

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Figure 9—AGA modelling outcome—Case #8 Term deposit scenario[84]

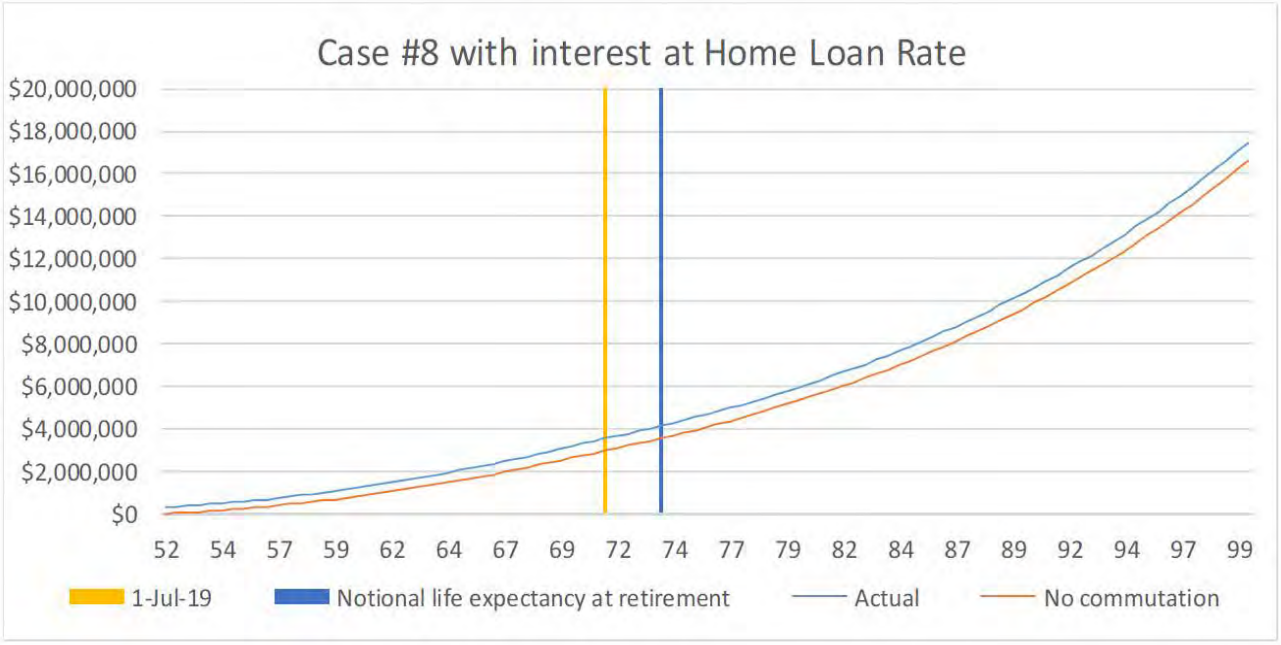


3.147. The results when modelling the use of a commutation lump sum to assist with purchase of a home show an even stronger financial benefit from commuting when compared to not commuting. The results are again broadly consistent between the two sets of modelling, even though the methodology used by the AGA and KPMG is different as outlined above.

3.148. Figure 10 shows the results of the KPMG modelling of using the commutation lump sum for the purchase of a house, again using the same set of figures. There is no 'break-even' point as the orange and blue lines do not cross before age 100 (the limit of the modelling).

[84] AGA report, p. 28.

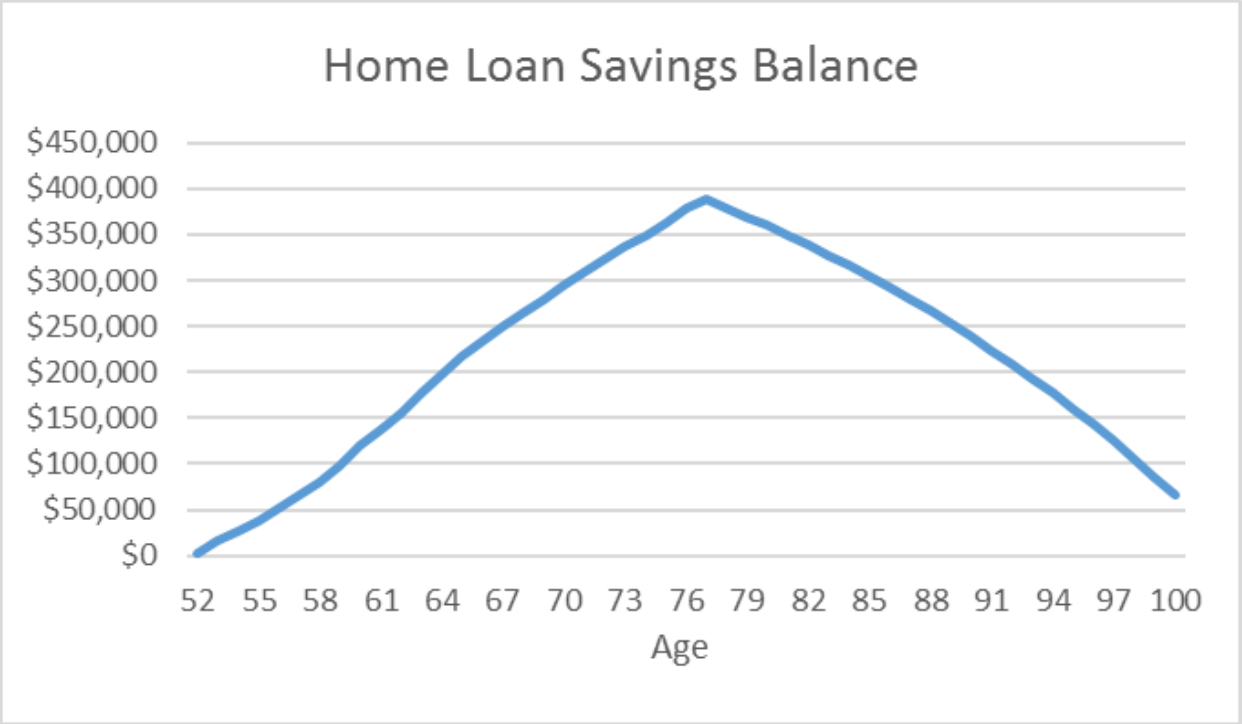
Figure 10—KPMG modelling outcome—Case #8 Home loan scenario[85]



3.149. Figure 11 shows the results of the AGA modelling of using the commutation lump sum for the purchase of a house. Again, there is no 'break-even' point before age 100, because the blue line does not reach the zero dollar axis on the chart.[86]

[85] KPMG report, p. 25.
[86] For comparative purposes, the AGA graph also ends at age 100, although it modelled beyond this age and found a break-even age for the home loan scenario in case #8 of 104 (AGA report, p. 12).

Figure 11—AGA modelling outcome—Person #8 Home loan scenario[87]



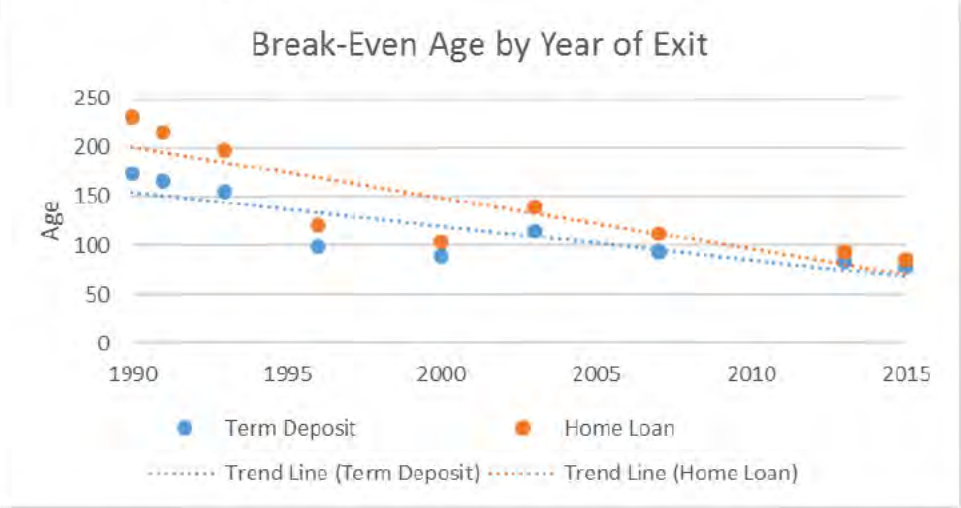
3.150. Despite the ADF's defective administration in providing incorrect information about the long-term effects of commutation decisions on retirement pay, the modelling suggests that it did not lead to financial detriment relative to the other available choice of not commuting. The modelling shows the opposite: that choosing to commute, even if on the basis of misleading information, would likely have been to a person's financial benefit.

3.151. As can be seen in Figure 12, a member who discharged prior to 1990 is unlikely to ever suffer a financial detriment as a result of that decision, irrespective of whether the commuted amount was used to fund the purchase of a house or placed in a term deposit.

3.152. Figure 12 shows that a member who discharged between 1990 and 2010 may live to their 'break-even' age, and ultimately be better off having not commuted. This would only arise if they live well beyond current life expectancy (currently approximately 80 years for males and 84 for females).[88] As noted above, this is based on conservative modelling scenarios—in particular, the modelling shows that it is unlikely that any person discharging in this period would have been better off not commuting compared to using the commutation amount to fund the purchase of a house.

[87] AGA report, p. 28.
[88] Australian Bureau of Statistics Life Expectancy Tables, at https://www.abs.gov.au/AUSSTATS/abs@.nsf/DetailsPage/3105.0.65.0012014?OpenDocument, accessed 19 September 2019.

Figure 12—'Break-even' age by year of exit[89]



3.153. It is also important to note that even in the conservative scenarios modelled, the modelling suggests the earliest *year* in which a 'break-even' age may be reached is 2037. While we did not model each individual who provided a submission, the modelling suggests that even if financial detriment is ever experienced, it is unlikely to occur until many years in the future (see Table 1).[90]

Table 1—'Break-even' year[91]

Case	Year of Exit	Age at exit	Break-Even Year (Term Deposit)	Break-Even Year (Home Loan)
1	1976	44	Never	Never
2	1976	38	Never	Never
3	1986	37	Never	Never
4	1990	48	2116	2173
5	1991	36	2120	2171
6	1993	40	2108	2150
7	1996	49	2046	2068
8	2000	52	2037	2052
9	2003	39	2078	2103
10	2007	41	2059	2078
11	2013	60	2037	2046
12	2015	56	2037	2044

[89] AGA Report, p. 13.
[90] AGA Report, p. 12.
[91] AGA Report, p. 12.

3.154. The modelling does show that a person who discharged after 2010 may reach their 'break-even' age at or about their current *actual* life expectancy.[92] However, three points are important to note here:

- First, this still involves conservative modelling, using term deposit rates rather than the home loan scenario, and ignoring any tax implications or capital gains.
- Second, by this time, CSC had included information in its publications which explicitly stated that the reduction to retirement pay would be permanent, so that the written information being relied on by DFRDB members was now clear. Even if a person did receive incorrect information from Defence personnel, the information produced by CSC and provided to DFRDB members was capable of clearly correcting any misunderstanding.
- Third, the modelling also shows the earliest *date* a person retiring in this period would reach their 'break-even' age is 2037. This would mean there remains ample time for a person to plan for their retirement based on accurate information available to them, and to take steps to mitigate the risk of financial loss, such as by seeking financial advice.

3.155. It is possible, of course, that some individuals may have made poor decisions about what to do with their lump sum. Equally, poor decisions could have been made by individuals about how to spend their fortnightly retirement pay, irrespective of whether the person commuted or not.

3.156. However, for most people, the real-life benefit from commuting is likely to far exceed the outcomes modelled, for the reasons described above.

3.157. It is true this benefit got less over time, for those who discharged more recently, and also for those who discharged at a later age. However, the modelling does not identify any cohort of people who commuted and made appropriate, if conservative, use of the benefit, who can point to both defective administration and a financial detriment relative to the only other option available under the DFRDB Act, namely to not commute.

3.158. Nevertheless, because our modelling has not considered people's individual circumstances, we cannot rule out the possibility, however unlikely, that there may be one or more individuals who can point to actual overall financial detriment caused by the defective administration. In these circumstances, we consider that the CDDA scheme is the appropriate mechanism for such cases to be considered. To avoid raising false hope and to facilitate streamlined processing of any claims under that scheme, we have included at Appendix F a list of considerations we suggest would need to be satisfied before a CDDA claim would need to be assessed.

[92] Australian Bureau of Statistics, October 2018, Life tables, States, Territories and Australia, 2015-2017 at https://www.abs.gov.au/AUSSTATS/abs@.nsf/DetailsPage/3302.0.55.0012015-2017?OpenDocument, accessed 19 September 2019.

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Part 4: Issues Arising from the Investigation – Indexation

Overview

4.1. Indexation is the process by which pensions are increased over time, according to a statutory formula.

4.2. We received many submissions from DFRDB members who were dissatisfied with indexation arrangements. The issues fell broadly into two categories:

- concerns that the current statutory indexation formula leads to an increase in the commutation reduction over time
- concerns about the statutory formula as enacted by parliament.

4.3. Complaints that the statutory indexation formula increases the commutation reduction over time is in scope of this investigation. This is because, if the commutation reduction does increase over time it is necessary to look at whether this was clearly explained to DFRDB members so they could consider the impact before deciding to commute.

4.4. The indexation arrangements in the DFRDB Act are complex and have a complicated history. This section therefore seeks to explain the legislative framework, both what has changed over the years as well as how indexation currently works.

4.5. Concerns about the statutory formula as enacted by parliament are beyond the scope of this investigation. Nevertheless, it is clear from the submissions we received, that there is a high level of confusion and dissatisfaction with current policy settings as expressed through the statutory arrangements and many members are hoping for legislative reform. Thus, while we have made no comments or findings on the suitability of the statutory formula we have included a section summarising the concerns raised by submitters. Given uncertainty in the DFRDB member cohort, it may be appropriate for government to make its position clear on this issue.

Legislative background

4.6. While the predecessor DFRB scheme was operating, pensions were not regularly indexed. Rather pensions were increased by government decision.

4.7. When it was passed by parliament in 1973 there was no provision in the DFRDB Act that allowed for pensions to be increased. DFRDB pension increases were authorised by separate annual Acts between 1 October 1972 and mid-1976. The indexation basis was the lesser of 1.4 times the increase in the CPI, or increases in male average weekly earnings.[93]

4.8. In 1977 the DFRDB Act was amended by the *Defence Force (Retirement and Death Benefits Amendments) Act 1977,* which inserted Part XA into the DFRDB Act. This change allowed the pension to be indexed from 1 July 1976. As a result, pensions were increased if

[93] See *Defence Forces Retirement Benefits (Pension Increases) Act 1973*, s 4(2), and *Defence Force Retirement and Death Benefits (Pension Increases) Act 1976*, ss 6-7, for increases between 1973–74 and 1975–76.

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there was an upward movement in the Consumer Price Index (CPI). Pensions were not decreased if there is a downward movement in the CPI.

4.9. The *Superannuation and Other Benefits Legislation Amendment Act 1986* temporarily reduced the annual CPI indexation by 2 per cent from 23 October 1986 until 20 October 1989, at which point the published CPI indexation was once again applied each year.[94]

4.10. From 1 January 2002, retirement pay indexation frequency was increased to twice a year.[95]

4.11. In 2014, the *Defence Force Retirement Benefits Legislation Amendment (Fair Indexation) Act 2014* added Division 3 of Part XA of the DFRDB Act. Generally speaking, the purpose of this Division, which applies to pensioners who are over 55 years of age, is to ensure DFRDB indexation arrangements for this group operates similarly to the indexation arrangements that apply to the age pension.

How indexation works

4.12. Indexation is applied in January and July each year.[96]

4.13. For members who are under 55, the relevant indexation rate is the Consumer Price Index (unless the CPI is negative, in which case the pension is unchanged. This ensures pensions are not reduced if there is downward movement in the CPI).

4.14. For members who are 55 and over, the relevant indexation rate is the higher of CPI or the Pensioner and Beneficiary Living Cost Index. There is an additional safeguard which means the increase must be sufficient to ensure a hypothetical 'indicative' pension does not fall below 27.7 per cent of Male Total Average Weekly Earnings.[97]

How does commutation impact the indexation rate?

4.15. A member's retirement pay is not indexed in full if the person did not commute, or commuted less than four times their annual retirement pay.

4.16. The DFRDB Act provides that if a person *did not* commute (or commuted a sum which was less than four times their annual retirement pay entitlement), the amount by which their retirement pay is increased is determined by applying the relevant indexation rate *to the*

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[94] The Parliamentary Library observed: 'These actions were undertaken as a budget measure in response to the unusually high rates of inflation of the period combined with a shortfall in government revenue. The rates of increase in CSS pensions were also discounted in the same way during this period', January 2008, Research Paper No. 16 2007-08, Military superannuation myths and reality, at https://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/rp/RP0708/08rp16#_ftn39, accessed 26 September 2019.

[95] *Superannuation Legislation Amendment (Indexation) Act 2001*.

[96] DFRDB Act s 98B—Increase in certain pensions.

[97] DFRDB Act s 98GA provides an overview: Each 1 January and 1 July, the amount of the hypothetical pension, as indexed by the higher of CPI and LCI, is compared with what the amount of the hypothetical pension should be if it is to continue to be at least 27.7 per cent of MTAWE. If the CPI/LCI result is higher than the MTAWE result, the 55-plus percentage is the higher of the percentage movements in CPI and LCI. If the MTAWE result is higher, the 55-plus percentage is the percentage increase needed to maintain the hypothetical pension at 27.7 per cent of MTAWE.

retirement pay they would be receiving if they had commuted four times their annual retirement pay entitlement.[98]

4.17. In effect, the DFRDB Act operates to divide a person's annual retirement pay into two portions—one which is indexed and one which is not. The amount of these portions are connected to the amount the person can commute:

- The maximum portion of retirement pay which is *indexed* is the amount of retirement pay which would be payable if they had decided to commute four times their annual retirement pay entitlement. This is the case regardless of whether they:
    - actually commuted or not, or
    - commuted more, less or exactly four times their annual pension.

  For the purposes of this report, this portion is the '*indexed retirement pay*'.

- An *unindexed* portion of retirement pay is only payable if the person commutes less than four times their annual retirement pay entitlement, which we refer to as '*unindexed retirement pay*' (see Figure 13).

4.18. Prior to 1983, the maximum amount a retiring member could elect to commute was four times their annual retirement pay entitlement. This means a person could commute some or all of their *unindexed* retirement pay, but commutation did not impact their *indexed* retirement pay.

4.19. This had the practical effect that a member's annual pension increased by the same dollar amount each year, regardless of whether and how much they commuted. This is because the person was receiving the same dollar amount of *indexed* retirement pay (to which the indexation factor was applied). If they commuted less than the maximum four times their annual pension, they would receive an additional amount each year, but this would be a portion of their *unindexed* retirement pay, and therefore was fixed from year to year.

4.20. Between 1983 and 2002 the maximum amount that could be commuted was increased by 0.05 times annual retirement pay each year.[99] However, the DFRDB Act was not also amended to increase the unindexed portion of retirement pay to align with the new maximum amount that could be commuted.

4.21. Accordingly, the indexed portion of retirement pay has remained at the amount of retirement pay which would be payable annually if a person had decided to commute four times the annual retirement pay entitlement, even though since 1983 a person can commute *more* than four times.

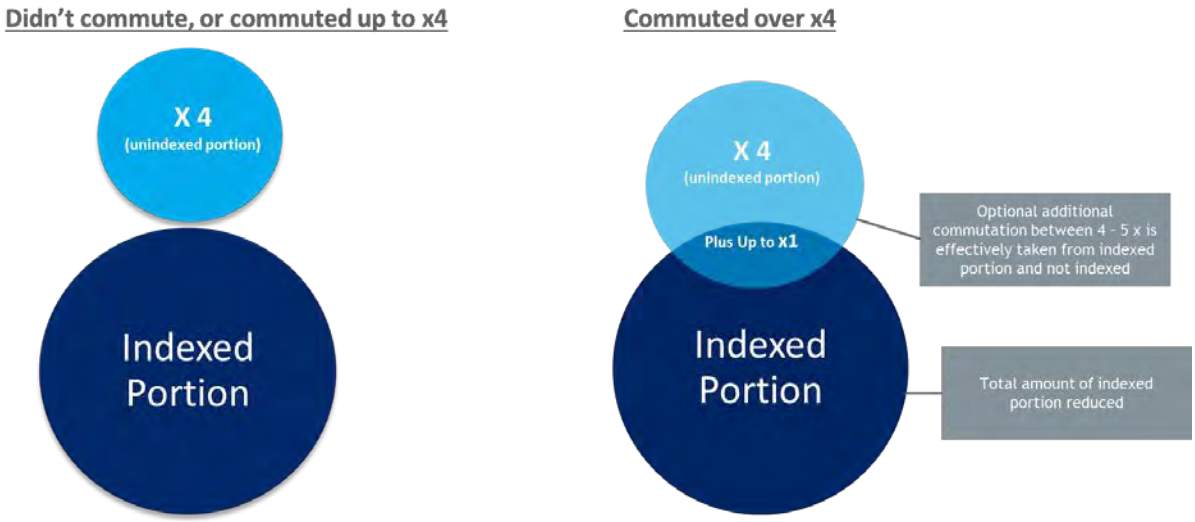
4.22. In effect, a person who elected to commute more than four times their annual retirement pay is exchanging a portion of their indexed retirement pay, as illustrated in Figure 13.

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[98] DFRDB Act s 98B(4)(b). If the current recipient did not commute four or more times their annual retirement pay, indexation applies to the notional rate they would have received if they had commuted four or more times their retirement pay.
[99] *Defence Legislation Amendment Act 1984*.

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Figure 13—Effect of commuting more than four times annual retirement pay



4.23. This means that a person who commuted more than four times their annual retirement pay would be left with an annual pension less than the maximum available indexed retirement pay.

Why does this impact indexation?

4.24. The indexation factor is applied twice a year to the *indexed* retirement pay the person is receiving.

4.25. For people who did not commute, or who commuted an amount less than or equal to four times their annual retirement pay, they are receiving the full indexed retirement pay. Therefore, the indexation factor is applied to that full amount.

4.26. However, where a person commutes more than four times their annual retirement pay, they are receiving *less* than the full indexed retirement pay. In this case, indexation is only applied to the actual pension paid. Therefore the indexation factor is applied to that lower amount.

4.27. The modelling performed by the AGA and KPMG took into account the actual indexation as described in the DFRDB Act.

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4.28. The following table illustrates the operation of indexation, according to the commutation decisions made by the member:

Figure 14—Commutation options

Decision	Retirement benefit comprises

Does not commute	• No lump sum
	• Ongoing annual retirement pay is partly indexed
	  ○ The amount indexed is the amount of retirement pay the person *would have* received if they commuted four times their retirement pay entitlement *is* indexed
	  ○ Remaining retirement pay *is not* indexed

Commutes less than 4 times (e.g. 3 times)	• Receives lump sum of (e.g.) three times their annual retirement pay
	• Ongoing annual retirement pay, reduced using the statutory formula, is partly indexed:
	  ○ The amount of retirement pay the person *would have* received if they commuted four times their retirement pay entitlement *is* indexed
	  ○ Remaining retirement pay *is not* indexed.

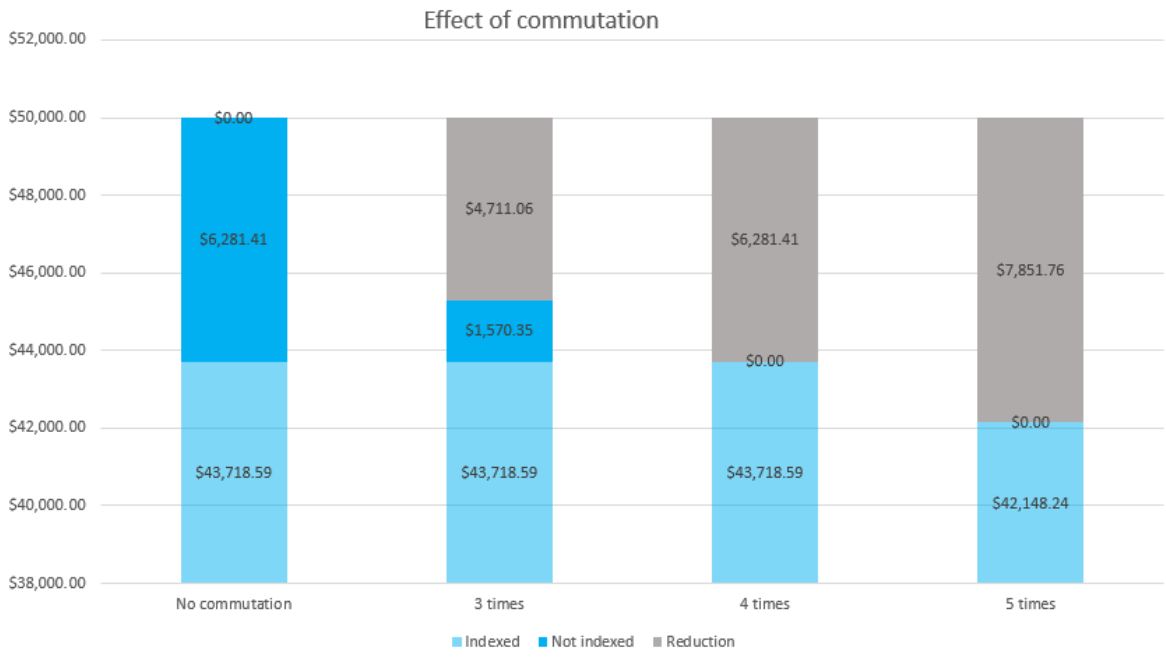
Commutes exactly 4 times	• Receives lump sum of four times their annual retirement pay entitlement • Ongoing annual retirement pay, reduced using the statutory formula, is fully indexed.
Commutes more than 4 times (e.g. 5 times)	• Receives lump sum of (e.g.) five times their annual retirement pay entitlement • Ongoing annual retirement pay is reduced using the statutory formula • The reduced retirement pay is fully indexed, but is *less* than the amount indexed under each of the above scenarios.

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4.29. To demonstrate, the following chart shows how different commutation factors have an impact on the indexed and unindexed portions of the retirement pay. The following assumptions apply:

- Person is 40 year old male, with a commutation divisor of 31.84
- Pre-commutation retirement pay is $50,000

Figure 15 – Effect of commutation



What were members told?

4.30. In response to a request for information, CSC provided us with copies of approved publications about the DFRDB scheme, including brochures, booklets and letters provided to members.

4.31. Members who elected to commute a portion of their retirement pay were advised the dollar figure for the rate of retirement pay they would receive if they did not commute. They were also given the dollar figure of their new reduced rate of retirement pay if they were to elect to commute.

4.32. Brochures produced by CSC explained how the pre commutation retirement pay rates were calculated and included the methodology used to calculate the reduction to retirement pay.

4.33. Each brochure has a section explaining pension increases. The explanation provided, which varied over time, is that retirement pay increases are based on the upward movement of the Consumer Price Index.

4.34. Brochures published after 1985 explain that retirement pay increases are also based on the amount of retirement pay that would be applicable if four times the amount of retirement pay been commuted.

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4.35. The brochures and booklets do not explicitly state the impact of commuting more than four times the annual dollar amount of retirement pay, and in particular, that the annual increases to the member's retirement pay will be less than if they commute four times or less.

Analysis

4.36. We are satisfied, in the absence of any contrary information, that indexation has been properly applied to DFRDB pensions by the administrators.

4.37. For people who commute up to four times the amount of their retirement pay, the difference between what they receive and what they would have received if they had not commuted (the 'commutation reduction amount') is fixed—it remains the same dollar amount from year to year throughout their life, unaffected by indexation.

4.38. However, a person who commutes more than four times the amount of their retirement pay has a smaller amount of indexable retirement pay (as a result of the initial reduction). This means the difference between their retirement pay and the retirement pay they would have received if they had not commuted will grow over time in accordance with the indexation factor.

4.39. The provisions for indexation in the DFRDB Act are extremely complex which is not uncommon across Commonwealth law. This is why it is good administrative practice for agencies administering those complex laws to explain them in a way lay people can understand.

4.40. The information provided by CSC did not advise the longer term consequences of electing to commute more than four times a person's retirement pay. In particular, this information could have made clearer that doing so has the effect of commuting a portion of a member's *indexed* retirement pay, which in turn would lower the amount by which their remaining annual retirement pay would grow through indexation.

4.41. While we acknowledge that the impact of indexation is unlikely to be the primary motivator to the decision to commute or not, it is still important that people have all relevant information in front of them when making a decision. The more complex a legislative scheme, the more critical it is that administrators of the scheme provide plain language explanations of how it operates.

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Part 5: POLICY ISSUES RAISED WITH US

5.1. During the course of this investigation, many people raised issues with us that go to the policy design of the scheme itself. This goes beyond matters of administration which are part of this investigation.

5.2. However, as these issues have been raised with us, this section summarises the concerns of submitters which fell outside the scope of this investigation, to bring these matters to the Government's attention.

5.3. In addition to concerns about being misled, many submitters, including those who now understand that the reduction after commutation is permanent, have expressed dissatisfaction with the fact that legislation does not permit an increase to retirement pay on reaching life expectancy factor age.

5.4. Many members also felt that the commutation divisor and indexation benchmarks used in the DFRDB Act were unfair or inadequate. This section endeavours to summarise the views of submitters on these two issues.

5.5. We also observed confusion among members about how legislative provisions relevant to the commutation divisor and indexation operate. We have provided a further explanation below to assist in understanding of these aspects of the scheme (noting indexation is also discussed in Part Four).

Expectation of life factor—the 'commutation divisor'

5.6. The 'expectation of life factor' is better described as a 'commutation divisor'. It is the divisor for the purposes of calculating a reduction to a person's retirement pay following commutation. It is found in a table in Schedule 3 to the DFRDB Act.

5.7. In effect the formula is as follows:

Reduction = amount commuted ÷ commutation divisor

5.8. The 'expectation of life factor' table in Schedule 3 creates the commutation divisor using the figures in the 1960-1962 life expectancy table published by the Australian Bureau of Statistics (ABS).[100] The legislation does not use the ABS table itself, but rather creates its own table based on the ABS table figures.

5.9. These figures have been the same since the DFRDB Act commenced in 1973. Members submitted that this was unfair, given the considerable increase in life expectancy since 1962.

5.10. It is understandable why members would prefer the use of later life expectancy figures. If the commutation divisor had increased in line with changes to life expectancy, the flow on effect would have been increased retirement pay for those who commuted (because a higher commutation divisor results in a smaller reduction).

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[100] For life expectancy tables from 1881 see Australian Bureau of Statistics *3105.0.65.001 Australian Historical Population Statistics 2019*. For 1960–1962 figures see column I in Tables 6.2 (Males) and 6.6 (Females) at https://www.abs.gov.au/AUSSTATS/abs@.nsf/DetailsPage/3105.0.65.0012014?OpenDocument, accessed 19 September 2019.

5.11. This option was open to the government and parliament of the day. The legislation could have provided for the use of a particular external actuarial table as updated from time to time.

5.12. However this was not the path that was chosen. This suggests that the scheme drafters never envisaged use of current tables, but rather, preferred a static commutation factor. With retrospect, if it had been formally named a 'commutation divisor' rather than a 'life expectancy' factor, it is possible the misunderstanding that ensued could have been avoided.

Indexation arrangements

5.13. In 2014, the *Defence Force Retirement Benefits Legislation Amendment (Fair Indexation) Act 2014* was enacted so that retirement pay for members over 55 are now indexed in the same way as aged pensions (i.e. more beneficially).[101]

5.14. While these changes were broadly welcomed, some of the ex-service organisations we spoke to felt the 2014 changes did not go far enough:

- Some wanted to see these more beneficial arrangements also apply to the indexation arrangements for those DFRDB members who are under 55.
- Some also wanted to see 2014 retirement pay rates reset to a higher amount (i.e. calculating the pension that would have been payable in 2014 if those indexation arrangements had been in place since 1973), rather than the actual retirement pay levels in 2014 based on the actual indexation arrangements that had applied.

5.15. In addition, we heard concerns about the overall impact of commutation on indexation arrangements, which mean a portion of the annual retirement pay of a person who did not commute is not indexed (see Part Four above).

Observations

5.16. The impact of the permanency of the commutation reduction, and the impact of commutation on indexation, have been addressed earlier in this report. Indexation arrangements more generally have been the subject of numerous government reviews and inquiries. There is no reason to believe that each of these issues are not the intended policy outcome following deliberate and considered government policy decisions.

5.17. Nevertheless, many members are dissatisfied with these government decisions and are hoping for change. It is understandable why-any of these steps would, if applied, leave scheme members better off financially, with commensurate expense to the taxpayer.

5.18. We have seen letters and complaint responses from Ministers, Defence, CSC and local MPs sent to individual members which provide insight into the Government's policy position to date. For example, in June 2018 the Office of the Hon Darren Chester MP wrote to one member noting the Government had enacted beneficial changes to indexation in 2014 and stated '*there are no plans to make further changes to the DFRB and DFRDB schemes*'.

5.19. Other correspondence draws attention to the fact that, if further changes are made to DFRDB, this may cause unfairness to members who decided not to commute. A temporary retirement pay reduction was never an option at law, so if the law were changed now to make it available, it could place commuters at an unfair advantage over those who understood the

[101] How indexation works is explained in detail in Part 4 of this report.

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scheme properly and chose not to commute. It may also cause unfairness to other current and former ADF members, for example those who chose to move to the MSBS scheme in the early 1990s based on the understanding the scheme was closing and would not be significantly reformed.

5.20. However, given the breadth of concern about these issues, it may be appropriate for the Government to publicly clarify its policy position to the broader DFRDB member cohort. In saying this, the Office makes no comment on the appropriateness of these policy settings, which are rightly the domain of government and parliament. We do, however, note that if changes are to be considered, the Government should have regard to the potential impact on other members, namely those who did not commute or transferred to other schemes.

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Part 6: CONCLUSION AND RECOMMENDATIONS

6.1. We have found historical deficiencies by Defence which warrant remedial action. While we have not found any errors by CSC, we have identified actions that may further improve communication about the long term effects of commutation on retirement pay.

Defective administration by Defence

6.2. Defence personnel in administrative positions of authority provided incorrect information to DFRDB members about their retirement benefits. Many DFRDB members, likely numbering in the thousands, were misled to believe that the commutation related reduction to their retirement pay would cease upon reaching life expectancy factor age.

6.3. This information was misleading, and providing it amounted to defective administration by the ADF.

6.4. This defective administration resulted in disappointment, distress, anger and frustrated expectations for many DFRDB members. We consider remedial action is appropriate. Defence should acknowledge the wrong that was done and the impact this has had on some members of the scheme. The Secretary of Defence and Chief of Defence Force should issue an unreserved apology to DFRDB members.

Recommendation 1

1.1 The Secretary of Defence and Chief of Defence Force should issue an apology for the incorrect advice provided to some DFRDB members about the long term effects of commutation on retirement pay, and for the distress it caused.

1.2 The apology should be published on the Defence and CSC websites and be available to DFRDB members on request to Defence.

Consideration of separate compensation scheme

6.5. Not all defective administration results in a compensable financial loss. Modelling has shown that the early access to capital provided by commutation is generally to the substantial benefit of DFRDB members, relative to the lawfully available alternative of not commuting. It also indicates that, where a person is not better off overall for having commuted, this is likely to be due to the member's subsequent choices about how to spend or invest the lump sum.

6.6. This means that a separate compensation scheme for all people who commuted is not appropriate, even if that incorrect or insufficient information may have caused a person to commute where they otherwise would not have.

Outlying cases

6.7. We considered whether there could be outlying cases with circumstances that may warrant compensation under the CDDA scheme. We did not identify any cases where compensation would be appropriate (although our investigation has not involved review of the personal circumstances of each individual DFRDB member).

6.8. It would do a disservice to falsely raise hopes of compensation among the members. Futile claims result merely in further inconvenience and frustration to the member, and an

unnecessary use of public resources for assessment processes. However, as with any modelling process, we cannot rule out that an outlying case may exist.

6.9. We have therefore set out the criteria (Appendix F) that we think should be satisfied for a CDDA claim to have any chance of success. This may assist members to self-assess prior to lodging a CDDA claim, and may assist Defence to determine whether a claim needs to be fully assessed.

6.10. The principle underpinning these criteria is that, in the absence of evidence to the contrary, our report stands as a finding in relation to two of the core elements of a CDDA claim – that there *was* defective administration by Defence, and that the defective administration *did not* cause financial detriment.

6.11. These findings could be rebutted by a person being able to point to, with some evidence, specific financial detriment based on their individual circumstances.

6.12. This could be to explain why the modelling assumptions do not apply to their personal circumstances, or that there is another financial detriment directly caused by their reliance on the misleading information provided by Defence. Financial disappointment due to the scheme operating differently to how people were told, and loss due to the person's subsequent investment decisions or life events, would be unlikely to meet this test.

6.13. In our view, Defence decision-makers would be entitled to finalise any claim, without further detailed assessment, that does not clearly show on its face why the person's circumstances differ from the findings in this report.

Improvements to CSC information

6.14. The information CSC provided was accurate and people could obtain information and confirm their understanding prior to making an election to commute. However, CSC messaging was not sufficiently explicit to correct the misunderstanding that had originated from within the ADF, because the nature of the misunderstanding meant that many:

- did not realise they needed to seek clarification from CSC and/or
- inadvertently read an alternative meaning into CSC 's written materials which fitted with their understanding derived from ADF sources.

6.15. While CSC's information could have been clearer, it was accurate and cannot be said to have been defective.

6.16. However, while CSC's brochures have been improved on numerous occasions since 2004, we have identified some additional improvements to current forms and letters that may further assist to remove any doubt for DFRDB members that the commutation reduction is permanent.

6.17. While a lesser issue than the permanence of the reduction in pension, we have also identified that CSC's brochures could more clearly explain the impact of commutation on indexation arrangements :

Recommendation 2

2.1 Commutation election forms and standard letters (sent to members in advance of their retirement and immediately after commutation) should clearly explain commutation will result in a permanent reduction to retirement pay.

2.2 CSC should also identify whether there are any members who have discharged and have already received the existing standard letter, but who are still in time to either commute, or ask CSC to reverse their commutation election. CSC should write to this cohort to explain that commutation will result in a permanent reduction to retirement pay.

Recommendation 3:

3.1 CSC should amend its DFRDB About Your Scheme and Retirement Benefits publications to clearly explain there may be longer-term indexation related consequences of commuting more than four times the annual amount of retirement pay.

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APPENDIX A—MINISTERIAL CORRESPONDENCE

The Hon Darren Chester MP
Minister for Veterans' Affairs
Minister for Defence Personnel
Minister Assisting the Prime Minister for the Centenary of ANZAC

MS19-000686

Mr Michael Manthorpe PSM
Commonwealth Ombudsman
GPO Box 442
CANBERRA ACT 2601

Dear Mr Manthorpe

On 25 March 2019, I announced, together with the Assistant Minister for Treasury and Finance, Senator the Hon Zed Seselja, an independent inquiry into the Defence Force Retirement and Death Benefits (DFRDB) superannuation scheme.

I intend that the inquiry will examine the accuracy of the information provided by scheme administrators and relevant departments to members of the DFRDB scheme.

The DFRDB scheme, which was established in 1972 and closed to new members in 1991, allowed members to commute (exchange) part of their pension for a lump sum.

There are different views within the veteran community about certain provisions within the scheme and the accuracy of information provided to members, particularly in relation to commutation.

The current scheme administrator is the Commonwealth Superannuation Corporation. Prior to 1 July 2015, CSC was the Trustee and ComSuper was the administrator. ComSuper was previously known as the Australian Government Retirement Benefits Office and the Board was the DFRDB Authority. Commonwealth Superannuation Corporation took on the Board function in 2011 following the establishment of the *Governance of Australian Government Superannuation Schemes 2011*.

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 held by the Department of Veterans' Affairs. Accordingly, I ask that you consider undertaking an investigation to bring resolution to this important matter.

My Department will be available to assist you as needed. My contact in the Department is Mr Patrick Hetherington, First Assistant Secretary, People Policy and Culture Division. Mr Hetherington can be contacted on [redacted]

Parliament House
CANBERRA ACT 2600

Telephone: 02 6277 7820
Email: minister.personnel@defence.gov.au

I thank you for considering my request.

Yours sincerely

s22



DARREN CHESTER

Encl

05 APR 2019

COMMONWEALTH OMBUDSMAN

File ref: qA32890

11 April 2019

The Hon Darren Chester MP
Minister for Veterans' Affairs
Minister for Defence Personnel
Minister Assisting the Prime Minister for the Centenary of ANZAC
Parliament House
CANBERRA ACT 2600

Cc: Mr Greg Moriarty, Secretary of Defence
Ms Liz Cosson AM CSC, Secretary of Department of Veterans' Affairs

Dear Minister

Investigation into the Defence Force Retirement and Death Benefits superannuation scheme

Thank you for your letter of 5 April 2019 requesting that I commence an own motion investigation into the Defence Force Retirement and Death Benefits (DFRDB) superannuation scheme.

Following consultation with the Department of Defence and having considered your request, I have decided, under paragraph 5(1)(b) of the *Ombudsman Act 1976* to commence an own motion investigation into the accuracy of information provided by scheme administrators and relevant departments to DFRDB scheme members in relation to commutation.

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

Throughout the course of the investigation, my Office will work closely with your department, DVA and the relevant scheme administrators. We will also invite affected DFRDB members to provide information to contribute to our investigation. I anticipate the investigation will be completed by the end of 2019.

If you would like to discuss the DFRDB investigation, you are welcome to contact me directly on [redacted] Alternatively, officers from your department can contact Mr Paul Pfitzner, Senior Assistant Ombudsman, on [redacted]

Yours sincerely

s22 [redacted]

Michael Manthorpe PSM
Commonwealth Ombudsman

Influencing systemic improvement in public administration

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APPENDIX B—DVA RESPONSE

Australian Government
Department of Veterans' Affairs
OFFICE OF THE SECRETARY
PRESIDENT REPATRIATION COMMISSION

EC19001015

Mr Michael Manthorpe PSM
Commonwealth Ombudsman
GPO Box 442
CANBERRA ACT 2601

Dear Mr ~~Manthorpe~~ Michael,

Thank you for your letter of 8 July 2019, about your Own Motion investigation into the administration of Defence Force Retirements and Death Benefits (DFRDB) commutation. I welcome the opportunity to provide information about any commutation advice given to DFRDB members by the Department of Veterans' Affairs (DVA).

There are a significant number of veterans who have received or currently receive DFRDB benefits. Many of these veterans would be in receipt of DVA entitlements, and some of these entitlements require means testing, which includes income from defined benefit superannuation schemes, such as DFRDB.

From time to time delegates from our income support area provide information to a veteran, or their representative, regarding how a DFRDB income stream or commutation may affect the rate of a means tested pension. These delegates do not, however, provide advice to DFRDB members regarding the operation of commutations. If a specific query is raised, a delegate would direct the client to the Commonwealth Superannuation Corporation (CSC) for advice.

Searches of our system records also suggest that any information given to clients about DFRDB and commutation is limited to general information. We have noted various Ministerial Correspondence documents that contain references to DFRDB and commutation. From the sample undertaken, the information provided in responses from DVA is limited to general statements about the effect of DFRDB on certain pensions and entitlements.

In the 1990s, DVA operated a Veterans Affairs Financial Information Service (VAFIS), which provided a financial advice service similar to the Department of Human Services' (DHS) Financial Information Service. The service was set up to assist veterans in understanding legislative changes to income and assets tests, but was eventually abolished. Unfortunately information about VAFIS and how it recorded client engagement is no longer available due to the passage of time. However, it is my understanding that, like the DHS Financial Information Service, which our clients are also entitled to use, the service provided information about the impacts of financial decisions but did not provide tailored financial advice.

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21 GENGE STREET
CANBERRA CITY ACT 2601

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CANBERRA ACT 2601
AUSTRALIA

TELEPHONE (02) 6289 6736
FACSIMILE (02) 6289 6257
INTERNET www.dva.gov.au

While it is not possible to unequivocally state that DVA has never provided advice to clients about DFRDB commutation, our investigations show that the departmental approach has been to direct specific enquiries to CSC or Defence.

I hope this information assists your office with its investigation. If you require any additional information from my department, you are welcome to contact me directly, or alternatively your investigation team can contact [redacted] Assistant Director, Portfolio Assurance Coordination and Reporting section, on [redacted].

I thank you for the ongoing commitment from your office in working with us towards positive outcomes for our veterans and their families.

Yours sincerely

s22 [redacted]

Liz Cosson AM CSC
Secretary

13 August 2019

Defence FOI 0044/26/27
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APPENDIX C—DEFENCE RESPONSE

Australian Government
Department of Defence
PO Box 7900 CANBERRA BC ACT 2610

EC19-005771

Mr Michael Manthorpe PSM
Commonwealth Ombudsman
GPO Box 442
CANBERRA ACT 2601

Dear Mr Manthorpe

Thank you for your letter of 25 October 2019 regarding your investigation into the administration of the Defence Force Retirement and Death Benefits (DFRDB) Scheme.

We thank you for the opportunity to comment on your report.

Defence notes that the investigation examined a large number of historical cases regarding the DFRDB Scheme and steps have been taken by the Department in recent years to minimise the likelihood of incorrect information being disseminated about commutation of retirement pay. It was encouraging to see that the report was unable to identify any cases where a financial loss occurred as a result of any inaccurate information having been provided to DFRDB Scheme members. We acknowledge, however, that some information provided to members in the past may have caused confusion and distress amongst members.

Defence values its workforce and veterans highly and seeks to provide the highest level of support, particularly on transition from the ADF to civilian life. Defence will continue to work with the Commonwealth Superannuation Corporation (CSC) to ensure that our members and veterans are well informed about their retirement options.

A letter to DFRDB members is at Enclosure 1 for publication in your final report and it will also be posted on both the Defence and CSC websites, and available to DFRDB members on request.

Yours sincerely

s22 [redacted]

Greg Moriarty
Secretary

18 November 2019

s22 [redacted]

Angus J Campbell, AO, DSC
General
Chief of the Defence Force

19 November 2019

Enclosure:
1. Letter to DFRDB members

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APPENDIX D—DEFENCE APOLOGY TO DFRDB MEMBERS

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Document 3

Australian Government
Department of Defence
PO Box 7900 CANBERRA BC ACT 2610

EC19-006342

DFRDB Members

Dear DFRDB member

On 10 April 2019, the Commonwealth Ombudsman, Mr Michael Manthorpe PSM, decided to commence an own motion investigation into the accuracy of information about commutation of retirement pay provided to members of the Defence Force Retirement and Death Benefits (DFRDB) by scheme administrators and relevant departments. The scope of the investigation was limited only to the administration of the DFRDB scheme.

The Ombudsman found that, on occasions in the 1980s and 1990s, information that was disseminated to some DFRDB members on the long term impact of commutation was incorrect. From the early 2000s onwards Defence has provided members with the correct information regarding commutation and all Commonwealth Superannuation Corporation (CSC) publications were rectified in 2004. Drawing on expert actuarial examination, the Ombudsman also found that the incorrect information was unlikely to have caused financial detriment to members.

While it would have been provided by well-meaning administrators and managers, it was incumbent on Defence to ensure the accuracy of the information provided. We apologise for providing incorrect advice to some DFRDB members and for the confusion and emotional impact that it may have caused.

Defence values its workforce and veterans highly, and always seeks to provide the highest level of support, particularly on transition from the ADF to civilian life. As superannuation is a complex subject, members have been encouraged to seek the most accurate information from CSC (or its predecessors), and Defence also continues to educate our administrators and managers on such matters.

While the Ombudsman found that a decision to commute was unlikely to have resulted in overall financial detriment, should you believe you experienced an actual loss due to your reliance on information that was incorrect, you may apply for Compensation for Detriment caused by Defective Administration (CDDA). Guidance for applying under the CDDA scheme is available at https://www.defence.gov.au/Legal/Directorates/dsfc.asp.

We thank our veterans for their service, and their families for the support provided to them.

Yours sincerely

s22 [redacted]

Greg Moriarty
Secretary

3 December 2019

s22 [redacted]

Angus J Campbell, AO, DSC
General
Chief of the Defence Force

3 December 2019

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APPENDIX E—CSC RESPONSE

Australian Government
Commonwealth Superannuation Corporation

20 November 2019

Mr Michael Manthorpe PSM
Commonwealth Ombudsman
GPO Box 442
Canberra ACT 2601

Dear Mr Manthorpe

Thank you for providing your Office's draft report on the Administration of the DFRDB Scheme. CSC is pleased the Ombudsman conducted an investigation, as we understand DFRDB commutation is a key concern for our customers.

CSC acknowledges the issues raised in the report and appreciates your recognition of CSC's unique operating environment, as an entity that received responsibility for DFRDB administration relatively recently, in 2015.

Noting that your report does not find any defective administration by CSC, CSC accepts the recommendations from your report in full and will implement these opportunities for improvement as soon as practicable. CSC is determined to continually improve the way we administer the superannuation funds for which we are the trustee, and we are committed to striving for the best possible outcomes for all of our valued customers.

CSC is committed to being open and transparent. During this investigation, we have fully co-operated with your staff, sourced complex data from multiple systems and provided historical documents spanning five decades. I acknowledge the CSC staff who have at all times exhibited their professionalism, expertise and commitment to the task of providing your office with the information that was sought.

We appreciate you providing CSC the opportunity to comment on the draft report and for the professionalism of your staff throughout the investigation process. Please contact me at any time if you would like to discuss this important issue.

Yours sincerely

s22

Peter Carrigy-Ryan
Chief Executive Officer

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APPENDIX F—CDDA CONSIDERATIONS

Purpose of this Appendix

Despite the finding of defective administration in this report, modelling indicates that compensation is unlikely to be payable to many (if any) DFRDB members, because a decision to commute is unlikely to have resulted in financial detriment.

However, because modelling does not consider a person's individual circumstances, it is theoretically possible that a person may be able to demonstrate financial detriment in their own specific circumstances.

If such a case exists, the Scheme for Compensation for Detriment caused by Defective Administration (CDDA scheme) is an appropriate avenue for assessing whether compensation may be payable.

Some DFRDB members have already experienced financial disappointment due to defective government administration. Given our view that few, if any, would be likely to qualify for CDDA compensation, we are concerned that the possibility of futile claims may lead to further inconvenience and disappointment to DFRDB members.

Decisions under the CDDA scheme are ultimately a matter for authorised decision-makers (in this case, within Defence) applying the CDDA guidelines published by the Department of Finance.[102]

We have outlined below our views on how the findings in this report might assist in the assessment of CDDA claims against these guidelines. Our hope is it will help members understand what might realistically be required for a successful claim and facilitate streamlined assessment of any CDDA claims by Defence.

Considerations for DFRDB members

The following is not an exhaustive list of the requirements for a successful CDDA claim, but rather our view on matters you should consider before making a claim.

In our view, for a claim to have any chance of success, you would need to demonstrate (supported by evidence) why your circumstances are different to the outcomes modelled in this report.

This means you either need to demonstrate that:

- your **decision to commute** resulted in an ***overall*** financial detriment (based only on the options permitted under the legislation) ***in your particular circumstances***, or

[102] Department of Finance, November 2018, *Scheme for Compensation for Detriment caused by Defective Administration*, Resource Management Guide No 409 https://www.finance.gov.au/individuals/discretionary-financial-assistance/scheme-compensation-detriment-caused-defective-administration-cdda-scheme accessed 8 November 2019.

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- you made a **later decision** which resulted in a financial detriment ***directly caused by*** the misleading information provided by Defence.[103]

Important: financial detriment:

- *must* be shown to have been caused by the misleading information
- *must not* be the result of other factors, such as subsequent spending and investment decisions, unforeseen life events or poor financial advice.

You would also need to meet all the criteria set out in the CDDA guidelines to qualify for compensation and you may be required to provide evidence to support your assertions.

Considerations for CDDA decision-makers in Defence

In our view, this report can be treated as a starting point for CDDA decision-makers. This means decision-makers can be satisfied, in the absence of evidence to the contrary, that both:

- **there *was* defective administration** due to misleading information about commutation benefits (further evidence of the misleading statement should not generally be required)
- unless the member is able to provide a plausible explanation of why their circumstances fall outside the circumstances modelled in this report, the defective administration **did *not* cause financial detriment**.

[103] For later decisions, it must also have been reasonable to still rely on the original misrepresentation, despite the passage of time.

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APPENDIX G—GLOSSARY

Australian Defence Force (ADF)	The military organisation which is responsible for the defence of Australia and its national interests. It consists of three branches, including the Australian Army, the Royal Australian Air Force and the Royal Australian Navy.
Commonwealth Superannuation Corporation (CSC)	The agency which currently manages and administers the DFRDB Scheme, as well as other superannuation funds designed specifically for Australian Government and ADF members.
Consolidated Revenue Fund (CRF)	A fund established by s 81 of the Constitution, consists of all revenues and moneys raised or received by the executive government of the Commonwealth. The CRF is self-executing in nature, which means that all money received by the Commonwealth automatically forms part of the CRF.[104]
Consumer Price Index (CPI)	The CPI measures the changes in the price of a fixed basket of goods and services, acquired by household consumers who are resident in the eight State/Territory capital cities.[105]
Defined Benefit Scheme	A scheme where entitlements are set by a predetermined formula and does not depend solely on contributions and investment returns.
Department of Defence (Defence)	Australian Government department which is responsible for defending Australia and its national interests. The department serves the government of the day through efficiently and effectively carrying out the government's Defence policy.[106]
Defence Forces Retirement Benefits Act 1948 (DFRB Act)	The Act of Parliament which established the DFRB scheme. The DFRB Act specifies requirements for eligibility to and administration of entitlements under the scheme.
Defence Forces Retirement Benefits scheme (DFRB scheme)	A scheme to provide retirement benefits, including a defined benefit pension, to certain members of the Australian Defence Force who met minimum length of service requirements (ordinarily, 20 years). Eligible members could, in limited circumstances, commute a portion of their defined benefit pension to a lump sum when they discharged. The scheme commenced in 1948 and closed to new entrants from 30 September 1972.

[104] Department of Finance—https://www.finance.gov.au/resource-management/pgpa-glossary/consolidated-revenue-fund, accessed 21 October 2019.
[105] Australian Bureau of Statistics—https://www.abs.gov.au/ausstats/abs@.nsf/Lookup/6467.0Feature+Article1Mar+2017, accessed 21 October 2019.
[106] Department of Defence—https://www.defence.gov.au/AboutUs.asp#role, accessed 21 October 2019.

Defence Force Retirement and Death Benefits Act 1973 **(DFRDB Act)**	The Act of Parliament which established the DFRDB scheme. The DFRDB Act specifies requirements for eligibility to and administration of entitlements under the scheme.
Defence Force Retirement and Death Benefits scheme (DFRDB scheme)	A scheme to provide retirement benefits, including a defined benefit pension, to certain members of the Australian Defence Force who met minimum length of service requirements (ordinarily, 20 years). Eligible members had an unfettered option to commute a portion of their defined benefit pension to a lump sum when they discharged. The scheme commenced in October 1972 and closed to new entrants in October 1991.
Defence Force Retirement and Death Benefits Authority (DFRDB Authority)	The authority which was responsible for managing and administering the DFRDB Scheme prior to the Commonwealth Superannuation (CSC) assuming responsibility in 2011.
Funded Scheme	A funded scheme must be able to meet all of its current and future obligations to retirees, and must have sufficient assets to provide for all accrued benefits. A funded scheme depends on capital contributions and returns on its investments to achieve stability
Government administration	The steps taken by government departments and agencies to implement: • the laws passed by parliament • departmental policy The Ombudsman's role is to investigate government administration.
Departmental policy guidelines	Guidelines developed by departments to guide officials in how to apply the legislation and laws created by parliament and the courts. These 'policy guidelines' may be published publically or may be internal. They are subordinate to legislation and are part of the administration of the legislation, so they can be investigated by the Ombudsman. Officials must also apply departmental policy guidelines, except where to do so would contravene legislation, or there are cogent reasons not to do so.
Government Policy Decisions	The approach a government has decided it will take in dealing with a particular issue. A government will often use legislation to implement a policy. Government policy decisions are not investigated by the Ombudsman.

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Living Cost Index	A living cost index reflects changes over time in the purchasing power of the after-tax incomes of households. It measures the impact of changes in prices on the out-of-pocket expenses incurred by households to gain access to a fixed basket of consumer goods and services.[107]
Male Total Average Weekly Earnings (MTAWE)	A measure of average before tax earnings of all male employees including any overtime payments. It is calculated by dividing an estimate of male gross—before deductions—weekly total earnings by the number of male employees. MTAWE is a standard measure for wage levels and is enshrined in a range of legislation. For example, MTAWE is used as a benchmark in setting pensions.[108]
Own Motion	The Commonwealth Ombudsman in accordance with s 5(1)(b) of the *Ombudsman Act 1976* may, of his or her own motion, investigate any action, being action that relates to a matter of administration, by a government department or by a prescribed authority.
Scheme administrator	An administrator is responsible for the overall operation of a fund including investment, fund performance, taxation and legislative requirements. The administrator's responsibilities are typically defined in legislation.
Trust	A trust is an obligation imposed on a person or a company to hold property for the benefit of beneficiaries. Trusts are widely used for investment and business purposes. A trustee is responsible for managing the trust's affairs.[109]
Unfunded scheme	In unfunded pension schemes, no contributions are made to the scheme in advance and no investment fund is built up. A member's benefits are not financed until just before they become payable. The benefits are generally paid by the employer. Unfunded defined benefit funds mostly cover government employees and are paid from the Australian Government's Consolidated Revenue Fund.[110]
Statutory entitlement	An entitlement enshrined in law. A person who meets the statutory criteria for payment cannot be refused it.
Statutory formula	A set of mathematical rules or equations set out in legislation.
Discharge	For DFRDB purposes, discharge includes transfer to Reserves.

[107] Australian Bureau of Statistics—https://www.abs.gov.au/AUSSTATS/abs@.nsf/Lookup/6467.0Explanatory%20Notes1Sep%202018, accessed 21 October 2019.
[108] Parliament of Australia—https://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id:%22library/prspub/WUKX6%22, accessed 21 October 2019.
[109] Australian Taxation Office—https://www.ato.gov.au/General/Trusts/, accessed 21 October 2019.
[110] Australian Taxation Office—https://www.ato.gov.au/Individuals/Super/In-detail/Growing-your-super/Super-contributions---for-defined-benefit-funds-and-untaxed-funds/?page=4, accessed 21 October 2019.

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APPENDIX H—CHRONOLOGY

Year	Significant Events	Communication
1972	DFRDB Scheme Commenced	**Transfer to the new scheme brochure** published stating *'the annual rate of retirement pay is reduced by an amount which is calculated by dividing the lump sum amount received, by the retired member's life expectancy'.*
1973	Pollard Review	**DFRDBA Circular** issued to all agencies *'full retirement pay is not restored should the member live beyond normal life expectancy'*.
		DB55A commutation election form published. Extracts commutation reduction s 24 (3)(b) in full. Requires acknowledgement *'I realise that under the provisions of s 24 future retirement pay payments will be reduced as a consequence of this election on and from the date the election is received by the Authority'.*
		Retirement benefits **brochure** published, describes commutation as the option to *'receive a lump sum prepayment of future retirement pay'.*
1976	Indexation in line with CPI introduced	
1978		**DB55A commutation election form updated** – s 24 (3)(b) and acknowledgement removed. New explanatory notes state *'Commutation is a conversion of a portion of future retirement pay payments to a one time lump sum. Once the conversion is made the portion commuted cannot be restored during the member's lifetime'.*
1983	Maximum commutable amount increases	**Internal AGRBO DFRDB Manual** states *'A member who commutes has his or her pension reduced. The reduced pension cannot be restored during the member's lifetime.'*
1985		**Retirement Benefits** brochure updated – no substantive changes in relevant text.
1988	Elections permitted in 3 months prior to retirement	**D20 commutation election form replaces DB55A**. No substantive changes in relevant explanatory notes text.
1991	DFRDB Scheme closes to new members	
	MSBS Scheme commences	
1994		**About Your Scheme booklet** published. No substantive changes in relevant text.
1995		**Retirement Benefits brochure** updated. No substantive changes in relevant text.
2001	*Reynolds and Defence Force Retirement and Death Benefits Authority (2001) AATA 599*	**D20 (commutation election) and D21 (retirement benefits) forms merged**, members referred to DFRDB booklet and other literature. No substantive changes in relevant explanatory notes text.
2002	Maximum commutable amount reaches 5 times annual retirement pay	
2004		**Retirement Benefits brochure** updated to include clearer information about commutation reduction - *'once the conversion has been made the portion you commute cannot be restored regardless of you exceeding your life expectancy'.*
2007	Podger Review	**About Your Scheme booklet** updated to clearly state reduction is *'permanent'.*
2010		**About Your Scheme booklet** updated to include further clarifying information – *'your retirement benefit will not be set to the pre-commutation rate, even if you exceed life expectancy'.*
2014	Current indexation arrangements introduced	

THE HON MATT KEOGH MP
MINISTER FOR VETERANS' AFFAIRS
MINISTER FOR DEFENCE PERSONNEL

PDR Number

Initiator name
Initiator title (if applicable)
Initiator company/organisation (if applicable)
Initiator address line 1
Initiator address line 2
SUBURB STATE Postcode

Dear XX,

DEFENCE FORCE RETIREMENT AND DEATH BENEFITS SCHEME COMMUTED PENSION

Thank you for raising your concerns regarding the administration of the Defence Force Retirement and Death Benefits (DFRDB) scheme and commuted pensions available under that scheme.

The DFRDB scheme and commuted pensions available under that scheme were reviewed by the Commonwealth Ombudsman in 2019 and by the Senate Foreign Affairs, Defence and Trade Reference Committee (Senate Committee) in 2021.

The Commonwealth Ombudsman concluded that some DFRDB scheme members were led to believe incorrectly that their commuted pension would increase once they reached their life expectancy factor age. This was not correct and amounted to defective administration by Defence.

As a consequence, the Secretary of Defence and Chief of the Defence Force issued an apology on 3 December 2019, which was published in the Ombudsman's report on 11 December 2019.

The Senate Committee recommended that the Australian Government consider providing more assistance to those members who wish to lodge a claim under the Compensation for Detriment caused by Defective Administration (CDDA) scheme in respect of the commuted pension under the DFRDB, or to those wishing to appeal an adverse decision in relation to the scheme.

Parliament House
CANBERRA ACT 2600
Ngunnawal and Ngambri Country

Telephone: 02 6277 7820
minister@dva.gov.au

Members of the DFRDB scheme who believe they have suffered a financial detriment as a result of the provision of such erroneous information, are encouraged to lodge a claim under the CDDA scheme. Defence has tailored the claims process to help focus on the issues critical to the determination of the claim and provided members access to a case manager to assist with the process. A claim can be lodged under this CDDA scheme by completing the DFRDB CDDA Application Form found at www.defence.gov.au/legal/Directorates/dsfc.asp and submitting it to dl.deldc@defence.gov.au. Please note that the Commonwealth Ombudsman's report sets out criteria (Appendix F of the report) that should be considered prior to lodging a claim for CDDA. The report can be found at www.ombudsman.gov.au/publications?page=1&year=2019.

The Senate Committee also recommended that the Australian Government consider ways to improve members' understanding of DFRDB and other military superannuation schemes moving forward. Defence continues to improve the education offered to Australian Defence Force members on financial matters, including superannuation, through seminars and one-on-one consultations with individual members when requested.

I acknowledge that some DFRDB scheme members are frustrated and disappointed with the outcome of these recent reviews. However, the DFRDB scheme has been reviewed multiple times, these reviews have recognised the beneficial nature of the scheme.

As outlined above, there is a scheme available for DFRDB members to make a claim against Defence for defective administration in relation to this, where members can obtain a payment if they can show they are worse off as a consequence of such defective administration, as compared against if they had not elected to commute their pension.

As such, the Australian Government has no plans to make further changes or conduct further reviews of the scheme at this time.

I trust this clarifies matters concerning this issue for you.

Yours faithfully,

HON MATT KEOGH MP

(Month) (Year)

Australian Government
Defence

MINISTERIAL TALKING POINTS

Defence Force Retirement & Death Benefits Scheme (DFRDB) indexation correspondence

Background

A number of veterans groups as well as individual veterans continue to campaign on three matters relating to the Defence Force Retirement and Death Benefits scheme (DFRDB): misleading information regarding the effect of commutation on retirement pensions, indexation methodology and the use of set life expectancy.

A Commonwealth Ombudsman investigation (2019) and a Senate Committee inquiry (2021) concluded Defence historically provided some DFRDB members misleading information regarding commutation, however this was unlikely to have caused a financial detriment to members.

These reports recognised the beneficial nature of the DFRDB scheme and did not recommend changes to commutation, the indexation methodology or the use of set life expectancy factors.

Talking Points

- I [Minister for Defence Personnel] can confirm following two extensive investigations into the Defence Force Retirement and Death Benefits scheme, all member benefits were and continue to be paid correctly.
- The Secretary of Defence and the Chief of the Defence Force have formally apologised to members who were given incorrect information regarding commutation.
- I acknowledge the outcomes of the Commonwealth Ombudsman investigation in 2019 and a Senate Committee inquiry in 2021, which concluded that incorrect information provided was unlikely to have caused financial detriment to members.
    - Neither report recommended changes to the scheme.
- Members can apply to the Compensation for Detriment caused by Defective Administration scheme if they believe they have suffered financial detriment.

Contact officer: Fiona McSpeerin, A/First Assistant Secretary People Policy and Culture

Contact officer phone: s22

Clearance	Name	Appointment	Date and time
Cleared by: (Group/Service)	Fiona McSpeerin	A/FAS People Policy and Culture	23/06/2022 8:46pm
MECC Embedded Communication Director	s47E(c)	Director Enablers Communication	24/06/2022 9:08am
Has a copy been provided to Defence Media for Information?	Yes		

OFFICIAL

Australian Government
Defence

Ministerial Background Brief

MB23-000806

FOR: Minister for Defence Personnel

CC: SEC, CDF, VCDF, ASSOCSEC, CPERS, DEPSEC GOV, Chief Counsel, FASMECC

MINISTERIAL BRIEF - INFORMATION REGARDING DFRDB

Key Issues:
Your office has requested an infographic product to explain the effect of commutation on the annual retirement pay entitlements of members of the Defence Force Retirement and Death Benefits (DFRDB) scheme. A draft product has been prepared for your consideration (Attachment A). Information to compare the retirement benefits available under the DFRDB scheme and ADF Super was also requested. The nature of the DFRDB scheme and ADF Super arrangements are substantially different, making a direct comparison between the two schemes difficult. In 2017, the Australian Government Actuary (AGA) provided analysis showing that for typical ADF personnel who serve for 20 years, the superannuation outcome for those covered by DFRDB would be expected to be superior to those produced under ADF Super (Attachment B).

Media Considerations:
The Australian Defence Force Retirees Association continues to ask veterans to campaign to Members of Parliament and Senators to request changes to DFRDB legislation. They may approach the media on this issue.

Minister comments:

Cleared by:
Ms Justine Greig PSM
Deputy Secretary
Defence People Group
s47E(c)
3 February 2025

Primary Contact Officer	Secondary Contact Officer
Brigadier Kirk Lloyd OAM	Mrs Sarah McGregor
Acting First Assistant Secretary, People Policy and Development	Acting Director General, People Policy and Employment Conditions
s47E(c)	s47E(c)

Sensitivity: Yes.

1. Veteran groups have raised concerns regarding the methodology of indexing DFRDB pensions.
2. As requested by your office, an infographic has been drafted (Attachment A) using the financial modelling provided by the AGA (Attachment C) and information published in the Commonwealth Ombudsman report (Attachment D). It is understood your office wishes to use the infographic to explain commutation to Members of Parliament.

3. There are risks associated with this product and these are outlined below:

   a. The product may be distributed outside of the intended audience, potentially causing further confusion and angst among the veteran community.

   b. The modelling used in the AGA report, which is being utilised in the product, uses a number of assumptions. There is risk in summarising, paraphrasing and utilising small components of this information in a short, two-page product, could be easily misread or misconstrued.

   c. Commonwealth Superannuation Corporation (CSC) Board members and delegates attract an indemnity in relation to the tasks they perform in their role as administrators of government superannuation funds. This indemnity does not extend to others. While Defence is of the view that the risk of any actual loss that could be claimed by a person alleging to have acted in reliance on the information in Attachment A appears negligible, it would be preferable CSC publish the information. This is because CSC may attract indemnity and is the proper authority to explain superannuation matters.

      i. CSC has advised they do not intend to produce such a product due to the associated risks.

4. Defence would welcome a discussion with you in regard to the material prepared and also the risks outlined above.

Financial Impacts: No.

Systems/legislation/deregulation: No.

Consultation: Yes.

5. s47E(c), Director Employment Law and Discretionary Claims, Defence Legal.

6. s47F, General Counsel, Commonwealth Superannuation Corporation.

Attachments:

Attachment A	Defence Force Retirement and Death Benefits scheme – Commutation.
Attachment B	AGA, Comparison of DFRDB with ADF Super, July 2017.
Attachment C	AGA, DFRDB Commutation Analysis, Commonwealth Ombudsman.
Attachment D	Commonwealth Ombudsman, Investigation into the administration of the DFRDB Scheme, December 2019.
Attachment E	About your scheme – A summary of the Defence Force Retirement and Death Benefits Scheme, Commonwealth Superannuation Corporation.
Attachment F	KPMG, Modelling of Retirement Outcomes for DFRDB Members, Commonwealth Ombudsman, October 2019.
Attachment G	DFRDB Legislation Summary.
Attachment H	*Defence Force Retirement and Death Benefits Act 1973*

Background:

Defence Force Retirement and Death Benefits

7. DFRDB opened on 1 October 1972 and closed to new members on 30 September 1991. It is a defined benefit scheme – benefits are calculated based on a formula using the member's annual rate of salary and completed years of effective service. Benefits are calculated at the time a member retires from the permanent ADF.

8. DFRDB offers retirement benefits in the form of a life paid pension, which a member becomes eligible for once they have completed 20 years of effective service, or 15 years of effective service and they have reached their retiring age for rank, and have left permanent ADF service. The pension is payable for life, no matter how long the member lives for and if, at the time of death, there are eligible dependants, further benefits become payable.

    a. For example, a 40-year-old DFRDB member with 20 years effective service can retire from the ADF and have immediate access to a fortnightly retirement benefit for the rest of their life. It is likely a 40-year-old member retiring from the ADF would commence paid civilian employment and continue to accrue superannuation benefits in an accumulation fund of their choice through legislated Superannuation Guarantee contributions paid by their employer.

    b. The member would continue to receive their DFRDB pension whilst working in civilian employment. If that member were to pass away and be survived by an eligible spouse, a portion of their pension would become payable to that eligible spouse for the remainder of their life.

9. DFRDB membership also provides invalidity benefits if the member retires from the ADF on invalidity grounds. There are also benefits for a member's eligible dependants in the event of their death. Attachment E details the main features of DFRDB and provides examples of how benefits are calculated.

Australian Defence Force Super

10. ADF Super opened on 1 July 2016 and is open to new eligible ADF members. ADF Super is an accumulation fund – benefits equal the account balance, made up of contributions plus net returns from their investment over time, minus fees and costs.

11. ADF Super can be accessed when a member meets a condition of release legislated by the *Superannuation Industry (Supervision) Act 1993*. In most cases, this is when a member reaches their preservation age and permanently retires from the workforce (for anyone born after 1 July 1964, the preservation age is 60).

    a. For example, a 40-year-old ADF Super member retiring from the ADF retains their preserved superannuation balance accrued within ADF Super, which continues to grow with net investment returns and any additional contributions. The member has no access to these funds until they reach preservation age (likely age 60) and permanently retire from the workforce.

12. Conditions of release are imposed on all regulated accumulation superannuation funds – if an ADF Super member rolled over their balance to another superannuation provider, their ability to access the funds does not change.

13. The options for a person to have their superannuation paid once they reach their conditions of release will depend on their chosen fund and the products available. Once the funds are exhausted from the account, in whichever form they have been paid, the person will have no further superannuation equity. This is in contrast to the DFRDB, which is payable for life.

14. ADF Super members who are members of the permanent force or who are continuous full-time reservists and are under the age of 60 are eligible for automatic Death and Invalidity benefits through ADF Cover at no extra cost.

Comparison of Benefits

15. The nature of the two arrangements is very different which makes comparison of them difficult. DFRDB is primarily an unfunded and untaxed defined benefit arrangement where years of ADF service and salary increases are the main influences on the eventual outcome. ADF Super is a fully funded taxed accumulation arrangement where investment returns play a large role in the eventual outcome.

16. In July 2017, Defence engaged the AGA to provide a comparison of DFRDB with ADF Super. This comparison is provided at Attachment B.

17. The AGA analysis shows that for typical ADF personnel who serve for 20 years, the superannuation outcome for those covered by DFRDB would be expected to be superior to those produced under ADF Super. However, outcomes of any comparison would depend on individual circumstances.

Indexation

18. Commutation is the early payment of part of a member's retirement pay in the form of a lump sum. The purpose of commutation is to allow members the flexibility to receive a lump sum if required, depending on their financial situation at the time, and to assist the member in resettling into civilian life.

19. Commutation results in a permanent reduction of the member's annual rate of retirement pay and this reduction is determined by life expectancy factors set out in the *Defence Force Retirement and Death Benefits Act 1973* (the Act). If a member elects a commutation lump sum, this will permanently reduce their pension.

20. Currently DFRDB pensioners under the age of 55 have the indexed portion of their pension indexed with upward movement of the Consumer Price Index, which is the same as other Government superannuation defined benefit pensions. DFRDB pensioners over the age of 55 have their indexed portion of their pension indexed with either Consumer Price Index or the Living Cost Index for Pensioners and Beneficiaries, whichever is higher.

21. Prior to 1983 the maximum amount a member could commute was the equivalent of four times their annual retirement pay.

22. Between 1983 and 2002 this amount was incrementally raised, however the DFRDB Act was not amended to increase the unindexed portion of retirement pay to align with the new maximum amount which could be commuted.

23. From 2002 the maximum amount a member may commute is five times their annual rate of retirement pay.

24. The DFRDB legislation provides "*that if a person did not commute (or commuted a sum which was less than four times their annual retirement pay entitlement), the amount by which their retirement pay is increased is determined by applying the relevant indexation rate to the retirement pay they would be receiving if they had commuted four times their annual retirement pay entitlement*". These members' pensions will therefore contain a small component which is not subject to indexation.

25. Figures 14 and 15 of Attachment D illustrates the operation of indexation, according to the commutation decisions made by the member.

26. The indexation methodology has been reviewed multiple times since the scheme started. While some reviews differ on the exact method, they broadly agree with a method that allows for pensions to maintain their purchasing power over time.

Commonwealth Ombudsman – Investigation into the Defence Force Retirement and Death Benefits scheme

27. On 11 December 2019, the Commonwealth Ombudsman published a report into the administration of the DFRDB scheme, specifically the issue of commutation (Attachment D).

28. As part of the report, the Ombudsman commissioned two separate and independent sets of financial modelling, from the AGA and KPMG (Attachment C and Attachment F).

    a. Both firms were provided with relevant data from 12 de-identified real life cases and asked to model and compare the financial outcomes which flowed from the two options available under the DFRDB Act – commutation with reduced retirement pay (which is what occurred in all 12 cases), and no commutation and higher retirement pay.

    b. To compare the options, the Ombudsman asked the actuaries to assume two investment scenarios for each case – the lump sum being invested in the purchase of a home (likely to have been the most common use of the lump sum) and the lump sum being placed in a term deposit.

    c. The results of the two sets of modelling are different because the two actuaries used slightly different interest rates and different methodologies.

    d. Despite these differences, both sets of modelling produce broadly consistent overall results. The modelling suggests people would have been better off financially commuting if they exercised even a very conservative investment strategy. This is illustrated in Attachment D (pages 35-43).

29. The Commonwealth Ombudsman noted they were satisfied indexation had been properly applied to DFRDB pensions by the administrators and did not recommend any changes to indexation methodology.

30. A summary of the DFRDB Legislation including sections 98B and 24 is provided at Attachment G and the full Act is provided at Attachment H.

31. CSC's administration of the DFRDB commutation provisions was also recently addressed in the Federal Court of Australia in McKenzie v Commonwealth Superannuation Corporation. Mr McKenzie, a DFRDB member was concerned CSC had calculated his retirement payments based on an erroneous construction of the Act. On 2 May 2023, Justice Perry delivered her judgment and dismissed the case, stating that CSC's construction plainly accorded with the text and structure of the Act.

From: s47E(c)
Sent: 7/11/2023 2:18:33 PM
To: "DLO MINDP" <dlo.mindp@defence.gov.au>
Subject: Request for information regarding DFRDB [SEC=OFFICIAL]

OFFICIAL

Hi s47E(c)

Apologies for the delay in sending this through, last week got rather overtaken.

The Minister requires from the Department two graphic products that may require some modelling. They are both to do with the beneficial nature of the DFRDB.

s47E(d)

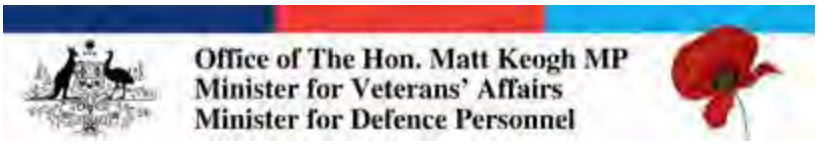
I'm happy to discuss with the relevant person in the Dept. who may be able to assist to refine what it is we're looking for.

Please let me know if you'd like to discuss further.

Kind regards and thanks,

s47E(c)
Senior Adviser

Office of Hon Matt Keogh MP
Minister for Veterans' Affairs and Defence Personnel
M: s22 | s47E(c) @defence.gov.au



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mattkeogh.com | minister.dva.gov.au | minister.defence.gov.au/minister/mkeogh
I acknowledge the traditional custodians of the land and acknowledge their elders past and present

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Defence Force Retirement and Death Benefits scheme – **Commutation**

Example: for Ministerial briefing only

The figures used in the flyer are taken from the AGA modelling commissioned by the Commonwealth Ombudsman during the 'Investigation into the administration of the Defence Force Retirement and Death Benefits (DFRDB) scheme', December 2019.

The Defence Force Retirement and Death Benefits (DFRDB) scheme is a defined benefit scheme – benefits are calculated based on a formula using:



the member's annual rate of salary

&



completed years of effective se ce

→



fortnightly pension payable for life

What is commutation?

Commutation is the early payment f rt of a member's retirement pay in th orm of a mp sum The purpose of commutatio s to allow mem ers the flexibility to receive a mp sum if required, depending on their financia ituation at the tim and to assist the member res ing into civilian e. Commutation results in the perm ent reducti n of a member's annual rate of retirement y.

The effect of commutation

In 2019, the Australian Government Actuary (AGA) modelled real-life scenarios of the effects of commutation on actual DFRDB members.

Let's look at Case 8:

Case 8, age 52, discharged from the ADF in 2000 after 36 years of service. He elected to commute the maximum amount of $306,880.02. By electing to commute, Case 8 received a reduced annual rate of retirement pay.



U g the ata provided for Case 8, let's consider the fina i utcome if **Person A** used his commutation to purchase his primary residence (the common use of commutations[1]) vs if **Person B** did not elect to commute and borrowed the same amount to buy their primary residence, over a period of 25 years.



	Person A Commutation	**Person B** No commutation
Actual retirement pay (uncommuted)	63,274.23	63,274.23
Commutation amount	306,880.02	0.00
Home loan amount	0.00	306,880.02
Retirement pay after commutation	**49,007.38**	**63,274.23**

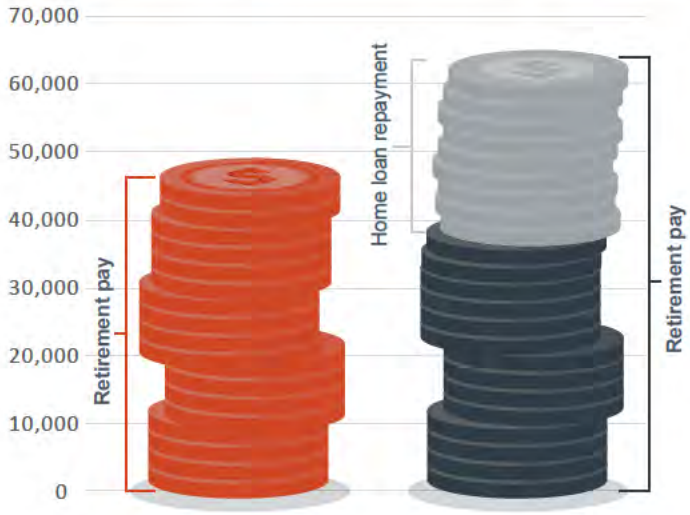
In the above example, by taking a commutation and purchasing a house, Person A will make no home loan repayments, but they will receive permanently reduced annual retirement pay.

1 Investigation into the administration of the Defence Force Retirement and Death Benefits (DFRDB) scheme, December 2019

Draft

Using the modelling data provided by the AGA for Case 8, the following graph compares the retirement pay of Person A and Person B for the first financial year after retirement:

Commutation vs no commutation at retirement



The graph shows Person A receives less retirement pay than Person B, but after making their home loan repayments, Person B has less remaining retirement pay than Person A.

This scenario is based on Person A investing the additional money that they have each pay, into a term deposit, which builds over time into savings.

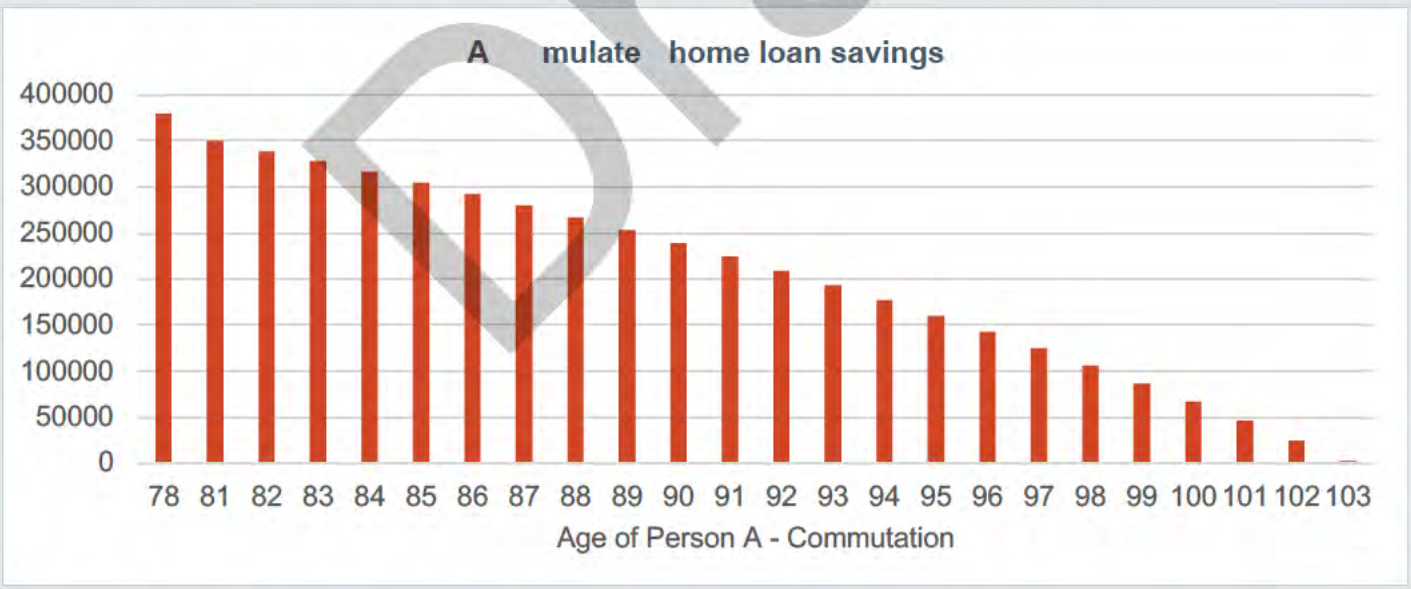
The AGA report provides an annual cost benefit analysis of the scenarios that relate to Person A and Person B. Different factors and assumptions are used in the report for the calculation, which include the prevailing mortgage rates, outstanding loan balance, term deposit interest rates and pension increase rates (plus others). This is looked at each year until Person A and Person B are 77 years old, a period of 25 years..

When the home loan is paid off, Person A and Person B are 77 years old.

From th s poin ward, Person A's accumulated financ l adva ta will reduce over time, as shown in the g ph below.

The modelling assumes Person B's home loan is paid off fter 2 years, at e age of 77. After the age of 77, Person B's retirement income would be larger than Per on A's, no ger having home loan repayments.

The graph below looks at the savings Person A would have a cumul by the age of 77, and how those savings may decrease over the coming years.



The point at which the financial advantage of commutation/reduced retirement pay ceases and no commutation/higher retirement pay starts to be more favourable is at age 104.

This product was developed for use by the office of the Minister of Veterans' Affairs and Minister for Defence Personnel, the Hon Matt Keogh MP. It is not intended to be shared for public distribution.

Disclaimers:

1. This flier is not financial advice. Members should read the information provided by the Commonwealth Superannuation Corporation (CSC), and consult with their own professional advisor and CSC about their options. Seeking professional advice may help to ensure that a person does not rely on any incorrect assumptions about the benefits available to them.
2. Full data, assumptions used by the AGA and additional modelling is available at https://www.ombudsman.gov.au/complaints/defence-force-complaints/defence-force-retirement-and-death-benefits-dfrdb.
3. Case 8 is not a representation of every DFRDB member. Individual outcomes vary depending on multiple factors including salary at retirement, years of effective service, age at retirement, commutation amount, home loan interest rates, loan term, and an individual's personal circumstances. All investment decisions of an individual remain the specific responsibility of that individual.

Draft

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Australian Government
Australian Government Actuary

Ref No.: s47F

12 July, 2017

s47E(c)
Military Superannuation Policy
Directorate of Military Remuneration
Department of Defence
BP35 s47E(c)
Brindabella Park
PO Box 7909
Canberra BC ACT 2610

Dear s47E(c)

COMPARISON OF DFRDB WITH ADF SUPER

I refer to recent telephone conversations about comparing the benefits from the Defence Force Retirement and Death Benefits Scheme (DFRDB) with ADF Super. As we both noted comparing the two very different schemes is not a simple matter. In this letter I have attempted to provide a fair comparison of the respective values of the benefits provided for Australian Defence Force (ADF) personnel who exit after 20 years of service.

I understand that you want to provide a copy of this letter to the Minister and Minister's Office so that they can get a better understanding of the issues involved. I have no objection to this on the basis that the advice is not further promulgated or quoted from without first checking with us as to its suitability.

Scheme summaries

Set out below is a brief summary of the benefits provided under the two arrangements. It should be noted that superannuation arrangements for those covered by DFRDB are complex and the summary should not be regarded as a definitive description of the benefits that would be payable in all situations.

DFRDB

Individuals covered by DFRDB receive DFRDB benefits under two pieces of legislation, namely the *Defence Force Retirement and Death Benefits Act 1973* (DFRDB Act) and a Determination made under the *Defence Act 1903*. In addition, a benefit is usually payable

from the fully funded ancillary section of the Military Superannuation and Benefits Scheme (MSBS) in respect of Ordinary Time Earnings (OTE) top up contributions.

DFRDB Act

The main benefit provided is a pension from an untaxed source that commences immediately on exit from service provided that 20 years of service has been completed. Those that exit prior to the completion of 20 years generally only receive a return of their member contributions to the DFRDB scheme. Where a scheme is untaxed, there is no 15% tax levied on employer contributions. However, pension benefits payable from such schemes are taxed as personal income albeit with an attaching 10% tax rebate for pensions payable to those aged 60 or more. Lump sums from these schemes are also taxed at higher rates than benefits payable from schemes where the 15% tax is levied.

After 20 years of service, the pension is 35% of final superannuation salary. With additional service the pension increases to a maximum of 76.5% after 40 years of service. More details of the pensions payable are set out in the Appendix to this letter.

Part of the pension may be taken as a lump sum. The maximum lump sum is 5 times the pension. A commutation factor (life expectancy factor) which depends on age and gender is used to determine the amount of pension given up for the lump sum. The male factor at age 40 is 31.84 reducing to 15.60 at age 60. Further details of the commutation factors are given in the Appendix to this letter. Generally, the lump sum resulting from commutation is greater than the actuarial value of the pension entitlement forgone.

Members are required to pay contributions of 5.5% of superannuation salary.

Superannuation salary for DFRDB is the highest incremental salary for the substantive rank plus service allowance and some qualifications and skills allowances.

Defence Act 1903 Determination

Since 1988, an additional "3% Productivity" employee accumulation lump sum benefit has been provided in addition to the DFRDB Act benefits. This benefit is provided from an untaxed source. The rate used for crediting interest additions is referenced to the yields on Commonwealth bonds. Where the member exits the ADF before being entitled to a DFRDB pension, this benefit is topped up to a "Superannuation Guarantee" lump sum.

Ordinary Time Earnings (OTE) top up

Since 2008, where an individual has had earnings which are not included in DFRDB superannuation salary e.g. overseas deployment allowances, employer contributions at the Superannuation Guarantee rate, currently 9.5%, of these earnings is paid into the fully funded ancillary section of MSBS.

The ancillary component of the MSBS is a taxed arrangement. That is, a 15% tax applies to employer contributions but benefits paid on, or after, age 60 are tax exempt.

Employer contributions after tax are credited to the individual's account. Earnings on the investment option chosen by the individual are credited to the account with the total account being eventually paid out as lump sum.

ADF Super

Under ADF Super, employer contributions at the rate of 16.4% of all earnings are paid into the superannuation fund of the individual's choice. As with the ancillary component of MSBS, these funds are taxed arrangements where a 15% tax is levied on employer contribution.

Comparison Issues

As mentioned previously, it is difficult to compare the benefits from the schemes. For someone with 20 years of service in DFRDB, it is salary progression, particularly final salary, that is the most important factor in the benefit outcome. For ADF Super, investment returns are probably the most important factor in the outcome.

Other factors which make comparisons difficult include:

- 5.5% member contributions are compulsory in DFRDB compared to there being no required member contributions for ADF Super.

- For individuals covered by the DFRDB arrangements, most of the benefits are paid from an untaxed source and thus subject to higher taxes when paid than the benefits from the taxed ADF Super funds.

- The DFRDB arrangements have changed over time, as have taxation arrangements. In particular, changes that have applied to those covered by DFRDB include the 1988 introduction of the "3% Productivity" benefit; the introduction of the 2008 OTE top up employer contributions; and the 2014 improvement to the indexation of pensions payable to those aged 55 or more.

Comparison example assumptions

For the purpose of providing a comparison example, I have made the following assumptions:

- The individual is a male and joined the ADF at age 20, served 20 years and exited at age 40 on a salary of $80,000;

- CPI increases over the period were 2.5% p.a.;
- General salary increases over the period were 4.0% p.a. and actual salary increases over the period after promotions were 6.0% p.a.;
- The Defence Act 1903 Determination and OTE top up arrangements applied for the whole period;
- Full earnings for the individual were 15% higher than DFRDB superannuation salaries;
- Nominal investment returns for ADF Super and MSBS ancillary accounts over the period were 7.0% p.a. (4.5% p.a. above CPI increases);
- Nominal interest crediting rates for the Defence Act 1903 Determination "3% Productivity" benefit were 4.0% p.a.;
- Where benefits are paid from an untaxed source, their value is reduced by 15% (the tax rate on employer contributions to taxed funds) for comparison purposes;
- Current (post 2014) indexation arrangements apply for DFRDB pensions and DFRDB indexed pension increases are 2.5 % p.a. before age 55 and 4.0% p.a. from age 55 onwards.
- For the purposes of providing a fair comparison, contributions to ADF Super are employer contributions of 16.4% of full earnings and member contributions of 5.5% of DFRDB superannuation salary.

Comparison example outcomes

DFRDB benefits

The benefits for those covered by DFRDB are as follows:

DFRDB Act (untaxed source)

i. DFRDB pension before commutation
   35% x $80,000 = $28,000

ii. Lump sum commutation (5 times pension before commutation)
   5 x $28,000 = $140,000

iii. Pension after commutation (male age 40 commutation factor is 31.84)

$$\$28,000 - \frac{\$140,000}{31.84} = \$23,603$$

iv. Approximate value of DFRDB Act benefits

The pension (including reversionary spouses' pension benefits) has an actuarial value of approximately $27 per $1 pa of pension for a 40 year old male. This is based on the assumptions adapted for the 2014 Long Term Cost Report for the military superannuation schemes.

The value of DFRDB benefits is:
$140,000 + $23,603 x 27 = $777,282

Defence Act 1903 Determination (untaxed source)

A lump sum of $38,769

OTE benefit (taxed fund)

A lump sum of $20,707

The total value of benefits after reducing benefits from untaxed sources by 15% for comparison purposes is:
0.85 x (777,282 + 38,769) + 20,707 = $714,350

ADF Super benefits (taxed fund)

To enable a fair comparison with DFRDB, where there are compulsory member contributions, the ADF Super benefits result from:

- Employer contributions of 16.4% of full earnings; and
- Member personal contributions of 5.5% of DFRDB superannuation salary

The resulting lump sum benefits on exit from the ADF are:

16.4% of full earnings (employer)	$274,058
5.5% of DFRDB superannuation salary (member)	$ 94,025
	$368,083

Investment returns sensitivity

As has previously been mentioned, outcomes from ADF Super are sensitive to investment returns. The assumptions used in the comparison above are based on the real investment returns relative to CPI over the 20 years to 30 June 2016 of 4.5 % p.a. as shown in an article in the Superfunds magazine. An extract from the article with the 20 year investment

returns is attached to this letter. As shown in the extract, the real return relative to CPI has varied over the range of 2.4% to 8.4% p.a. over 20 year periods ending on 30 June for the years from 1982 to 2016.

The comparison has been done on a range of investment returns to illustrate this sensitivity and the results are set out in the table below:

Investment returns p.a.	4.0%	6.0%	7.0%	8.0%	10.0%
ADF Super individuals($)	278,242	334,604	368,083	405,723	495,748
DFRDB individuals($)	709,295	712,466	714,350	716,467	721,531

It can be seen from the above table that for typical ADF personnel with 20 years of service, the DFRDB arrangements provide better superannuation benefits than ADF Super.

Other comments

Outcomes from both arrangements depend on individual circumstances with salary progression and investment returns being the most important factors. However, other individual circumstances can alter the relative outcomes and these are briefly covered below:

- Age at entry. The older the individual at entry to the ADF, the less valuable the DFRDB benefit becomes as the pension will be payable for a shorter time after retirement and the commutation factor is lower.

- Length of service. In terms of the annual level of employer support as a percentage of salary received over a career in DFRDB, the maximum level of support is for those who leave after 20 years of service. Thus, the relative attractiveness of DRFDB decreases with additional service.

- Full earnings for the individual compared to DFRDB superannuation salary. As ADF Super is based on full earnings, the higher full earnings are compared to DFRDB superannuation salary improves the relative benefit outcome from ADF Super.

Conclusion

The nature of the two arrangements is very different which makes comparison of them difficult. However, the analysis shows that for typical ADF personnel who serve for 20 years, the superannuation outcome for those covered by DFRDB would be expected to be superior to those produced under ADF Super.

Please feel free to call me on s47F to discuss this.

Yours sincerely

s22

s47F
Actuary

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APPENDIX

Retirement pay (pension)

Members who separate from the ADF on other than invalidity grounds are entitled to retirement pay on separation after completion of a minimum of 20 years' service or, if they have reached statutory retiring age for their rank, on completion of 15 years' service.

Retirement pay

Years of service	Per cent of final salary	Years of service	Per cent of final salary
15	30.00	28	47.50
16	31.00	29	49.25
17	32.00	30	51.25
18	33.00	31	53.25
19	34.00	32	55.50
20	35.00	33	57.75
21	36.50	34	60.25
22	38.00	35	62.75
23	39.50	36	65.25
24	41.00	37	67.75
25	42.50	38	70.50
26	44.00	39	73.50
27	45.75	40	76.50

Commutation factors

Age (in years) on date of effect of election	Factor	
	Male	Female
30	41.12	46.49
31	40.18	45.53
32	39.25	44.57
33	38.31	43.61
34	37.38	42.65
35	36.45	41.70
36	35.51	40.75
37	34.59	39.81
38	33.67	38.86
39	32.75	37.92
40	31.84	36.99
41	30.93	36.06
42	30.03	35.13
43	29.14	34.21
44	28.25	33.29

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Age (in years) on date of effect of election	Factor	
	Male	Female
45	27.38	32.38
46	26.51	31.48
47	25.65	30.58
48	24.80	29.69
49	23.96	28.80
50	23.13	27.92
51	22.31	27.05
52	21.51	26.18
53	20.72	25.32
54	19.94	24.47
55	19.18	23.63
56	18.43	22.79
57	17.70	21.96
58	16.99	21.13
59	16.29	20.32
60	15.60	19.51
61	14.94	18.72
62	14.29	17.94
63	13.67	17.17
64	13.06	16.42
65	12.47	15.68

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period					20 year period						25 year period					
Average fund returns	AWE	CPI	Real returns		Year ending 30 June	Average fund returns	AWE	CPI	Real returns		Year ending 30 June	Average fund returns	AWE	CPI	Real returns	
			vs AWE	vs CPI					vs AWE	vs CPI					vs AWE	vs CPI
8.0	9.7	6.4	-1.5	1.5												
8.2	10.2	6.9	-1.8	1.2												
8.3	10.4	7.5	-1.9	0.7												
11.3	10.5	7.9	0.7	3.2												
11.8	11.1	8.3	0.6	3.2												
10.8	11.6	8.8	-0.7	1.8	**1982**	9.8	10.0	7.1	-0.2	2.5						
10.0	11.9	9.3	-1.7	0.6	**1983**	10.5	10.4	7.7	0.1	2.6						
10.3	12.1	9.4	-1.6	0.8	**1984**	10.5	10.7	7.9	-0.2	2.4						
11.9	11.9	9.7	0.0	2.0	**1985**	12.1	10.6	8.0	1.4	3.8						
13.8	11.6	9.9	2.0	3.5	**1986**	13.2	10.7	8.3	2.3	4.5						
14.5	11.3	10.1	2.9	4.0	**1987**	14.2	10.6	8.6	3.3	5.2	**1987**	12.7	9.6	7.3	2.8	5.0
14.5	11.2	10.0	3.0	4.1	**1988**	12.3	10.7	8.8	1.4	3.2	**1988**	12.3	9.7	7.6	2.4	4.4
16.5	10.6	9.6	5.3	6.3	**1989**	12.3	10.7	9.0	1.4	3.0	**1989**	12.1	9.8	7.9	2.1	3.9
16.7	9.4	9.0	6.7	7.1	**1990**	13.0	10.6	9.3	2.2	3.4	**1990**	13.0	9.8	8.0	2.9	4.6
15.9	8.8	8.4	6.5	6.9	**1991**	13.4	10.3	9.2	2.8	3.8	**1991**	13.0	9.8	8.0	2.9	4.6
16.1	8.3	7.6	7.2	7.9	**1992**	12.9	10.0	8.9	2.6	3.7	**1992**	13.0	9.7	8.0	3.0	4.6
15.8	7.7	7.1	7.5	8.1	**1993**	13.5	9.6	8.6	3.6	4.5	**1993**	11.9	9.6	7.9	2.1	3.7
15.5	7.4	6.6	7.5	8.3	**1994**	14.9	9.0	7.9	5.4	6.5	**1994**	11.9	9.4	7.8	2.3	3.8
13.6	7.2	6.2	6.0	7.0	**1995**	14.9	8.0	7.3	6.4	7.1	**1995**	12.3	9.3	7.9	2.7	4.1
13.2	6.5	5.9	6.3	6.9	**1996**	14.3	7.5	6.9	6.3	6.9	**1996**	12.7	9.0	7.8	3.4	4.5
14.7	5.8	5.2	8.4	9.0	**1997**	14.9	7.1	6.2	7.3	8.2	**1997**	12.6	8.7	7.6	3.6	4.6
13.6	5.4	4.5	7.8	8.7	**1998**	14.6	6.8	5.8	7.3	8.3	**1998**	13.0	8.5	7.2	4.1	5.4
13.2	4.9	4.3	7.9	8.5	**1999**	14.3	6.6	5.4	7.2	8.4	**1999**	14.1	8.0	6.7	5.6	6.9
12.6	4.9	4.0	7.3	8.3	**2000**	13.1	6.3	5.1	6.4	7.6	**2000**	14.2	7.2	6.2	6.5	7.5
10.9	4.8	3.9	5.8	6.7	**2001**	12.5	5.9	4.9	6.2	7.2	**2001**	13.6	6.8	5.9	6.4	7.3
8.6	4.7	3.5	3.7	4.9	**2002**	12.5	5.4	4.5	6.7	7.7	**2002**	13.1	6.5	5.5	6.2	7.2
8.6	4.6	3.1	3.8	5.3	**2003**	11.2	5.2	4.1	5.7	6.8	**2003**	12.5	6.4	5.3	5.7	6.8
8.8	4.3	2.8	4.3	5.8	**2004**	11.2	4.9	4.1	6.0	6.8	**2004**	12.5	6.2	5.0	5.9	7.1
9.0	4.3	2.5	4.5	6.3	**2005**	10.8	4.9	3.9	5.6	6.6	**2005**	11.6	6.0	4.7	5.3	6.6
9.3	4.1	2.5	5.0	6.6	**2006**	10.1	4.7	3.6	5.2	6.3	**2006**	11.5	5.6	4.5	5.6	6.7
9.7	4.2	2.6	5.3	6.9	**2007**	9.3	4.6	3.3	4.5	5.8	**2007**	12.3	5.3	4.2	6.6	7.8
8.3	4.3	2.8	3.8	5.4	**2008**	8.8	4.5	3.1	4.1	5.5	**2008**	10.9	5.0	3.9	5.6	6.7
6.7	4.5	2.7	2.1	3.9	**2009**	7.6	4.4	2.8	3.1	4.7	**2009**	9.7	4.9	3.8	4.6	5.7
6.8	4.5	2.6	2.2	4.1	**2010**	7.5	4.4	2.6	3.0	4.8	**2010**	9.3	4.9	3.7	4.2	5.4
6.7	4.5	2.7	2.1	3.9	**2011**	7.5	4.3	2.6	3.1	4.8	**2011**	8.4	4.8	3.5	3.4	4.7
5.5	4.5	2.7	1.0	2.7	**2012**	7.0	4.3	2.6	2.6	4.3	**2012**	7.2	4.6	3.2	2.5	3.9
6.0	4.6	2.8	1.3	3.1	**2013**	7.2	4.4	2.6	2.7	4.5	**2013**	7.9	4.6	3.0	3.2	4.8
6.3	4.5	3.0	1.7	3.2	**2014**	7.4	4.4	2.7	2.9	4.6	**2014**	8.0	4.4	2.8	3.4	5.1
6.1	4.4	2.9	1.6	3.1	**2015**	7.5	4.2	2.6	3.2	4.8	**2015**	7.9	4.2	2.6	3.6	5.2
6.0	4.1	2.5	1.8	3.4	**2016**	7.1	4.1	2.5	2.9	4.5	**2016**	7.7	4.0	2.5	3.6	5.1

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DFRDB COMMUTATION ANALYSIS

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DFRDB COMMUTATION ANALYSIS

1 INTRODUCTION

1.1 The Commonwealth Ombudsman (Ombudsman) is investigating past practices by the predecessors of the Commonwealth Superannuation Corporation (CSC) in respect of the commutation option for retirees from the Defence Force Retirement and Death Benefits Scheme (DFRDB). In order to inform the Ombudsman's view, the Ombudsman has requested the Australian Government Actuary (AGA) provide an analysis of financial outcomes relating to 12 individuals who elected to commute part of their retirement pay (pension) for a lump sum.

1.2 This report presents the outcomes of the analysis using the assumptions requested by the Ombudsman.

1.3 It should be noted that this report has been specifically prepared for the Ombudsman and third parties are not entitled to rely upon it for decision making purposes. We understand that the Ombudsman may append a copy of this report to the Ombudsman's report for information purposes. We have no objection to this provided that this report is appended in its entirety. If the Ombudsman does not append a copy of this report or otherwise makes this report publicly available, then if this report is quoted in the Ombudsman's report, any quotation that is attributed to the AGA should be cleared with the AGA prior to publication.

2 DFRDB COMMUTATION OPTION

2.1 Where serving ADF personnel in the DFRDB retire after 20 or more years of service, they are entitled to retirement pay (pension). Part of the retirement pay can be converted for a lump sum. Appendix C provides details of the commutation factors (termed expectation of life factors in Schedule 3 of the *Defence Force Retirement and Death Benefits Act 1973*) per $1 per annum of pension commuted.

2.2 When DFRDB initially commenced in 1973, the maximum lump sum available as a result of commutation was four times the pension before any commutation. The initial design of the DFRDB was such that there was a strong financial incentive for retirees to take the maximum lump sum. The component of the pension (before commutation) that was being commuted for the lump sum was unindexed pension. The balance of the pension was indexed pension. As would be expected, virtually all retirees elected to commute the unindexed pension for the maximum lump sum.

2.3 From 1982 to 2002, the amount of the maximum lump sum that could be taken was gradually increased from four times the pension before any commutation to five times the pension before any commutation. It is important to note that while the commutation factors did not change, the component of any lump sum that is in excess of four times the pension before any commutation is an exchange for (commutation

of) indexed pension. Following these changes, the vast majority of retirees continued to commute their pension for the maximum lump available.

2.4 The pension increases for indexed DFRDB pensions were initially based on the Consumer Price Index (CPI). In 2014, there was an improvement to the indexation arrangements for those aged 55 or more. These increases are based on a methodology that essentially replicates the increases to the Commonwealth Age Pension allowing for the different pension indexation dates for DFRDB compared to the Age Pension.

2.5 The reversionary pension payable to a surviving spouse following the death of the pensioner is unaffected by whether or not members retiring elect to commute part of their pensions.

3 DATA

3.1 The modelling used actual data from the DFRDB membership database extracted by the Commonwealth Superannuation Corporation (CSC) at the request of the Ombudsman and subsequently provided to the AGA by the Ombudsman.

3.2 The CSC data contained information that would enable the comparison between the commuted lump sum and the pension forgone for the commutation, including:

- date of exit,
- age at exit,
- commutation factor,
- gender,
- rank,
- final salary,
- effective years of service,
- pension as a percentage of salary,
- notional retirement age and associated reduction, if applicable,
- commutation multiple,
- commutation lump sum; and
- annual pensions at the date of discharge and at 1 July 2019.

3.3 We have performed checks on the data provided based on our understanding of the legislation governing the DFRDB.

3.4 CSC also provided the pension indexation factors that applied to DFRDB pensioners from the July 1976 increase to the January 2019 increases. The pension indexation percentages for the July 2019 pension increases are available on the CSC website. The indexation rates used are set out in Appendix B.

3.5 We performed a check by comparing the initial pension payable on retirement increased in line with the pension indexation factors provided by CSC with the actual current day pension provided by CSC. This check found that the projected pensions were within 0.5% of the current pension provided by CSC.

3.6 Based on our checks, we are comfortable that the data supplied is reasonable for the purposes of this analysis. Relevant details for the 12 individuals are set out in Appendix A.

4 METHODOLOGY

4.1 The Ombudsman requested that the analysis be based on the DFRDB legislation as it stands. The Ombudsman has further requested that the outcomes analysed should be based, as far as is practicable, on actual economic outcomes after retirement rather than those that might have been expected at the time of retirement.

4.2 The methodology used in this analysis has been developed by AGA. In doing this, AGA consulted with the Ombudsman regarding the general principles underlying the AGA methodology.

4.3 The approach that the AGA has taken to this exercise is to firstly consider the options available to a member retiring at the time of discharge in accordance with our understanding of the legislation governing the DFRDB, that is to either:

- take a lifetime pension consisting of indexed and non-indexed components, or
- commute or exchange all of the unindexed component plus part of the indexed component (post 1982) for an upfront lump sum payment, with the residual indexed pension continuing to be paid for the life of the member. This option does not involve the reinstatement of the commuted pension at any time.

4.4 Under either option, the member will always receive an indexed pension relating to the component of retirement pay that is not able to be commuted. Thus, in performing the comparison analysis, this component can be ignored. For analysis purposes, it is only necessary to compare the lump sum from commutation with the unindexed and indexed pension forgone as a result of commutation.

4.5 In performing our analysis, we have adopted the concept of determining a “break-even age” for the 12 individuals being analysed. The break-even age for each individual is the age where the value derived from the commutation lump sum equals the value derived from the forgone pension payments. If the individual lives beyond

the break-even age, then with the benefit of hindsight, the individual would have been financially better off by not commuting part of their pension. Conversely, if the individual does not live to the break-even age, then the individual would have been financially better off commuting part of their pension.

4.6 Based on the concept of a break-even age, we have then compared the value of the commuted benefit that a member elected with the value of ongoing pension payments that were forgone in the commutation. It should be noted that as none of the 12 individuals being considered have yet reached their break-even ages, it was necessary to make assumptions about future interest rates to calculate break-even ages for these individuals.

4.7 While the Ombudsman has requested the analysis be done based on actual economic outcomes, it should be noted that an individual would have had to make a value judgement regarding his/her break-even age at the time of retirement based on economic conditions at that time and their expectations of longevity.

4.8 As our analysis has been performed using interest rate related assumptions, this approach could be argued to be conservative from the perspective of comparing the value of the commutation lump sum with the pension forgone. This is because most individuals at the time of retirement would not have foreseen the substantial falls in interest rates that have applied in recent years and would have based their decisions assuming higher interest rates. Higher interest rates increase the attractiveness of the commutation lump sum relative to the pension forgone.

Valuation Approaches

4.9 Discussions with the Ombudsman indicated that its investigations found that it was likely that the majority of those who elected to commute for the maximum lump sum used the lump sum either as a deposit for a house or used it to reduce the amount of money that needed to be borrowed for a house. Given this, the Ombudsman requested that the AGA should incorporate some sort of analysis which considered this scenario given it was a common theme.

4.10 We also considered what would be a worse case sensible use of the commutation lump sum. Our view was that investing the lump sum with the bank met this criterion. However, given that the lump sum would have been considered to be a significant amount of money at the time, we consider that a relatively astute, but still conservative investment would have been a term deposit, rather than an at call investment.

4.11 We have thus adopted two alternative approaches as follows:

- benefits received are invested in a risk free environment represented by prevailing one year term deposit rates, or

- the commuted amount is used to purchase a property, thus reducing the amount the member would have had to borrow in relation to a 25 year home loan.

Term Deposit Approach

4.12 When considering how to value the term deposit approach it is important to recognise that different people will have different perspectives on how to evaluate the two sets of alternative benefit payments. As a result, we have used two different methods to compare the benefits, noting that both methods will result in the same break-even age.

Term Deposit – Accumulation Method

4.13 The first approach is termed "the accumulation method" as both the commutation lump sum and the pension forgone are accumulated annually with term deposit interest rates. The two accumulation profiles are then compared to find out whether there is a crossover point. If there is a crossover, the age of the member in the crossover year would be the break-even age. For most of the retirements in the early years of DFRDB, there is no crossover year and the commutation lump sum provides better value than the pension forgone indefinitely.

4.14 When describing this approach, it is useful to consider a simplified example of a member who exchanged annual unindexed pension payments of $15,000 for a lump sum of $300,000 at age 54, with a notional commutation factor of 20. There are two scenarios to be modelled. They are the commutation lump sum and the forgone unindexed pension payments. They are modelled as follows:

- Commutation lump sum

  The $300,000 is assumed to be invested in one year term deposits and is not accessed at any time. Each year, interest is added to the opening balance at the start of the year to give an accumulated value at the end of the year.

- Unindexed pension payments

  The forgone unindexed pension payments are also assumed to be invested in one year term deposits when the member receives the payments and again, not accessed at any time. Over time this investment account grows as follows:

  1. At the start of the first year, the initial balance is zero.
  2. At the end of the first year, the balance is the amount of the pension received ($15,000) in that year plus a small amount of interest earned on the pension payments received in the year. On average, pension

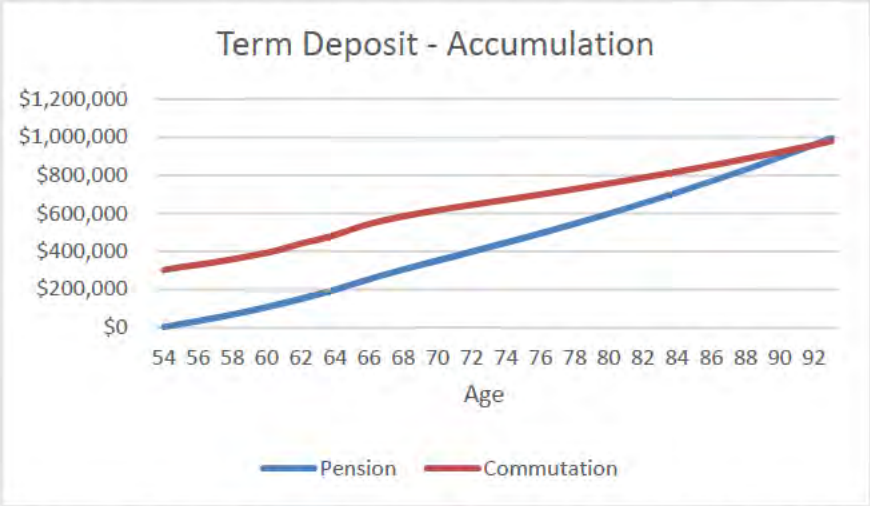
payments are received halfway through the year. Thus, the amount of interest earned is around half a year's worth of interest on $15,000 in the simplified example.

3. In the second and subsequent years, interest is earned on the opening balance and added to the account. Another year's worth of pension ($15,000) will be added along with around half a year's worth of interest earned on that year's pension payments to give the account balance at the end of the year.

4.15 The accumulated value of the two series of invested benefits based on the data for our simplified example individual and assumptions is then compared. The point, or age of the member, at which the two values intercept is identified. Where an individual lives past the break-even age, based on the assumptions used, the individual would have been better off not commuting. This process is illustrated by Figure 1 below where the crossover (break-even) age is 92.

4.16 For the purpose of this calculation, it was necessary to make an assumption about future term deposit rates. As set out in Section 5, we have assumed that recent historically low interest rates of 2% per annum remain at those levels in the future.

Figure 1: Example of Term Deposit Accumulation comparison



In this example, the member ceased service in the year 2000 at age 54 and the value of the two benefits would be expected to cross in 2038 when the member is age 92. This is the break-even age.

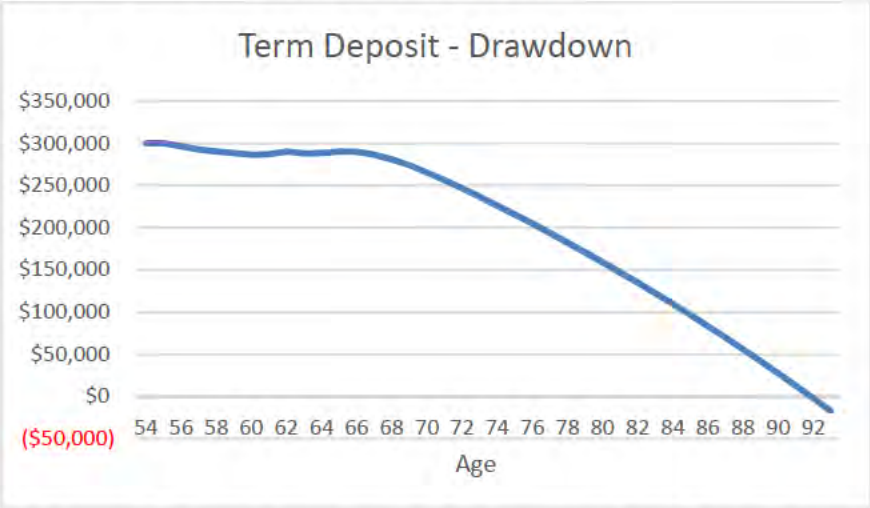
Term Deposit –Drawdown Method

4.17 An alternative way of comparing the two benefit options in the above example is to think of the $300,000 lump sum as an investment from which the annual $15,000 pension payments are withdrawn each year. Effectively, the member decides that he or she still needs access to the forgone pension payments, firstly out of the interest earned on the investment, and if that is insufficient to provide the pension forgone,

then secondly out of the capital. The point at which the investment is exhausted is the actual break-even age.

4.18 Figure 2 below illustrates this approach and shows that the lump sum investment would be expected to be exhausted at age 92 – the same age as derived in the accumulation approach above.

Figure 2: Example of Term Deposit Drawdown



In this example, the member ceased service in the year 2000 at age 54 and the value of the investment supporting the pension drawdown is expected to be exhausted in 2038 when the member is age 92. This is the break-even age.

Home Loan Approach

4.19 The home loan approach recognises that many individuals who chose to take a commutation lump sum actually used that money to reduce the amount that they would have otherwise borrowed for a mortgage. The value proposition here is a little more complex and is described below using the same member as an example:

1. If the member had been required to borrow the extra $300,000 for their home loan, then based on a loan term of 25 years and the prevailing mortgage rates in 2000, they would have been required to make extra mortgage repayments in the first year of about $27,000.

2. By taking the commutation lump sum, the member can save $27,000 in mortgage payments. However, as they have forgone $15,000 of annual pension payments, they can pay themselves the forgone annual pension from the $27,000 savings in mortgage payments. The surplus savings of $12,000 would then be put into an investment account earning the one year term deposit rates.

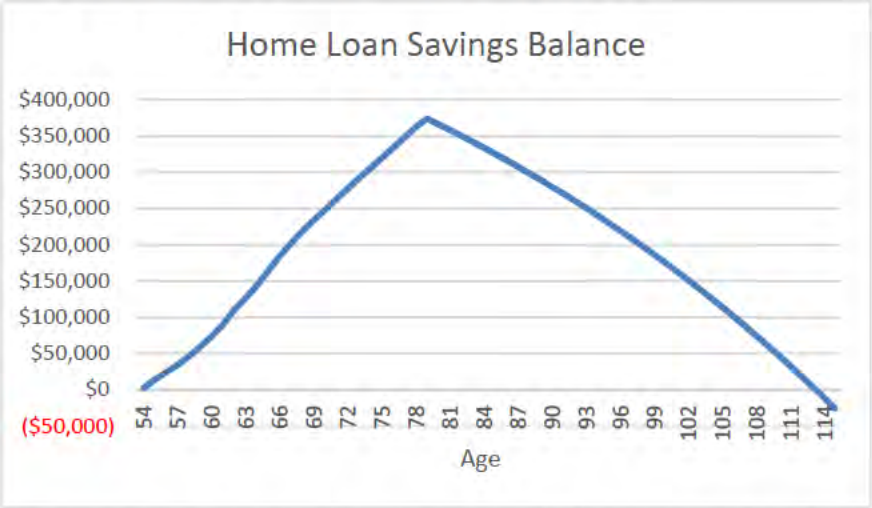
3. This calculation is performed each year based on the prevailing mortgage rates and outstanding loan balance, with the surplus savings added to the investment.

4. Once the home loan is paid off after 25 years, the investment receives no further top-ups, but ongoing annual forgone pension payments of $15,000 would start to be paid out of the accumulated investment until the balance is exhausted. This represents the actual break-even age.

5. For the purpose of this calculation, it is assumed that mortgage rates in the future will be at the rate of 4% per annum based on the current economic environment.

4.20 The home loan approach for the same member can be illustrated in Figure 3 below.

Figure 3: Example of Home Loan Savings Balance



In this example, the member ceased service in the year 2000 at age 54 and used the entire commutation lump sum to purchase a property, which would otherwise be financed by a 25-year home loan.

4.21 The above break-even age of 114 is significantly higher than the term deposit break-even age of 92, largely due to the fact that mortgage rates are significantly higher than term deposit rates. Effectively, the home loan approach assumes that the member has been able to access mortgage investment returns on their commuted lump sum in the first 25 years.

5 ASSUMPTIONS

5.1 The Ombudsman has set the assumptions for the purpose of this report. This has either been directly or by means of setting an approach for deriving the assumptions. The Ombudsman requested that the analysis should be done on a gross of tax basis. Therefore, the analysis has not taken into account tax implications.

5.2 Data on historical term deposit interest rates and mortgage borrowing rates was obtained from information published by the Reserve Bank of Australia (RBA) where it was available. For a small number of years in the 1970s and for 1980, information on term deposit rates from the RBA was not available and these rates were obtained from other sources. For the purpose of applying historical rates for our calculations,

the average of one year term deposits and variable mortgage rates over each financial year was used in respect of that financial year. Detail regarding the historical term deposit and mortgage rates that we have used are set out in Appendix B of this report.

5.3 As the individuals being analysed have yet to reach break-even ages, it has been necessary to make assumptions about the future. These assumptions are:

- Interest rates on term deposits are assumed to be 2% per annum from 1 July 2019;
- Mortgage interest rates are assumed to be 4% per annum from 1 July 2019; and
- Pension indexation for DFRDB members under age 55 is assumed to be 2% per annum from 1 July 2019. Pension indexation for DFRDB members aged 55 and over are is assumed to be 3% per annum from 1 July 2019.

6 RESULTS

6.1 Calculations have been performed under the three different approaches described above for each of the 12 individual cases provided, noting that there are only two different break-even ages produced.

6.2 A summary of the various break-even ages has been set out in Table 1 below, noting that “Never” means that the commutation option will always exceed the alternative based on actual and assumed term deposit and mortgage rates. A summary of the break-even year is also set out in Table 2 below.

DFRDB COMMUTATION ANALYSIS

Table 1: Summary of break-even ages

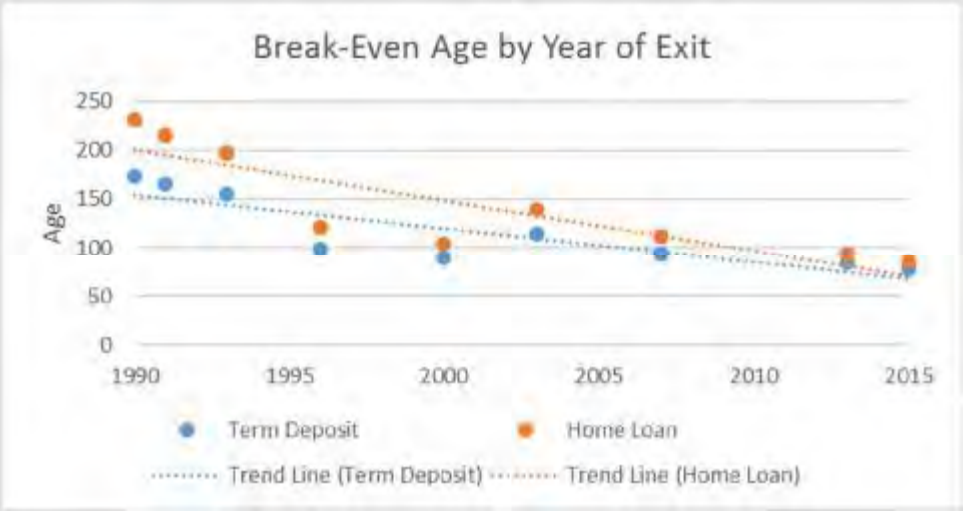
Case	Year of Exit	Age at exit	Break-Even Age (Term Deposit)	Break-Even Age (Home Loan)
1	1976	44	Never	Never
2	1976	38	Never	Never
3	1986	37	Never	Never
4	1990	48	174	231
5	1991	36	165	216
6	1993	40	155	197
7	1996	49	99	121
8	2000	52	89	104
9	2003	39	114	139
10	2007	41	93	112
11	2013	60	84	93
12	2015	56	78	85

Table 2: Summary of break-even years

Case	Year of Exit	Age at exit	Break-Even Year (Term Deposit)	Break-Even Year (Home Loan)
1	1976	44	Never	Never
2	1976	38	Never	Never
3	1986	37	Never	Never
4	1990	48	2116	2173
5	1991	36	2120	2171
6	1993	40	2108	2150
7	1996	49	2046	2068
8	2000	52	2037	2052
9	2003	39	2078	2103
10	2007	41	2059	2078
11	2013	60	2037	2046
12	2015	56	2037	2044

6.3 Figure 4 below provides an alternative way of looking at the results, noting that the three "Never" cases cannot be included in the chart:

Figure 4: Break-even ages



For the chart above, the cases were arranged in chronological order based on each member's exit date.

6.4 Note that care needs to be taken in interpreting this chart as year of exit is not the only factor determining the break-even age. See section 7 for more discussion on this aspect.

6.5 More details about each of the 12 individuals are set out in the charts in Appendix D. Generally, the charts are limited to age 100 for presentation purposes and, to aid comparison, all charts for an individual have the same maximum age. There are a number of instances where the break-even age for the term deposit approaches is less than age 100 but the break-even age for the home loan approach is greater than age 100 and the break-even age for the home loan approach is not shown on the home loan approach chart. In these circumstances the break-even ages can be referenced in Table 1 above.

6.6 To further illustrate the derivation of the break-even ages, we have provided the full workings of our calculations under each approach in respect of Case 8 in Appendix E.

7 COMMENTS

7.1 A number of observations can be made from the results set out above.

7.2 The earlier the discharge date, the higher the break-even age. This is not surprising when consideration is made of the high levels of term deposit and mortgage rates that have applied during these earlier periods relative to current rates. Effectively, individuals have been able to take advantage of these high rates on their notionally invested commutation lump sum.

DFRDB COMMUTATION ANALYSIS

7.3 For more recent discharge dates, lower interest rates have applied, meaning that break-even ages are much lower and more in line with what might be considered to be an individual's life expectancy based on current Australian population life expectancies.

7.4 While the date of discharge is an important indicator of the break-even age, the age at discharge is also important. The relative values of the commutation factors at each age mean that the older the age at discharge, the lower the break-even age. We have performed calculations for a range of different potential members who were assumed to discharge at either age 50 or age 60 to verify this observation.

7.5 In relation to Figure 4 above, while the average age at discharge of the 12 individuals was 45, the ages at discharge of cases 7 and 8 (corresponding to the lower break-even ages) were 49 and 52 respectively.

7.6 Using the commutation lump sum to reduce the amount of a home loan results in a higher break-even age than investing in one year term deposits. This reflects the higher level of mortgage rates relative to term deposit rates. For this exercise, we have used a 25 year home loan. In general, the longer the home loan term, the greater the advantage gained.

7.7 This observation leads to the consideration of what is an appropriate investment to use for this exercise. The term deposit approach is intended to reflect a relatively unsophisticated, risk-free investment, while the home loan represents what we understand to have been a common use of the commuted lump sum in practice. Of course, it is arguable that individuals may have had other intentions for the investment of the lump sum, including superannuation, managed investments, home renovations or simply to meet major commitments like school fees or travel.

7.8 Each individual will have made their own decision about what to do with the commuted lump sum, with varying degrees of success. Investment decisions are generally made on the basis of a trade-off between risk and return, such that higher risk is rewarded with higher returns on average over the long term. While we cannot illustrate all potential investment strategies, we feel that using a risk-free approach as a base in order to set a theoretical minimum break-even age is appropriate, along with illustrating the home loan approach which is likely to have been one of the more common investments.



Michael Burt, FIAA
Actuary
26 September 2019

Appendix A – Data used in the calculations

	Case #1	Case #2	Case #3	Case #4
Year of discharge	1976	1976	1986	1990
Salary used in calculations (Final salary)	$12,536	$12,536	$26,558	$49,364
Length of Effective Service	21	23	20	20
Percentage of Retirement Pay applicable to years of service	36.50%	39.5%	35%	35%
Actual Retirement Pay at retirement (Uncommuted)	$4,575.64	$4,951.72	$9,295.30	$17,277.40
Commutation multiplier	4	4	4.2	4.35
Commutation amount	$18,302.56	$19,806.88	$39,040.26	$75,156.69
Age at retirement	44	38	37	48
Expectation of life factor	28.25	33.67	34.59	29.69
Retirement Pay after commutation at retirement	$3,927.76	$4,363.46	$8,166.64	$14,746.02
Total pension received from commencement to 1 July 2019 (Actual dollars)	$700,260.58	$761,903.10	$501,594.40	$658,703.97
How much the member contributed (Actual dollars)	$4,850.40	$4,318.29	$12,264.02	$27,669.81

DFRDB COMMUTATION ANALYSIS

	Case #5	Case #6	Case #7	Case #8
Year of discharge	1991	1993	1996	2000
Salary used in calculations (Final salary)	$37,818	$56,066	$84,518	$96,972
Length of Effective Service	21	22	33	36
Percentage of Retirement Pay applicable to years of service	36.5%	38%	57.75%	65.25%
Actual Retirement Pay at retirement (Uncommuted)	$13,803.57	$18,109.32	$47,344.87	$63,274.23
Commutation multiplier	4.45	4.55	4.65	4.85
Commutation amount	$61,425.89	$82,397.40	$220,153.65	$306,880.02
Age at retirement	36	40	49	52
Expectation of life factor	35.51	36.99	23.96	21.51
Retirement Pay after commutation at retirement	$12,073.75	$15,881.76	$38,156.49	$49,007.38
Total pension received from commencement to 1 July 2019 (Actual dollars)	$478,604.59	$574,056.84	$1,199,722.01	$1,256,616.01
How much the member contributed (Actual dollars)	$21,017.69	$30,940.57	$52,913.87	$73,475.55

DFRDB COMMUTATION ANALYSIS

	Case #9	Case #10	Case #11	Case #12
Year of discharge	2003	2007	2013	2015
Salary used in calculations (Final salary)	$61,339	$73,394	$93,023	$149,339
Length of Effective Service	22	24	37	40
Percentage of Retirement Pay applicable to years of service	38%	41%	67.75%	76.50%
Actual Retirement Pay at retirement (Uncommuted)	$23,308.82	$30,091.54	$63,023.08	$114,244.33
Commutation multiplier	5	5	5	5
Commutation amount	$116,544.10	$150,457.70	$315,608.45	$571,221.65
Age at retirement	39	41	60	56
Expectation of life factor	37.92	30.93	19.51	18.43
Retirement Pay after commutation at retirement	$20,235.40	$25,227.08	$46,871.60	$83,250.21
Total pension received from commencement to 1 July 2019 (Actual dollars)	$390,648.89	$363,315.67	$281,301.56	$380,700.24
How much the member contributed (Actual dollars)	$39,800.93	$51,128.79	$92,626.68	$120,580.08

Appendix B – Historical data used

The table below shows the economic parameters for the period between 1 July 1975 and 30 June 2019 that have been used in the calculations.

Period Start	Period end	CPI Indexation	"Age Pension" Indexation	One Year Term Deposit rate	Mortgage rate
1/07/1975	30/06/1976	13.40%	n/a	8.23%	10.13%
1/07/1976	30/06/1977	13.60%	n/a	7.98%	9.88%
1/07/1977	30/06/1978	8.20%	n/a	7.75%	9.65%
1/07/1978	30/06/1979	8.20%	n/a	7.33%	9.23%
1/07/1979	30/06/1980	10.50%	n/a	7.45%	9.35%
1/07/1980	30/06/1981	9.40%	n/a	9.04%	10.94%
1/07/1981	30/06/1982	10.50%	n/a	11.90%	12.63%
1/07/1982	30/06/1983	11.40%	n/a	12.52%	13.08%
1/07/1983	30/06/1984	5.90%	n/a	11.30%	11.83%
1/07/1984	30/06/1985	4.40%	n/a	11.74%	11.64%
1/07/1985	30/06/1986	7.20%	n/a	13.88%	13.78%
1/07/1986	30/06/1987	9.40%	n/a	13.95%	15.50%
1/07/1987	30/06/1988	6.90%	n/a	11.70%	14.14%
1/07/1988	30/06/1989	8.80%	n/a	13.63%	15.27%
1/07/1989	30/06/1990	8.60%	n/a	15.02%	16.88%
1/07/1990	30/06/1991	4.90%	n/a	11.29%	15.05%
1/07/1991	30/06/1992	1.70%	n/a	7.89%	11.84%
1/07/1992	30/06/1993	1.20%	n/a	5.62%	9.87%
1/07/1993	30/06/1994	1.40%	n/a	4.93%	8.89%
1/07/1994	30/06/1995	3.90%	n/a	7.59%	9.90%
1/07/1995	30/06/1996	3.70%	n/a	7.00%	10.44%

DFRDB COMMUTATION ANALYSIS

Period Start	Period end	CPI Indexation	"Age Pension" Indexation	One Year Term Deposit rate	Mortgage rate
1/07/1996	30/06/1997	1.30%	n/a	5.82%	8.38%
1/07/1997	30/06/1998	0.00%	n/a	4.48%	6.76%
1/07/1998	30/06/1999	1.10%	n/a	4.08%	6.61%
1/07/1999	30/06/2000	2.80%	n/a	5.16%	7.03%
1/07/2000	30/06/2001	6.00%	n/a	5.13%	7.63%
1/07/2001	30/06/2002	2.92%	n/a	3.90%	6.34%
1/07/2002	30/06/2003	3.43%	n/a	3.96%	6.57%
1/07/2003	30/06/2004	2.01%	n/a	4.41%	6.88%
1/07/2004	30/06/2005	2.31%	n/a	4.65%	7.15%
1/07/2005	30/06/2006	3.02%	n/a	4.68%	7.36%
1/07/2006	30/06/2007	2.50%	n/a	5.53%	7.97%
1/07/2007	30/06/2008	4.24%	n/a	6.55%	8.80%
1/07/2008	30/06/2009	2.70%	n/a	4.57%	7.28%
1/07/2009	30/06/2010	2.72%	n/a	5.45%	6.53%
1/07/2010	30/06/2011	3.33%	n/a	6.04%	7.66%
1/07/2011	30/06/2012	1.60%	n/a	5.18%	7.45%
1/07/2012	30/06/2013	2.51%	n/a	4.17%	6.52%
1/07/2013	30/06/2014	2.92%	3.12%	3.39%	5.95%
1/07/2014	30/06/2015	1.30%	1.30%	2.95%	5.78%
1/07/2015	30/06/2016	1.30%	1.50%	2.41%	5.53%
1/07/2016	30/06/2017	2.11%	2.41%	2.35%	5.28%
1/07/2017	30/06/2018	1.91%	2.31%	2.22%	5.22%
1/07/2018	30/06/2019	1.30%	1.81%	2.14%	5.31%

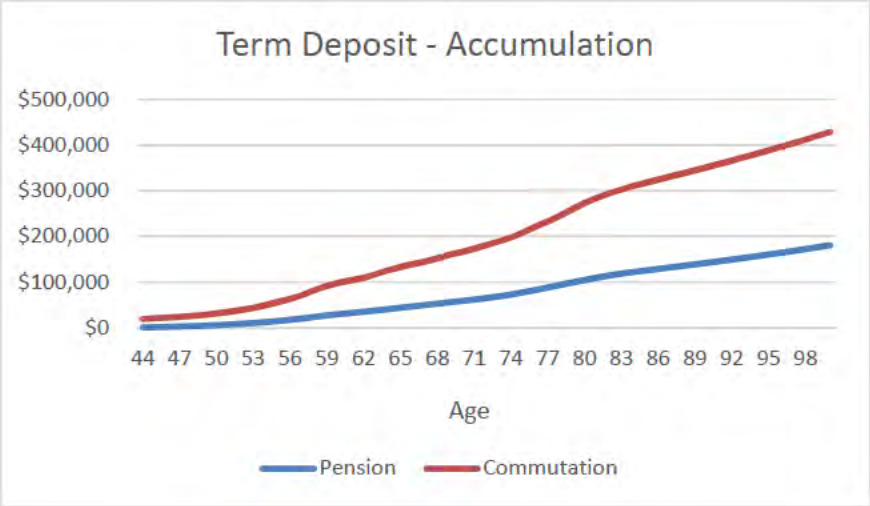
Appendix C – Commutation factors (expectation of life factors in Schedule 3 of the Defence Force Retirement and Death Benefits Act 1973)

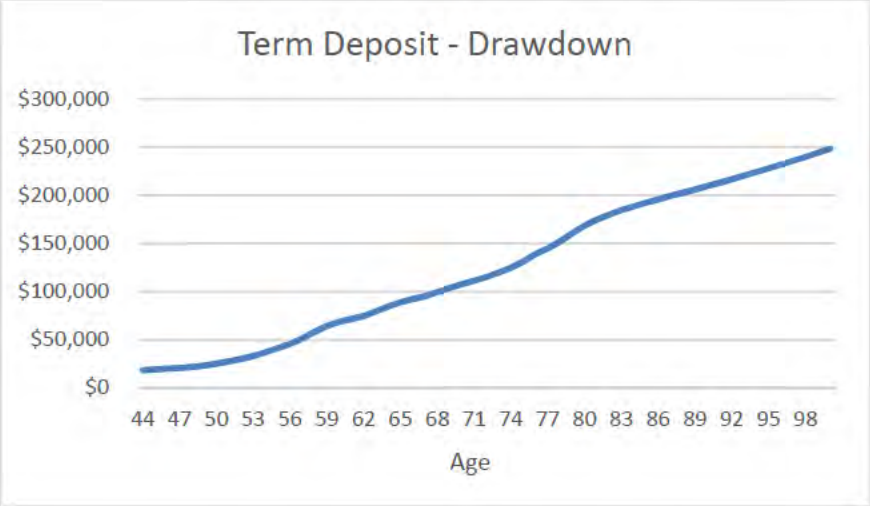
Age	Male	Female
30	41.12	46.49
31	40.18	45.53
32	39.25	44.57
33	38.31	43.61
34	37.38	42.65
35	36.45	41.70
36	35.51	40.75
37	34.59	39.81
38	33.67	38.86
39	32.75	37.92
40	31.84	36.99
41	30.93	36.06
42	30.03	35.13
43	29.14	34.21
44	28.25	33.29
45	27.38	32.38
46	26.51	31.48
47	25.65	30.58
48	24.80	29.69
49	23.96	28.80

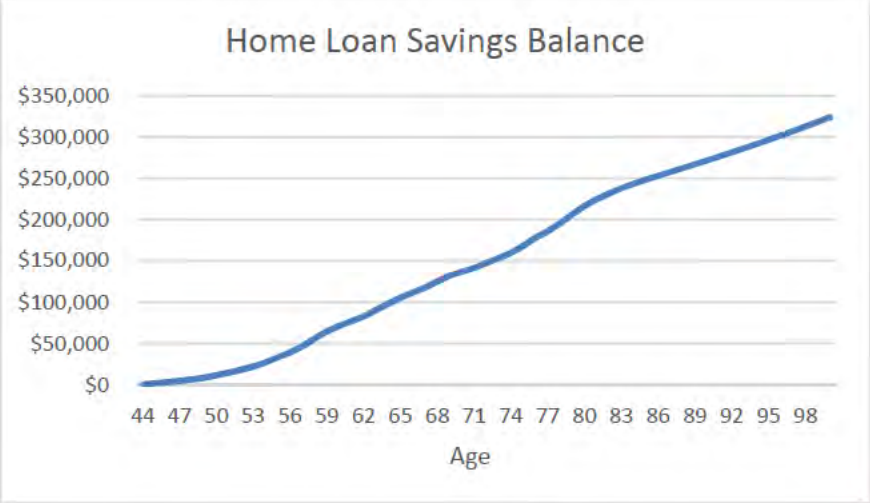
Age	Male	Female
50	23.13	27.92
51	22.31	27.05
52	21.51	26.18
53	20.72	25.32
54	19.94	24.47
55	19.18	23.63
56	18.43	22.79
57	17.70	21.96
58	16.99	21.13
59	16.29	20.32
60	15.60	19.51
61	14.94	18.72
62	14.29	17.94
63	13.67	17.17
64	13.06	16.42
65	12.47	15.68

Appendix D – Individual case results

Case 1

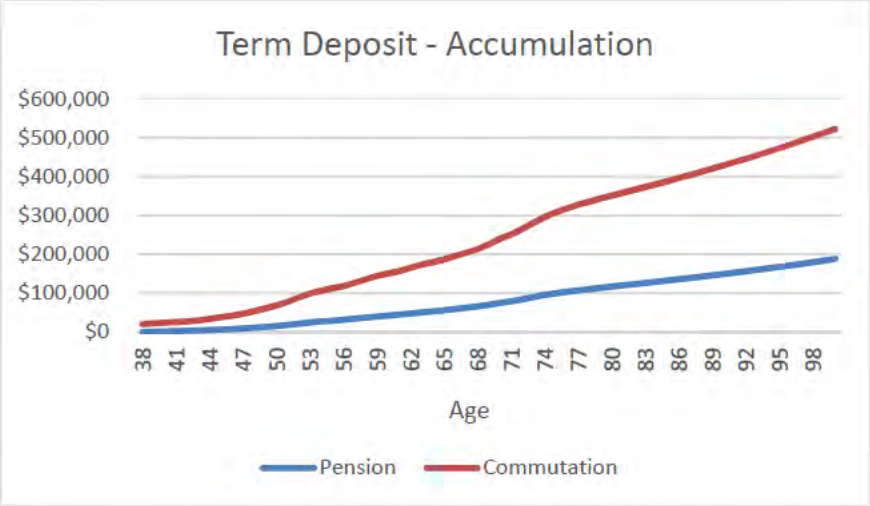


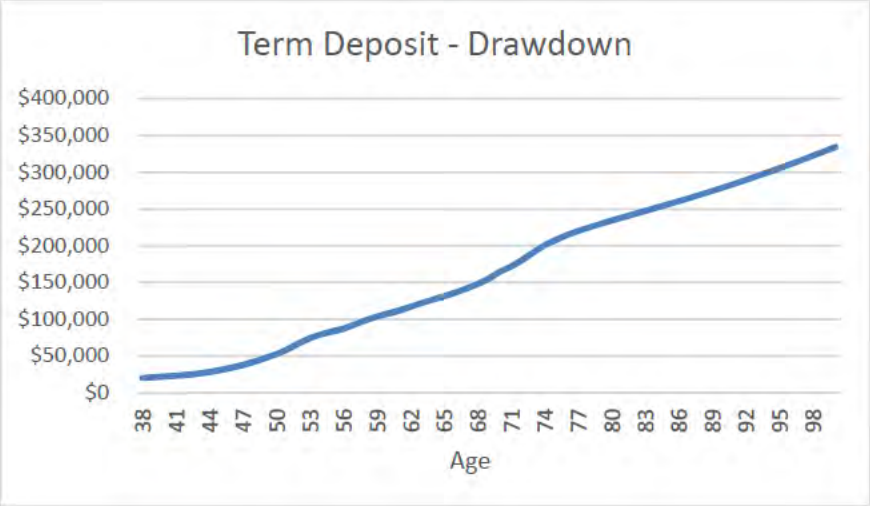


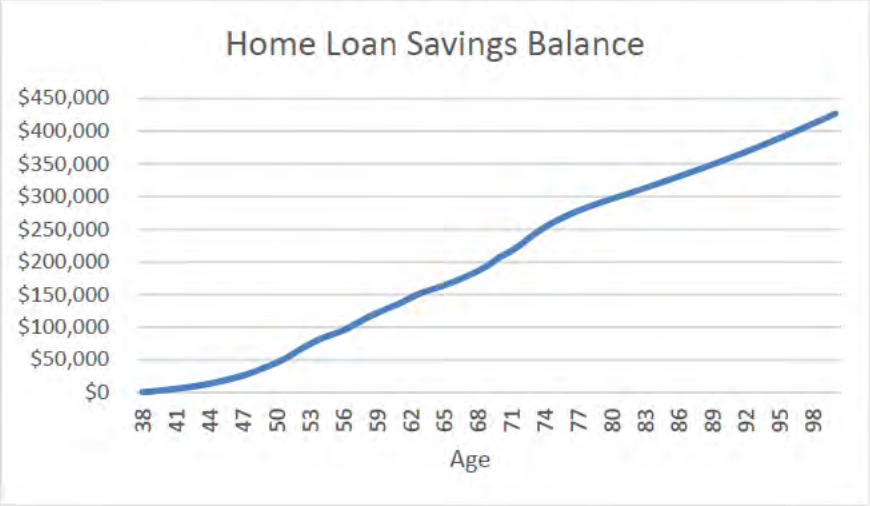


DFRDB COMMUTATION ANALYSIS

Case 2

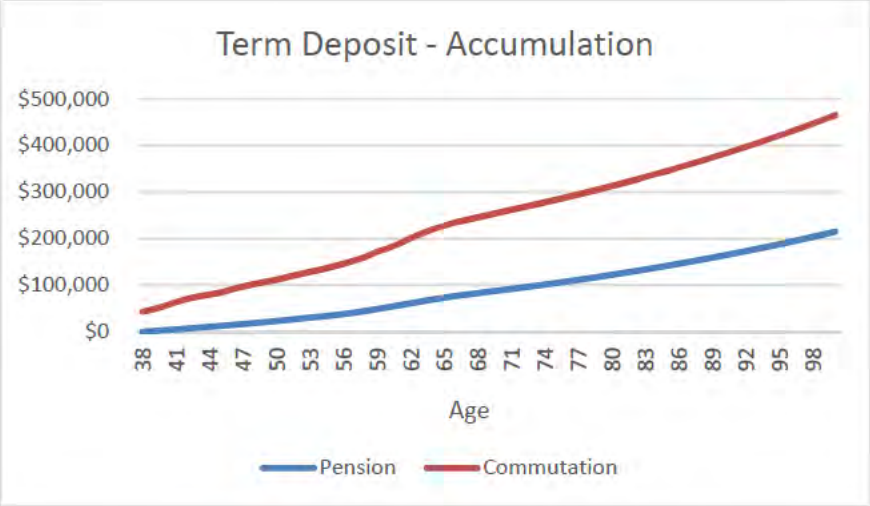


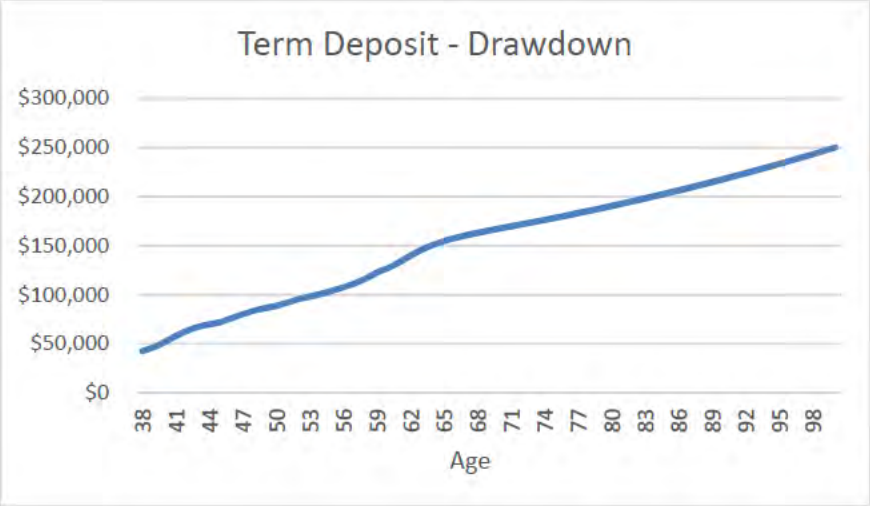


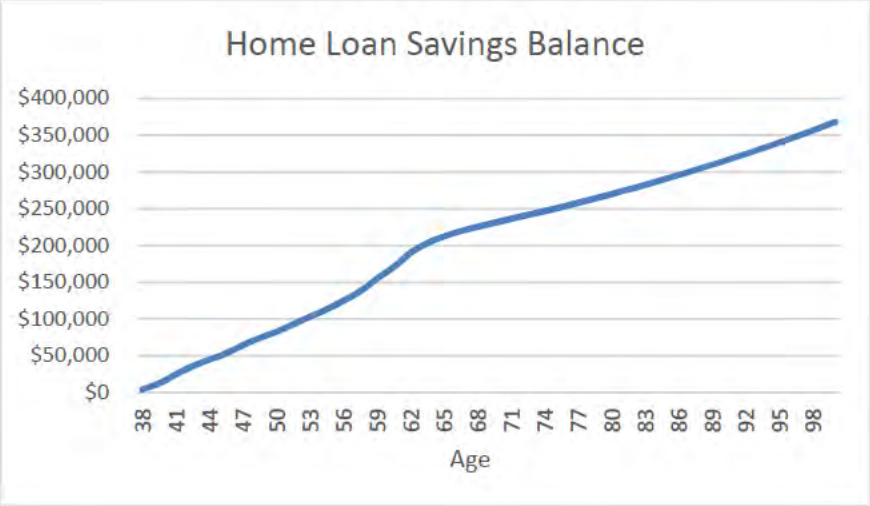


DFRDB COMMUTATION ANALYSIS

Case 3

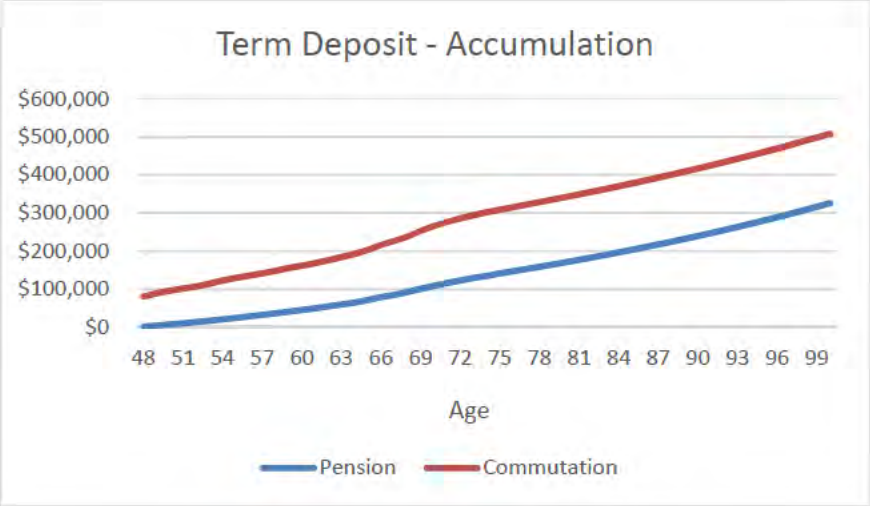


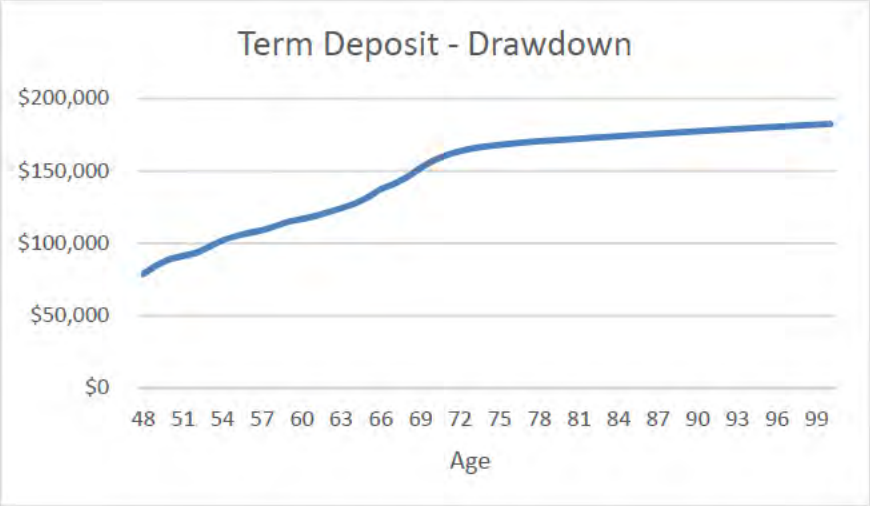


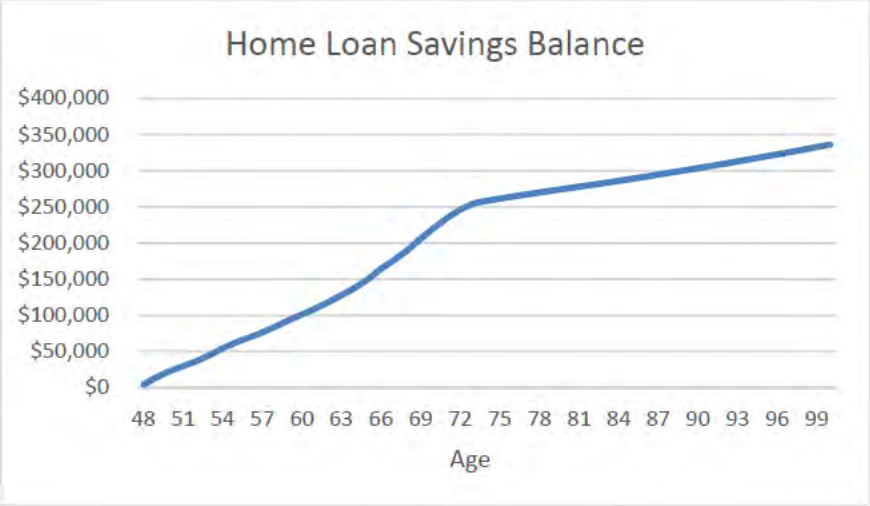


DFRDB COMMUTATION ANALYSIS

Case 4

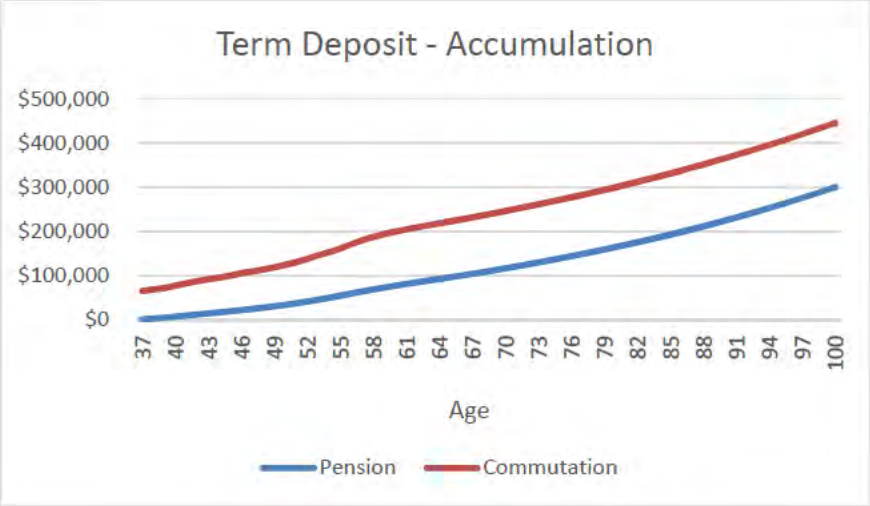


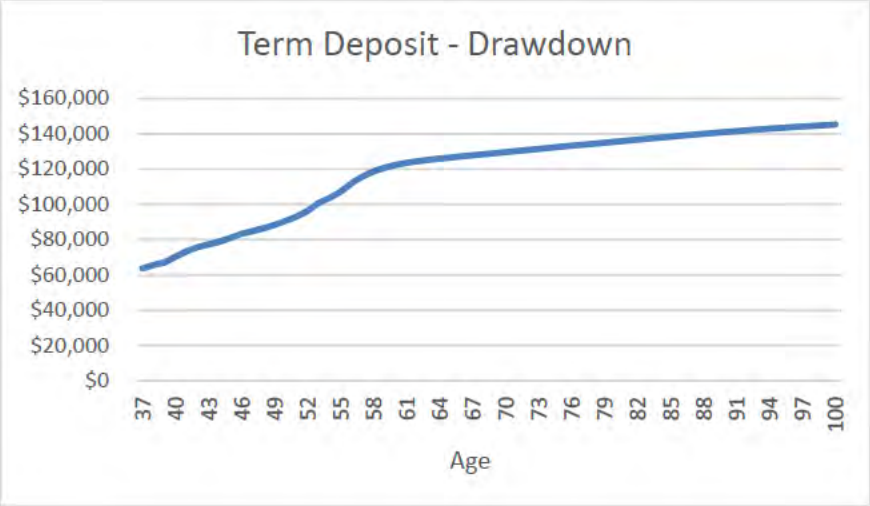


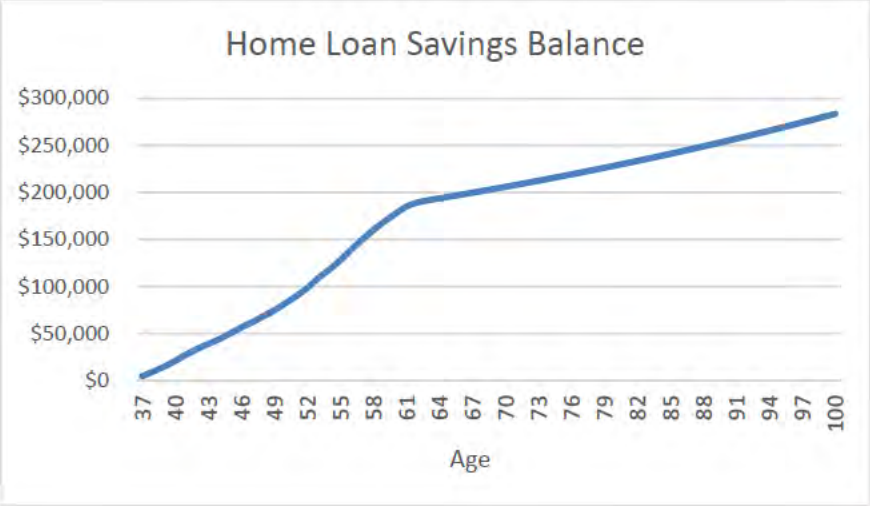


DFRDB COMMUTATION ANALYSIS

Case 5

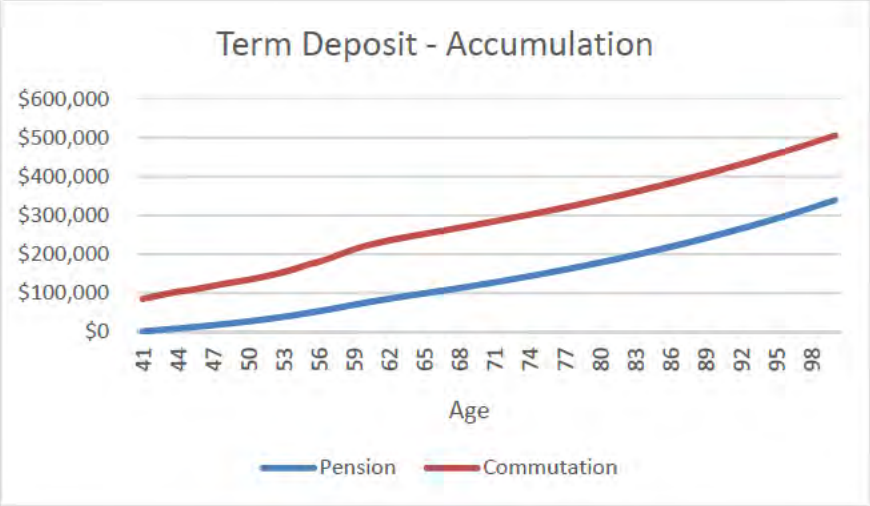


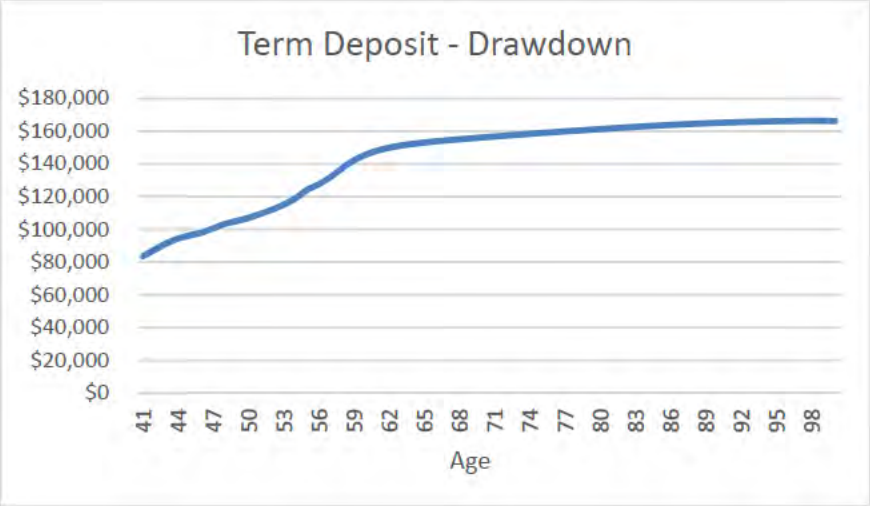


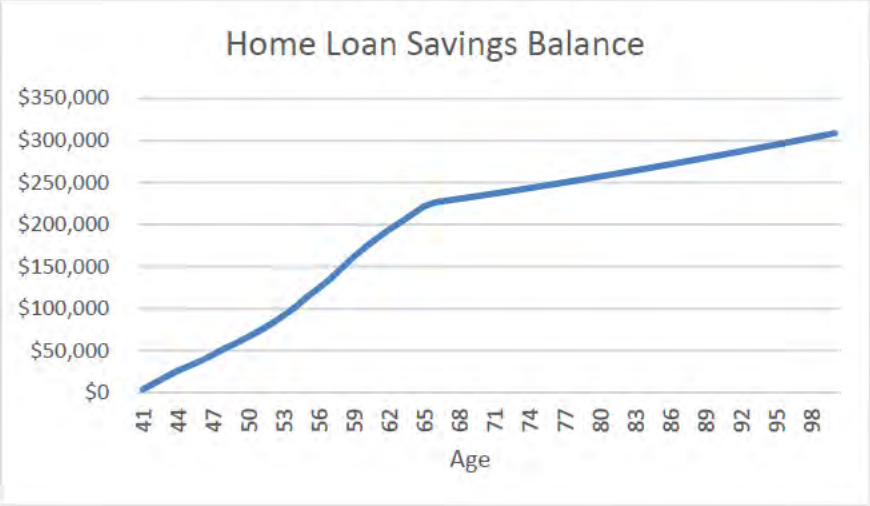


DFRDB COMMUTATION ANALYSIS

Case 6

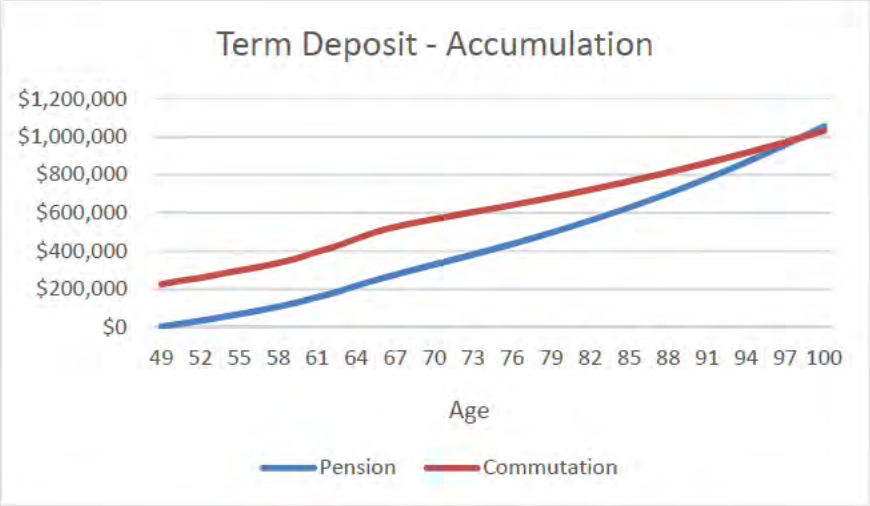


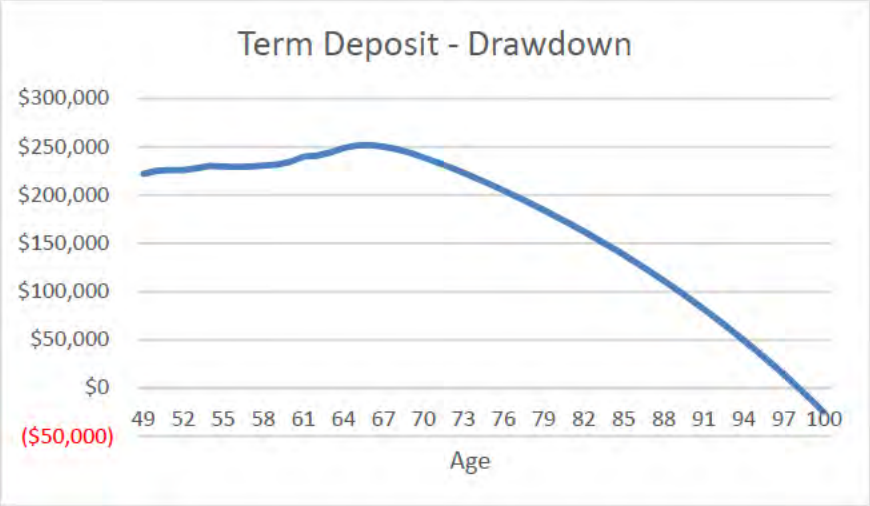


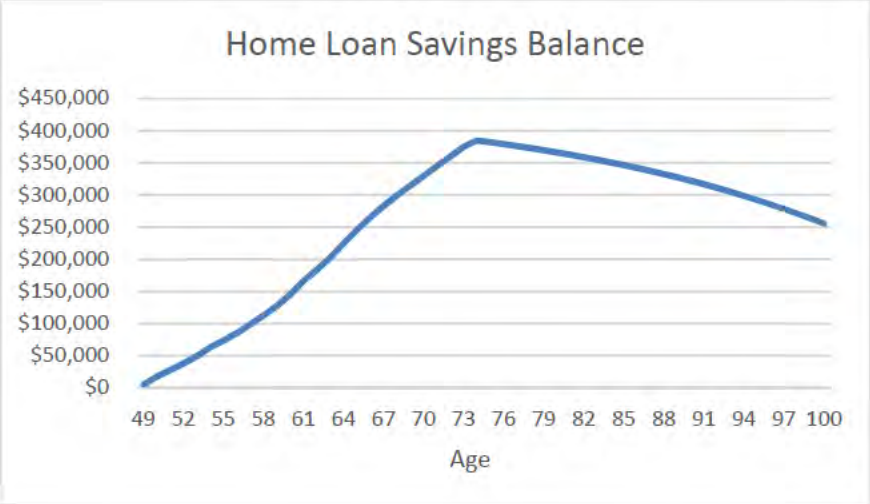


DFRDB COMMUTATION ANALYSIS

Case 7

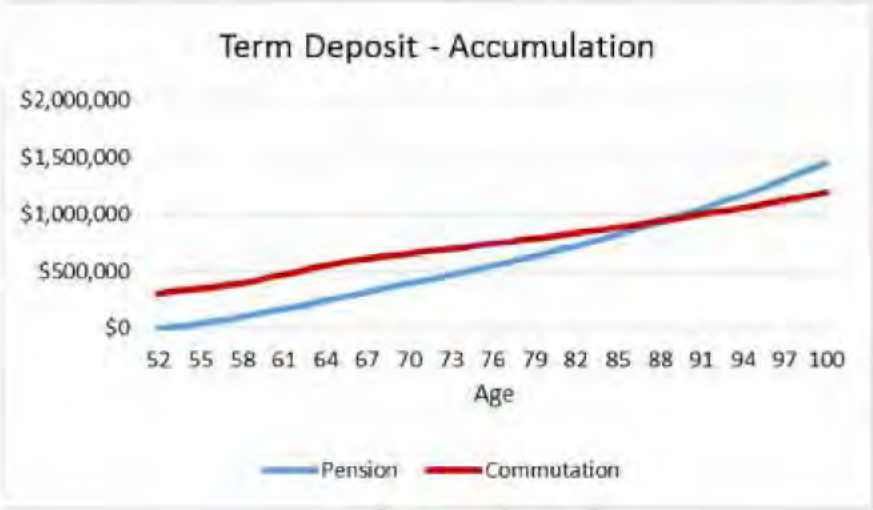


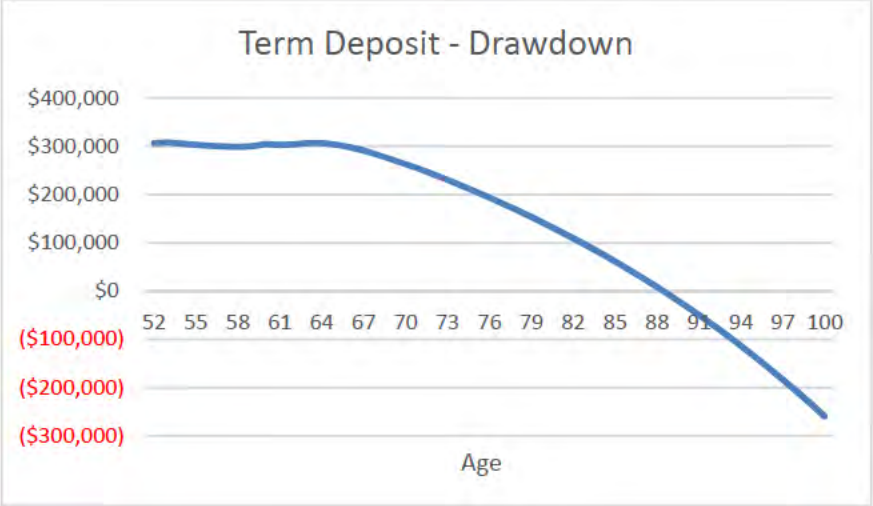




DFRDB COMMUTATION ANALYSIS

Case 8

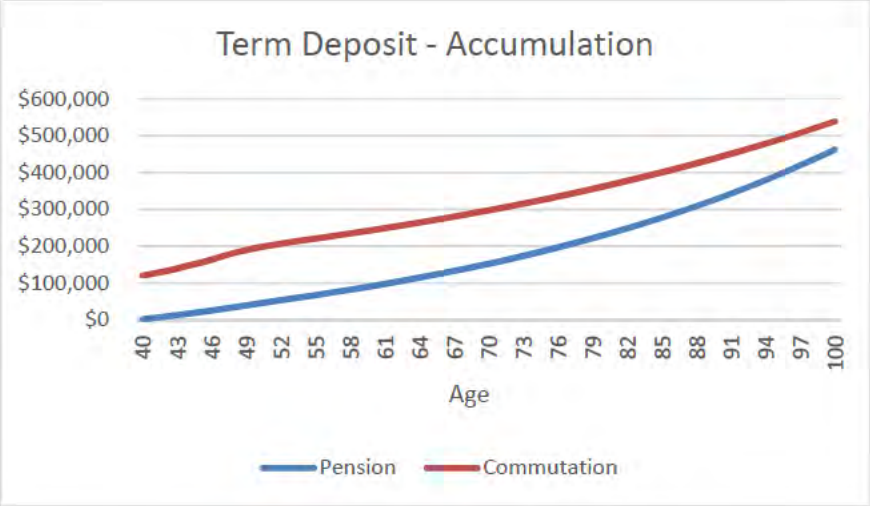


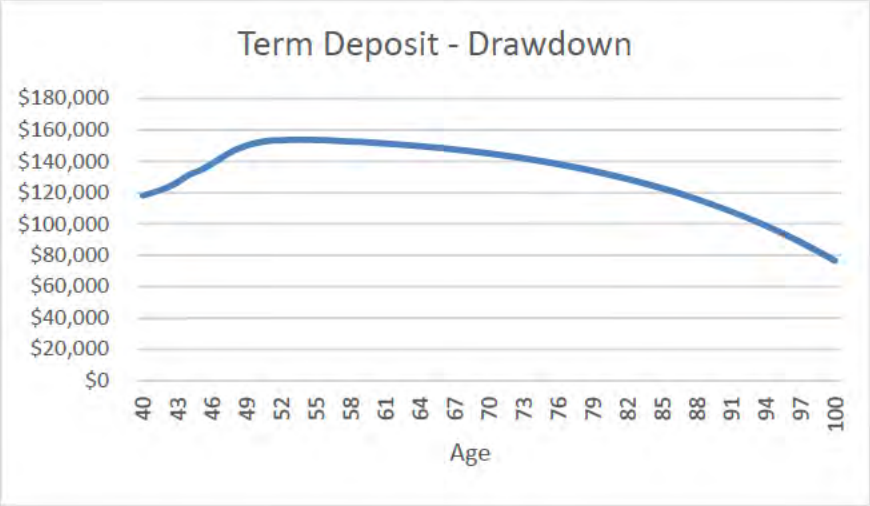


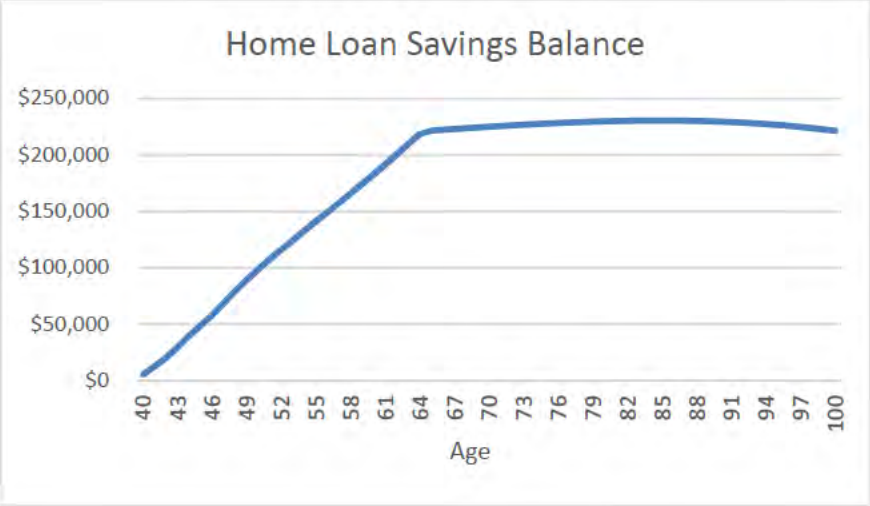


DFRDB COMMUTATION ANALYSIS

Case 9



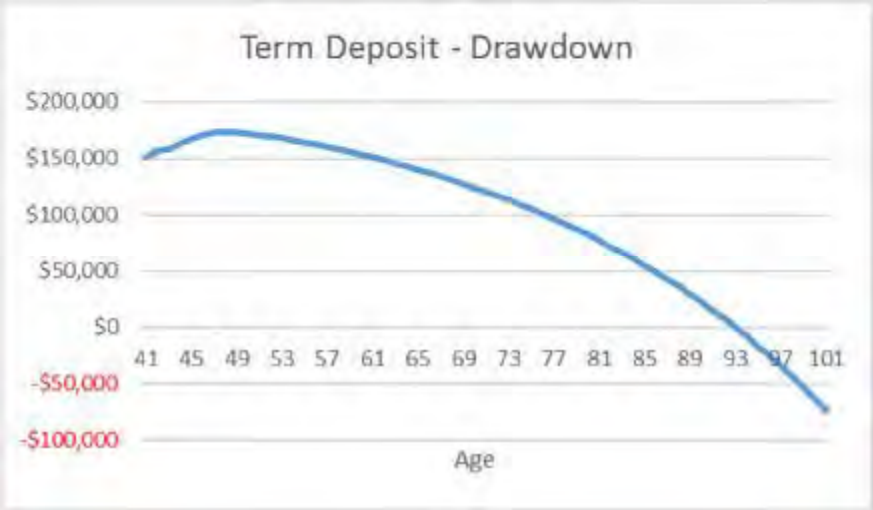




DFRDB COMMUTATION ANALYSIS

Case 10

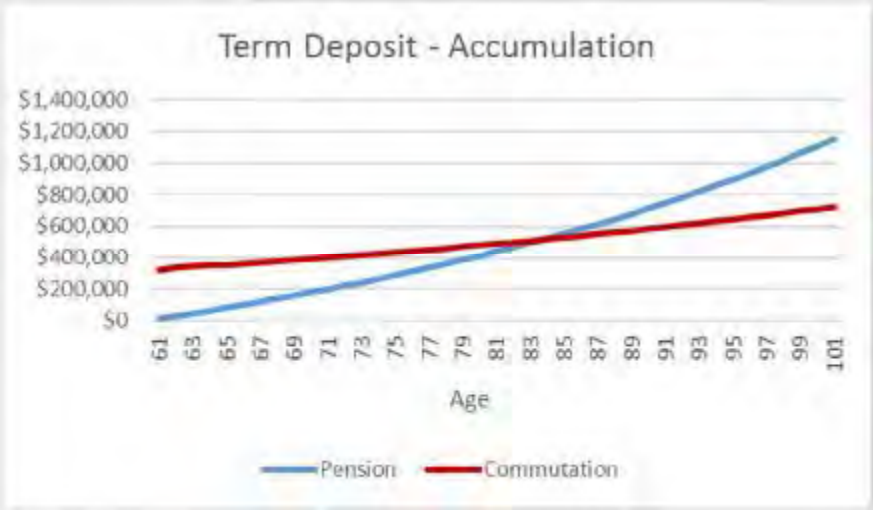


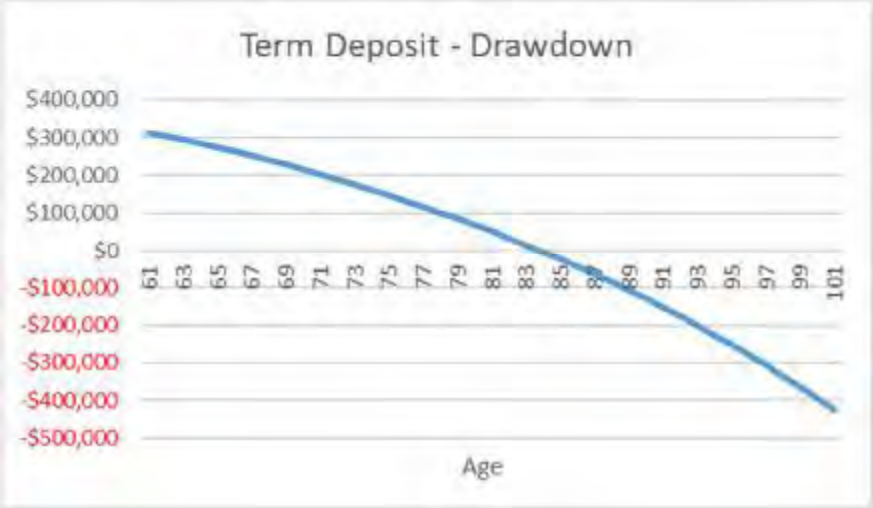




DFRDB COMMUTATION ANALYSIS

Case 11







DFRDB COMMUTATION ANALYSIS

Case 12







Appendix E – Case 8 detailed results

Term Deposit – Accumulation

Financial Year	Age	Interest Rate	Pension Payments			Commutation Lump Sum Balance at Year End
			Pension	Total Interest	Balance at Year End	
1999-2000	52	5.16%	2,072	8	2,079	309,179
2000-2001	53	5.13%	14,277	473	16,830	325,050
2001-2002	54	3.90%	14,457	939	32,226	337,740
2002-2003	55	3.96%	14,544	1,563	48,333	351,109
2003-2004	56	4.41%	14,616	2,453	65,402	366,587
2004-2005	57	4.65%	14,682	3,386	83,470	383,649
2005-2006	58	4.68%	14,770	4,247	102,487	401,584
2006-2007	59	5.53%	14,888	6,083	123,459	423,805
2007-2008	60	6.55%	14,948	8,571	146,977	451,547
2008-2009	61	4.57%	15,109	7,063	169,149	472,186
2009-2010	62	5.45%	15,152	9,624	193,926	497,901
2010-2011	63	6.04%	15,244	12,168	221,339	527,962
2011-2012	64	5.18%	15,367	11,871	248,577	555,328
2012-2013	65	4.17%	15,439	10,690	274,706	578,489
2013-2014	66	3.39%	15,520	9,580	299,806	598,110
2014-2015	67	2.95%	15,611	9,087	324,504	615,779
2015-2016	68	2.41%	15,669	8,004	348,177	630,609
2016-2017	69	2.35%	15,727	8,352	372,257	645,402
2017-2018	70	2.22%	15,811	8,427	396,495	659,709
2018-2019	71	2.14%	15,905	8,662	421,061	673,837
2019-2020	72	2.00%	16,009	8,581	445,651	687,314
2020-2021	73	2.00%	16,136	9,074	470,861	701,060
2021-2022	74	2.00%	16,267	9,580	496,708	715,082
2022-2023	75	2.00%	16,402	10,098	523,208	729,383
2023-2024	76	2.00%	16,541	10,630	550,379	743,971
2024-2025	77	2.00%	16,684	11,174	578,237	758,850
2025-2026	78	2.00%	16,832	11,733	606,802	774,027
2026-2027	79	2.00%	16,984	12,306	636,092	789,508
2027-2028	80	2.00%	17,140	12,893	666,126	805,298
2028-2029	81	2.00%	17,302	13,496	696,923	821,404
2029-2030	82	2.00%	17,468	14,113	728,503	837,832
2030-2031	83	2.00%	17,639	14,746	760,888	854,589
2031-2032	84	2.00%	17,815	15,396	794,099	871,680
2032-2033	85	2.00%	17,996	16,062	828,157	889,114
2033-2034	86	2.00%	18,183	16,745	863,085	906,896
2034-2035	87	2.00%	18,376	17,445	898,906	925,034
2035-2036	88	2.00%	18,574	18,164	935,644	943,535
2036-2037	89	2.00%	18,778	18,901	973,323	962,406
2037-2038	90	2.00%	18,988	19,656	1,011,968	981,654

DFRDB COMMUTATION ANALYSIS

Term Deposit – Drawdown

Financial Year	Age	Balance at Start Year	Pension Paid	Interest Rate	Total Interest	Balance at Year End
1999-2000	52	306,880	2,072	5.16%	2,291	307,107
2000-2001	53	307,107	14,277	5.13%	15,398	308,228
2001-2002	54	308,228	14,457	3.90%	11,752	305,523
2002-2003	55	305,523	14,544	3.96%	11,806	302,785
2003-2004	56	302,785	14,616	4.41%	13,026	301,194
2004-2005	57	301,194	14,682	4.65%	13,676	300,189
2005-2006	58	300,189	14,770	4.68%	13,689	299,107
2006-2007	59	299,107	14,888	5.53%	16,139	300,357
2007-2008	60	300,357	14,948	6.55%	19,172	304,581
2008-2009	61	304,581	15,109	4.57%	13,577	303,049
2009-2010	62	303,049	15,152	5.45%	16,091	303,988
2010-2011	63	303,988	15,244	6.04%	17,893	306,636
2011-2012	64	306,636	15,367	5.18%	15,496	306,765
2012-2013	65	306,765	15,439	4.17%	12,473	303,798
2013-2014	66	303,798	15,520	3.39%	10,041	298,319
2014-2015	67	298,319	15,611	2.95%	8,582	291,290
2015-2016	68	291,290	15,669	2.41%	6,827	282,448
2016-2017	69	282,448	15,727	2.35%	6,441	273,162
2017-2018	70	273,162	15,811	2.22%	5,880	263,231
2018-2019	71	263,231	15,905	2.14%	5,467	252,793
2019-2020	72	252,793	16,009	2.00%	4,896	241,680
2020-2021	73	241,680	16,136	2.00%	4,672	230,217
2021-2022	74	230,217	16,267	2.00%	4,442	218,391
2022-2023	75	218,391	16,402	2.00%	4,204	206,193
2023-2024	76	206,193	16,541	2.00%	3,958	193,611
2024-2025	77	193,611	16,684	2.00%	3,705	180,632
2025-2026	78	180,632	16,832	2.00%	3,444	167,244
2026-2027	79	167,244	16,984	2.00%	3,175	153,436
2027-2028	80	153,436	17,140	2.00%	2,897	139,193
2028-2029	81	139,193	17,302	2.00%	2,611	124,502
2029-2030	82	124,502	17,468	2.00%	2,315	109,350
2030-2031	83	109,350	17,639	2.00%	2,011	93,722
2031-2032	84	93,722	17,815	2.00%	1,696	77,603
2032-2033	85	77,603	17,996	2.00%	1,372	60,979
2033-2034	86	60,979	18,183	2.00%	1,038	43,834
2034-2035	87	43,834	18,376	2.00%	693	26,151
2035-2036	88	26,151	18,574	2.00%	337	7,915
2036-2037	89	7,915	18,778	2.00%	-29	-10,893
2037-2038	90	-10,893	18,988	2.00%	-408	-30,289

DFRDB COMMUTATION ANALYSIS

Home Loan

Financial Year	Age	Loan Balance	Home Loan Rate	Loan Repayment	Pension Paid	Savings on Loan	Interest Rate	Total Interest	Balance at Year End
1999-2000	52	306,880	7.03%	3,788	2,072	1,716	5.16%	6	$1,723
2000-2001	53	306,221	7.63%	27,519	14,277	13,242	5.13%	428	$15,393
2001-2002	54	301,916	6.34%	24,578	14,457	10,121	3.90%	799	$26,312
2002-2003	55	296,316	6.57%	25,073	14,544	10,530	3.96%	1,250	$38,092
2003-2004	56	290,533	6.88%	25,739	14,616	11,122	4.41%	1,924	$51,139
2004-2005	57	284,603	7.15%	26,302	14,682	11,620	4.65%	2,650	$65,409
2005-2006	58	278,461	7.36%	26,723	14,770	11,953	4.68%	3,337	$80,699
2006-2007	59	272,023	7.97%	27,917	14,888	13,028	5.53%	4,826	$98,553
2007-2008	60	265,542	8.80%	29,540	14,948	14,592	6.55%	6,929	$120,074
2008-2009	61	259,113	7.28%	26,722	15,109	11,613	4.57%	5,754	$137,441
2009-2010	62	250,977	6.53%	25,454	15,152	10,302	5.45%	7,765	$155,508
2010-2011	63	241,638	7.66%	27,279	15,244	12,034	6.04%	9,752	$177,295
2011-2012	64	232,542	7.45%	26,951	15,367	11,584	5.18%	9,490	$198,369
2012-2013	65	222,569	6.52%	25,622	15,439	10,183	4.17%	8,486	$217,038
2013-2014	66	211,130	5.95%	24,862	15,520	9,342	3.39%	7,520	$233,900
2014-2015	67	198,484	5.78%	24,664	15,611	9,054	2.95%	7,044	$249,997
2015-2016	68	184,944	5.53%	24,385	15,669	8,716	2.41%	6,126	$264,838
2016-2017	69	170,421	5.28%	24,132	15,727	8,404	2.35%	6,311	$279,554
2017-2018	70	154,909	5.22%	24,086	15,811	8,275	2.22%	6,288	$294,117
2018-2019	71	138,527	5.31%	24,156	15,905	8,252	2.14%	6,387	$308,756
2019-2020	72	121,316	4.00%	23,276	16,009	7,267	2.00%	6,248	$322,272
2020-2021	73	102,551	4.00%	23,276	16,136	7,140	2.00%	6,517	$335,929
2021-2022	74	83,022	4.00%	23,276	16,267	7,009	2.00%	6,789	$349,727
2022-2023	75	62,696	4.00%	23,276	16,402	6,874	2.00%	7,063	$363,664
2023-2024	76	41,543	4.00%	23,276	16,541	6,735	2.00%	7,341	$377,740
2024-2025	77	19,528	4.00%	19,862	16,684	3,178	2.00%	7,587	$388,504
2025-2026	78	0	4.00%	0	16,832	-16,832	2.00%	7,602	$379,274
2026-2027	79	0	4.00%	0	16,984	-16,984	2.00%	7,416	$369,706
2027-2028	80	0	4.00%	0	17,140	-17,140	2.00%	7,223	$359,788
2028-2029	81	0	4.00%	0	17,302	-17,302	2.00%	7,023	$349,509
2029-2030	82	0	4.00%	0	17,468	-17,468	2.00%	6,816	$338,857
2030-2031	83	0	4.00%	0	17,639	-17,639	2.00%	6,601	$327,819
2031-2032	84	0	4.00%	0	17,815	-17,815	2.00%	6,378	$316,383
2032-2033	85	0	4.00%	0	17,996	-17,996	2.00%	6,148	$304,534
2033-2034	86	0	4.00%	0	18,183	-18,183	2.00%	5,909	$292,260
2034-2035	87	0	4.00%	0	18,376	-18,376	2.00%	5,661	$279,546
2035-2036	88	0	4.00%	0	18,574	-18,574	2.00%	5,405	$266,377
2036-2037	89	0	4.00%	0	18,778	-18,778	2.00%	5,140	$252,739
2037-2038	90	0	4.00%	0	18,988	-18,988	2.00%	4,865	$238,615
2038-2039	91	0	4.00%	0	19,205	-19,205	2.00%	4,580	$223,990
2039-2040	92	0	4.00%	0	19,428	-19,428	2.00%	4,286	$208,848
2040-2041	93	0	4.00%	0	19,658	-19,658	2.00%	3,980	$193,170
2041-2042	94	0	4.00%	0	19,895	-19,895	2.00%	3,664	$176,940
2042-2043	95	0	4.00%	0	20,139	-20,139	2.00%	3,337	$160,138

DFRDB COMMUTATION ANALYSIS

Financial Year	Age	Loan Balance	Home Loan Rate	Loan Repayment	Pension Paid	Savings on Loan	Interest Rate	Total Interest	Balance at Year End
2043-2044	96	0	4.00%	0	20,390	-20,390	2.00%	2,999	$142,747
2044-2045	97	0	4.00%	0	20,649	-20,649	2.00%	2,648	$124,747
2045-2046	98	0	4.00%	0	20,915	-20,915	2.00%	2,286	$106,118
2046-2047	99	0	4.00%	0	21,190	-21,190	2.00%	1,910	$86,839
2047-2048	100	0	4.00%	0	21,472	-21,472	2.00%	1,522	$66,889
2048-2049	101	0	4.00%	0	21,763	-21,763	2.00%	1,120	$46,246
2049-2050	102	0	4.00%	0	22,063	-22,063	2.00%	704	$24,887
2050-2051	103	0	4.00%	0	22,372	-22,372	2.00%	274	$2,788
2051-2052	104	0	4.00%	0	22,690	-22,690	2.00%	0	-$19,902

Calculation notes

1. The interest rates shown above have been rounded to two decimal points for presentation purposes. Unrounded interest rates have been used in the calculations.

2. The individual retired part way through the first year shown (1999-2000) and this has been factored in to the results for 1999-2000.

Term deposit – Accumulation approach

3. Under the Term deposit – Accumulation approach, the lump sum balance at the end of the year is simply the lump sum balance at the end of the previous year plus one year's interest. For example, the closing balance at the end of 2004-2005 was $383,649. The interest rate for 2005-2006 was 4.675%. The interest addition is 4.675% x 383,649 = 17,936. The closing balance should thus be 383,649 + 17,936 = $401,585. The amount shown in the table is one dollar less and this is due to rounding.

4. Under the Term deposit – Accumulation approach, the pensions balance at the end of the year is firstly the pensions balance at the end of the previous year plus one year's interest. For example, the closing balance at the end of 2004-2005 was $83,470. The interest rate for 2005-2006 was 4.675%. The interest addition is 4.675% x 83,470 = 3,902. The balance at the end of 2005-2006 before allowing for pension payments received during the year should be 83,470 + 3,902 = $87,372.

5. To this amount needs to be added pension payments received during the year (2005-2006) of $14,770 and a small amount of interest earned on the pension payments. Assuming pension payments are received halfway through the year on average, approximately half a year's interest is earned on average. The approximate amount of interest earned is 4.675%/2 x 14,770 = 345. The expected end year balance is 87,372 + 14,770 + 345 = $102,487 which is consistent with the figure given above.

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Term deposit – Drawdown approach

6. Under the Term deposit – Drawdown approach, the balance at the end of the year is firstly the balance at the end of the previous year less the pension paid. For example, the closing balance at the end of 2004-2005 was $300,189. The pension paid during the year was $14,770. The balance at the end of 2005-2006 allowing for pension payments received during the year should be 300,189 – 14,770 = $285,419.

7. To this amount needs to be added interest received for the year (2005-2006). The interest rate for 2005-2006 was 4.675%. The interest on the opening balance is 4.675% x 300,189 = 14,034. However, this amount needs to be reduced because there were pension drawdowns from the opening balance during the year. Assuming pension payments are received halfway through the year on average, approximately half a year's interest on the pension payments is lost on average. The approximate amount of interest lost is 4.675%/2 x 14,770 = 345. The interest addition for the year is 14,034 – 345 = $13,689. The expected end year balance is 285,419 + 13,689 = $299,108 which is consistent with the figure given above.

Home loan approach

8. Under the Home loan approach, the balance at the end of the year is firstly the balance at the end of the previous year plus the savings in mortgage repayments less the pension paid. For example, the closing balance at the end of 2004-2005 was $65,409. The saving in mortgage repayments for 2005-2006 was $26,723 out of which pension paid during the year was $14,770. This frees up 26,723 – 14,770 = $11,953 which can now be invested increasing the balance to 65,409 + 11,953 = $77,362 before allowing for interest for the year.

9. To this amount needs to be added interest received for the year (2005-2006). The interest rate for 2005-2006 was 4.675%. The interest on the opening balance is 4.675% x 65,409 = 3,058. Interest earned on the funds invested during the year ($11,953) also needs to be added. Assuming that funds were invested, on average, halfway through the year, approximately half a year's interest would be earned on the funds invested. The approximate amount of interest is 4.675%/2 x 11,953 = 279. The interest addition for the year is 3,058 + 279 = $3,337. The expected end year balance is 77,362 + 3,337 = $80,699 which is consistent with the figure given above.

10. The figures for 2024-2025 allow for the fact that the mortgage would be fully repaid part way through the year.

Pension payments

11. The majority of the pension forgone as a result of commutation is unindexed pension but part of it is indexed pension. The amount of annual pension forgone as a result of commutation is 63,274.23 – 49,007.38 = $14,266.85.

DFRDB COMMUTATION ANALYSIS

12. The individual took a lump sum commutation of 4.85 times the pension before commutation. The component of four times the pension before commutation is commutation of unindexed pension. The remainder is commutation of indexed pension.

13. The annual amount of unindexed pension commuted is 4/4.85 x 14,266.85 = $11,766.47.

14. The annual amount of indexed pension commuted is 0.85/4.85 x 14,266.85 = $2,500.38.

15. Up to July 2001, pensions were indexed annually in July. Subsequently, pensions were indexed twice yearly in January and July. From July 2014, differential indexation rates applied depending upon the age of the pensioner. For those pensioners under age 55, pension indexation continued to be based on CPI increases. For those pensioners aged 55 or more, pension indexation was based on the methodology used to index the Age Pension. This has been allowed for in our analysis.

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COMMONWEALTH OMBUDSMAN

Investigation into the administration of the Defence Force Retirement and Death Benefits (DFRDB) scheme

December 2019

Report by the Commonwealth Ombudsman,
Michael Manthorpe, under the *Ombudsman Act 1976*

REPORT NO. 06 | 2019

FOREWORD

In April 2019 I was approached by the Hon Darren Chester MP, Minister for Veterans and Defence Personnel and asked if I would look into the administration of the commutation provisions contained in the Defence Force Retirement and Death Benefits (DFRDB) scheme. I decided to do so under the Own Motion powers contained in the *Ombudsman Act 1976.*

'Commutation' refers to eligible retiring Defence Force members having the choice to take their benefits as a pension, or they could opt to commute a part of their pension into a lump sum and access a reduced pension.

It is important to note that there have only ever been two options available to DFRDB members: namely, to commute, or not to commute. DFRDB members reported being told that commutation was a loan to be repaid over their life expectancy. Such information is incorrect. At law, commutation is not a loan, but a permanent exchange of one type of entitlement for another. The result is a permanent reduction to retirement pay.

Many DFRDB members, likely numbering in the thousands, were provided incorrect information by Defence personnel who were responsible for providing advice about the workings of the scheme. Those DFRDB members were led to believe, incorrectly, that their commuted pensions would increase once they reached their life expectancy factor age. The absence of clear guidelines and instructions to staff led to this incorrect information being provided, which resulted in a misunderstanding of the basic design of the scheme. In my view, this amounted to defective administration by Defence.

The incorrect information created the idea that there was a hybrid option, i.e. a lump sum, plus a reduced pension, and that the pension would revert to the higher rate when the 'loan' represented by the lump sum was 'paid off'. However, at law this option did not exist. It was not what the Parliament intended and, despite the raised expectations of some members, it was illusory. Most members did, in fact, choose to commute. Some members did so on the basis of the incorrect advice, while others did so based on a correct understanding of the scheme.

The information provided by the DFRDB Authority (now the Commonwealth Superannuation Corporation (CSC)) was at all times correct. However, while correct, the information was not sufficiently clear to correct the misunderstanding that many members had from their interactions with Defence. With the benefit of hindsight, I can now see how this information could have been clearer, as is the case with CSC's current documents.

While these errors have now been fixed, I have turned my mind to what should happen to remedy the defective administration.

Although disappointing and frustrating, missing out on a benefit to which a person is not actually entitled under the law does not necessarily mean that the person suffered financial detriment. As a matter of principle, compensation should only be paid where poor administrative practices cause actual financial loss.

I wanted to determine whether those who were given misleading information were likely to have suffered overall financial loss as a result of their choice. I engaged two expert actuaries, the Australian Government Actuary (AGA) and KPMG to independently model a number of

scenarios to compare the real financial results of commuting and not commuting—that is, the two options that were actually available.

In all of the scenarios we modelled, using conservative assumptions about how retiring members might have used the lump sum, commutation has resulted in a beneficial overall financial outcome for DFRDB members to date. This is particularly true for DFRDB members who retired in the years before 2010. While some of those who discharged in recent years may be able to make the case that at some time in the future they could be financially worse off having commuted, I am satisfied these decisions to commute were made after CSC improved its publications to explicitly advise that the commutation reduction is permanent.

I am satisfied the decision to commute is not likely to have, of itself, caused financial loss, relative to the only other option that was available at law. I have therefore concluded that it is not appropriate to recommend compensation in a broad sense.

Although unlikely, I cannot rule out that there may be outlying cases with circumstances of which we are not aware. The Scheme for Compensation for Detriment caused by Defective Administration (CDDA scheme) is suitable for any such cases to be considered. However, to avoid giving false hope to individuals or creating unnecessary process for agencies, I have included a list of considerations which we suggest would need to be satisfied as part of any such claim.

Nevertheless, I acknowledge the disappointment, frustration and anger experienced by DFRDB members whose expectations were falsely raised. Even though the modelling suggests that they did not suffer financial detriment by commuting, relative to the other available option, it is undoubtedly the case that they experienced perceived detriment relative to what they had been told would occur. I have therefore recommended that the Secretary of the Department of Defence and Chief of the Defence Force apologise for the defective administration that occurred and for the disappointment members have experienced. I am pleased that my recommendation has been accepted, and I have included a copy of the apology letter as an appendix to the report

For completeness, I also considered whether, in light of the raised expectations and subsequent disappointment, the Government should provide some form of financial reparation or *ex gratia* payment to impacted DFRDB members. Such a payment could, theoretically, go some way towards addressing the perceived financial detriment between the commutation option and what members were informed would occur.

However, I have decided to stop short of making such a recommendation. There are two reasons for this. First, on the basis of the modelling, to do so would unreasonably place the cohort who commuted in an even stronger financial position than those who correctly understood the operation of the scheme and decided not to commute, which in the long run appears to have been the less beneficial choice for most people. Similarly, it would provide an unjustified windfall at taxpayers' expense for those who did understand the scheme and chose to commute.

Second, to do so would presume to contradict the intent of the Parliament that passed the legislation establishing the DFRDB scheme decades ago. It would of course be possible for the current Parliament and the current Government to consider whether the policy issue in question ought be re-opened in light of the analysis in this report.

For my part, while I have considerable sympathy for the thousands of members who were misled, my judgement is that to seek to compensate for that now through a reparation payment would invoke the old adage that two wrongs do not make a right.

I am satisfied that CSC's current material is now clear, but have recommended some changes to its correspondence to ensure relevant information is front and centre.

Of course, it is not CSC's role to provide financial advice, and I would not want it to. Equally, I would not want any person to understand this report as advocating one course of action over another for DFRDB members yet to make a commutation decision. As always, people should consider their own personal circumstances, and seek independent financial advice, before making decisions with significant financial consequences.

Instead, my recommendations go to two core principles of good public administration—the public should have all relevant information at their disposal to enable informed decision-making, and the importance of written procedural guidance and training to ensure accurate information is provided.

Some DFRDB members also argued for more beneficial options or scenarios to be applied, which are not currently available under the *Defence Force Retirement and Death Benefits Act 1973*. My power to investigate extends only to determining whether the law was correctly administered, not what might have been if Parliament had passed different laws. However, as these views were keenly felt, and people took the time to provide them to me, I have reflected those concerns in a separate part at the end of this report. The Government may wish to turn its mind to the policy questions articulated here, or otherwise make its position on these issues clear.

I wish to express my sincere thanks to each person who took time to share their views, and particularly to those who kept, and then supplied to us, contemporaneous documentary evidence dating back some 40 years. I also extend my thanks to the CSC and Defence staff who were responsive and co-operative, particularly noting our requests often sought significant amounts of information going back many decades.

Finally I thank my staff who worked tirelessly, impartially and professionally to consider the issues canvassed in this report.

Michael Manthorpe PSM
Commonwealth Ombudsman

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Part 1: INTRODUCTION AND SCOPE OF INVESTIGATION

Background

1.1. On 25 March 2019 the Minister for Veterans' Affairs and Defence Personnel (the Minister), the Hon Darren Chester MP, together with the Assistant Minister for Treasury and Finance, Senator the Hon Zed Seselja, announced an independent inquiry into the Defence Force Retirement and Death Benefits (DFRDB) scheme.

1.2. On 5 April 2019, the Minister wrote to the Ombudsman asking that he consider undertaking an investigation into the DFRDB scheme. The Minister indicated his intention that the inquiry he announced would examine the accuracy of the information provided about commutation by the scheme administrators and relevant departments to DFRDB members.

1.3. The Minister indicated that he considered the Ombudsman, who is also the Defence Force Ombudsman, was well placed to investigate the issues and that his view was supported by the members of the Ex-Service Organisations Round Table (ESORT) held by the Department of Veterans' Affairs.

1.4. After considering the request, on 10 April 2019 the Ombudsman, Michael Manthorpe PSM, wrote to the Minister and advised that he had decided, pursuant to s 5(1)(b) of the Ombudsman Act, to commence an own motion investigation into the accuracy of information provided to DFRDB members by scheme administrators and relevant departments about commutation of retirement pay.

Ombudsman's powers

1.5. The Office of the Commonwealth Ombudsman (the Office) was established to investigate complaints and provide independent oversight of public administration by Australian Government agencies and certain private sector businesses. The Ombudsman makes recommendations to improve government administration.

1.6. The Ombudsman cannot be directed to undertake an investigation, to arrive at a certain conclusion or on the scope of an investigation. Rather, the Ombudsman decides what is in or out of scope of his investigations in accordance with his statutory function as set out in the *Ombudsman Act 1976*.

1.7. The Ombudsman's role is limited to investigating 'action that relates to a matter of administration'.[1] Accordingly, our focus is on the administration or implementation of legislation and policy, by officials in government departments and statutory agencies.

Scope

1.8. For this reason, the Ombudsman limited the scope of this investigation to the administration of the DFRDB Scheme, and particularly the issue of commutation. The primary focus of the investigation is the accuracy of information provided to DFRDB members. We set out the following questions to guide our investigation:

[1] Section 5(1)(b) of the *Ombudsman Act 1976,* which relates to own motion investigations.

- What information was provided to DFRDB members about the effects of commutation on future retirement pay entitlement?
- Was this information inaccurate, inadequate, ambiguous or misleading? If so:
    - what were the consequences?
    - what remedial action (if any) should be taken?
- Were retirement payments indexed as required by legislation? If not, what remedial action (if any) should be taken?

1.9. The following issues go to the nature of the legislation passed by parliament and matters of government policy, and therefore are out of scope of this investigation:

- Whether legislation is fair and just, including provisions for:
    - use of certain life expectancy tables
    - permanency of reductions to commuted pensions
    - indexation arrangements.
- Whether government ought to take different policy decisions or make amendments to legislation.

1.10. While these matters are not within scope, the submissions we received indicated a high level of dissatisfaction with current policy settings, as expressed through the statutory arrangements. A section has therefore been included to summarise the out of scope issues arising in the submissions received. There was also evidence of confusion among DFRDB members about how DFRDB legislation works. We have endeavoured to provide clarification on the operation of the legislation.

Methodology

1.11. The administration of DFRDB was the subject of significant media and public interest immediately prior to the commencement of the investigation. Further, with some 53,163 DFRDB members, the majority of whom elected to commute their retirement pay, public interest in this investigation was high among this group. Accordingly, the Ombudsman invited submissions from DFRDB members and the public to inform the investigation.

1.12. A submission form was provided to guide contributions, but submissions were accepted in any format. The submission process opened on 20 May 2019 and closed on 30 June 2019, although all information received after this date was accepted and reviewed. In total, the Office received 3,436 submissions during the course of the investigation.

1.13. The Office also contacted stakeholder groups and interested veterans who had been advocating on this issue to ensure they were aware of the investigation and our call for public submissions. These stakeholder groups encouraged DFRDB members to make individual submissions. The Department of Veterans' Affairs also provided information about the investigation on its website and through the ESORT.

1.14. The Office met with stakeholder groups with a particular interest in this issue. We also interviewed more than 30 people, identified through submissions and other documents, who we felt could provide information of value to our investigation. Interviews were conducted by phone or in person where appropriate.

1.15. For the purposes of informing the investigation about the effects of commutation on the DFRDB cohort, the Office commissioned external actuarial modelling from two sources, the Australian Government Actuary (AGA) and KPMG.

1.16. The modelling provided by both AGA and KPMG was factual, based on real-life scenarios with all assumptions chosen by our Office. Although we had regard to the actuaries analysis provided as part of their reports, the Office undertook its own independent analysis of the modelling results.

1.17. The Office also issued multiple sets of questions and requests for information to the Department of Defence (Defence) and Commonwealth Superannuation Corporation (CSC) under s 8 of the Ombudsman Act. The Office met regularly with these agencies to obtain and clarify information and provide updates on the investigation progress. The Office formally asked the Department of Veterans' Affairs whether it had ever provided advice on the DFRDB Scheme. In response, DVA confirmed that its practice has always been to refer questions about commutation to CSC (Appendix B).

1.18. During the early stages of the investigation the Office also met with the Australian National Audit Office and the Productivity Commission.

1.19. In accordance with s 15 of the *Ombudsman Act 1976*, the Office provided a copy of the draft report to the Chief of the Defence Force, the Secretary of Defence and the Chief Executive Officer of CSC. Their responses, along with the apology from Defence, are published at Appendices C, D and E.

1.20. The Office thanks those staff from Defence, CSC and all other agencies who provided information to this investigation. Agencies were at all times responsive to our requests for information and their cooperation is appreciated.

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Important terms

1.21. Some of the terms below are taken from the *Defence Force Retirement and Death Benefits Act 1973* (DFRDB Act). We have also adopted some simpler terms and phrases than those used in the legislation if it made it easier to explain complex concepts in plain English. A glossary with other terms used in the report can be found at Appendix G.

Figure 1—Important terms

Commutation	Commutation is an exchange of part of a DFRDB member's future retirement pay for an immediate lump sum.
Minimum service period	The minimum service period required for eligibility for retirement pay is 20 years of effective service (or 15 years of effective service if the person has achieved the retiring age for their rank).
Retirement pay	Retirement pay is the pension component of DFRDB entitlements. It is worked out as a percentage of the annual rate of pay at discharge (the percentage is based on number of complete years of service).
Pre-commutation amount	The pre-commutation amount is the annual rate of retirement pay to which a person is entitled, prior to any decision to commute, and is the amount a person will receive if they do not decide to commute. Retirement pay does not revert to the pre commutation rate when a DFRDB member reaches their life expectancy factor age.
Maximum commutation amount *and* Maximum commutation factor	The maximum commutation amount is the maximum amount a person may elect to commute. It is calculated by multiplying the person's annual retirement pay before commutation by their maximum commutation factor. The maximum commutation factor was four until 30 June 1983, when it began increasing by increments of 0.05 each year until it reached the current maximum of five on 1 July 2002. This means the maximum amount a person may elect to commute, depending on the year they discharge, is between four to five times their annual retirement pay before commutation.
Commutation divisor *and* Life expectancy factor age	The commutation divisor is based on a person's gender and age at retirement, used in the statutory formula for working out a person's commutation reduction. The DFRDB Act calls it the 'expectation of life factor' and some submitters know it as the 'notional life expectancy factor'. This is because the commutation divisor is based on the 1960-1962 life expectancy tables. A person's life expectancy factor age is their life expectancy age *as it was in 1962*. This figure has been fixed in the Act since 1973. It is therefore lower than current Australian Bureau of Statistics life expectancy figures.
Commutation reduction	The commutation reduction is the amount by which the starting rate of a person's retirement pay is permanently reduced if they elect to commute. The amount of the commutation reduction depends on how much the person elected to commute and their commutation divisor.
Retirement benefit	The retirement benefit is the total DFRDB benefits payable to a person in retirement (including commutation lump sum and retirement pay pension).

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Part 2: BACKGROUND ON THE DFRDB SCHEME

History of the DFRDB

2.1. Prior to the DFRDB scheme commencing the Defence Forces Retirement Benefits (DFRB) scheme operated to provide retirement benefits to members of the Australian Defence Force (ADF).

2.2. The DFRB scheme was a specially designed pension arrangement which differed from other public sector superannuation schemes to accommodate the particular needs of the ADF.[2] For example:

- retirement pensions were based on rank, took into account earlier retiring ages and were designed to supplement civil employment earnings
- commutation provided access to capital for relatively young retirees who were transitioning to civilian life.

2.3. In 1972 the Joint Select Committee on the DFRB scheme, known as the 'Jess Committee', made 20 recommendations, leading to the introduction of a new scheme 'to provide an annuity type benefit as a supplement to civilian earnings for those retiring early and as a means of support for members in later life'.[3] The Committee made recommendations to simplify the scheme and make it easier for members to understand, observing:

> the difficulty is that the present scheme defies explanation in simple terms. We cannot over-emphasise the importance we attach to having a scheme in which contributions and benefits are capable of simple explanation to the members of the scheme. [4]

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.[6]

2.5. Other beneficial changes that were recommended included capping contributions at 5.5 per cent of salary and annual indexation to maintain relativity with average weekly earnings.[7]

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[2] Defence Forces Retirement Benefits Board, July 1970, *D.F.R.B Booklet*, p. 3.
[3] Joint Select Committee on Defence Forces Retirement Benefits Legislation, May 1972, Parliamentary Paper No 74, ('Jess Report'), p. 31.
[4] Jess Report, p. 47. The Committee also considered that an advisory and counselling service would not be necessary for the proposed DFRDB scheme because of its relative simplicity.
[5] Jess Report, para. 106, p. 30.
[6] Jess Report, recommendation 14(a), p. 3, and commentary at para. 112, p. 31.
[7] Jess Report, recommendations 4 and 6, p. 1.

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2.6. The DFRDB Act passed Parliament and received Royal Assent in 1973. Commencement of most of the substantive provisions of the DFRDB Act was backdated retrospectively to 1 October 1972.

2.7. The scheme was closed to new members from October 1991 following the Cole Review (1990)[8] as it no longer met the needs of the ADF. The Cole Review observed that while DFRDB provides 'a generous benefit' to those who serve the minimum service period (generally at least 20 years), there is no employer benefit payable and no return on contributions for people who discharge before the minimum service period. This meant it no longer met community standards, which by that time had changed in line with major superannuation reforms. Further, the scheme did not encourage members to serve beyond 20 years, resulting in the loss of experienced ADF members in the 20–22 years of service bracket.[9]

2.8. The Podger Review (2007)[10] considered the DFRDB, Military Superannuation Benefits Scheme (MSBS) and the proposal for a new contemporary scheme in the context of the unique nature of military service, ADF demographics and the wider Australian superannuation framework. It recommended the government consider indexing DFRDB retirement pay for members over 55 to the same benchmark as age pensions.[11] The government gave effect to this recommendation in 2014.[12]

Important concepts explained

What is the DFRDB scheme?

2.9. The DFRDB scheme creates a statutory entitlement to a defined benefit, part of which may be commuted, for ADF members who were required to participate in the scheme.

2.10. It commenced on 1 October 1972. All ADF members were required to contribute to the scheme. Contributors to the predecessor scheme, the Defence Force Retirement Benefits (DFRB) scheme, including members with active service in conflicts such as Vietnam, Korea, Indonesia and Malaysia, were also rolled into the DFRDB scheme with appropriate protections against detriment. The scheme has been closed to new members[13] since 1 October 1991 and closed to re-entering members since 1 July 2016.

2.11. The scheme was originally overseen by the DFRDB Authority and then from 2011, by CSC. While the day to day payments under the scheme were made by various agencies,[14] we

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[8] Defence Force Retirement and Death Benefits Scheme Review Committee, June 1990, Department of the Senate Paper No. 870 ('Cole Report').
[9] Cole Report, p. 3.
[10] Department of Defence, December 2007, Report of the Review of Military Superannuation Arrangements ('Podger Report').
[11] Department of Finance and Deregulation, December 2008, Review of Pension indexation Arrangements in Australian Government Civilian and Military Superannuation Schemes ('Matthews Report'), p. 47.
[12] *Defence Force Retirement Benefits Legislation Amendment (Fair Indexation) Act 2014*.
[13] Although the scheme was closed, a retiree could elect to return to the scheme as a contributor if they returned to the ADF on an engagement to undertake continuous full-time service (DFRDB Act, s 61B). Section 61B was subsequently repealed by the *Defence Legislation Amendment (Superannuation and ADF Cover) Act 2015*.
[14] Australian Government Retirement Benefits Office (1970s), then Retirement Benefits Office (1980s) then ComSuper from the 1990s until it merged into CSC on 1 July 2015.

have focussed on the DFRDB Authority and CSC, as these agencies were responsible for scheme information and materials and presented at retirement seminars.

2.12. The main features of the scheme are as follows:

- Compulsory[15] member contributions are paid into the Australian Government Consolidated Revenue Fund (CRF). All DFRDB entitlements are paid from the CRF.
- The compulsory contribution is 5.5 per cent of the member's salary.[16]
- Members may be entitled to retirement pay when they are discharged if they have served for the minimum service period, being either:
    - 20 years of effective service, or
    - 15 years' effective service if they have already reached the retiring age for their rank.[17]
- Retirement pay is calculated using a statutory formula based on salary at retirement and complete years of service (not the amount contributed).
- Members who are not eligible for retirement pay when they are discharged are refunded their contributions.[18]
- Members eligible for retirement pay also have the option to commute a portion of that pension into a lump sum.[19]
- Prior to 1 July 1983 the maximum amount a member could commute was the equivalent of 4 times their annual retirement pay. This figure was incrementally raised over 20 years from 1 July 1983, and the maximum commutation amount has been the equivalent of 5 times their annual retirement pay since 1 July 2002.[20]
- A member has 12 months from discharge to exercise their election to commute.[21]
- A member who elects to commute has their retirement pay permanently reduced according to the statutory formula set out in s 24(3)(b) of the DFRDB Act. The commutation divisor used in this formula has at all times been the *Commutation of retirement pay and Class C invalidity Pay—expectation of life factor* which is Schedule 3 of the DFRDB Act.
- Pensions are indexed according to a statutory formula.[22]

2.13. As a statutory defined benefit scheme, DFRDB is different to standard superannuation schemes.

2.14. For example, eligible DFRDB members receive indexed retirement pay for life. The rate of retirement pay is set by a legislative formula and is not affected by market performance. By

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[15] DFRDB Act, s 17—Contributions by members of scheme.
[16] DFRDB Act, s 19—Amount of fortnightly contributions.
[17] That is, the rank held immediately before their retirement—DFRDB Act s 23(1)(b)(ii).
[18] DFRDB Act, s 56—Refund of contributions. In some limited circumstances, members not eligible for retirement pay could instead apply to have their entitlements preserved on discharge.
[19] DFRDB Act, s 23—Entitlement to retirement pay; s 24—Commutation of retirement pay.
[20] *Defence Legislation Amendment Act 1984*.
[21] DFRDB Act, s 24(1AA).
[22] In addition to entitlements under the DFRDB Act, a one-off lump sum 'productivity benefit' is also payable, irrespective of whether the person elects to commute or not, under a ministerial determination made under s 52(1) of the *Defence Act 1903*.

contrast, the rate and duration of a superannuation pension product will be affected by factors such as how much the member contributed, fund performance and prevailing economic conditions (meaning a person may run out of superannuation before the end of their life).

2.15. Further, eligible DFRDB members may elect to commute part of their retirement pay entitlement into a lump sum at the time of their discharge regardless of their age (which could have been as early as age 36), or further employment. By contrast, superannuation members generally cannot access their funds until they have both reached their preservation age (which varies between age 55 and 60[23]) and retired from the workforce.

2.16. As recommended by the Jess Committee, the scheme is 'unfunded'. This means there is no 'fund' held by a trustee. Rather, the government pays for the scheme from its consolidated revenue fund as liabilities fall due. Member contributions also go into consolidated revenue. The money from contributions is therefore not invested on behalf of the member—it is, in effect, no longer the member's money.

2.17. However, no retirement benefits are paid if the member discharges before reaching the eligible effective service period. Instead, an amount equal to their contributions is refunded to them.[24]

2.18. This creates an incentive to remain in the ADF for at least the minimum service period (generally 20 years), because the benefits of retirement pay are considerable relative to a refund of contributions. It also incentivises discharging at or shortly after the 20 year mark by providing access to capital for retiring members, who may have several decades of working life remaining, and need to transition to civilian life and employment.

What is commutation?

2.19. Commutation refers to a member's entitlement to receive a lump sum payment at the point of discharge, in exchange for a permanently reduced retirement pay.

2.20. Commutation was a feature of the DFRB scheme as well as the DFRDB scheme, but arrangements differ in the two schemes. Under the DFRB Act, commutation was only payable in limited circumstances, which required examination of what the member proposed to spend the lump sum on. The DFRB Board had discretion to approve or deny an application to commute a portion of a pension.

2.21. However, under the DFRDB Act, commutation is not restricted by any discretionary approval process and there are no limitations on the proposed use of commutation funds. Rather, commutation is available to each person discharging from the ADF who is eligible for retirement pay under the scheme. During our investigation, however, we heard that the commuted amount was very often used to help a member set themselves up for life, for example by buying a house. Indeed, we saw a recording of a presentation delivered by a DFRDB Authority staff member, in which this was suggested as an appropriate use for the lump sum.

2.22. The DFRDB Act prescribes the requirements for eligibility, the election process, and the effect a commutation election will have on future retirement pay. This means if a member

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[23] See Australian Taxation Office information available at https://www.ato.gov.au/rates/key-superannuation-rates-and-thresholds/?page=11, accessed 19 November 2019.

[24] Some DFRDB members, who left the ADF and were not eligible for retirement pay, may have also been eligible to receive a superannuation guarantee top up, and a gratuity, depending on their length of service and when they left the ADF.

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meets these statutory criteria, their election to commute cannot be refused and must be paid in accordance with the legislation.

2.23. Equally, it means that the administrator has no discretion to decide *not* to reduce retirement pay in the manner required by the DFRDB Act.

2.24. While available as of right to all members who meet the minimum service period, receiving commutation requires an active choice to be made. To receive a commutation lump sum, members needed to fill in a commutation election form[25] and submit it to CSC within 3 months before retirement, or in the 12 months after discharge.

The legal situation

2.25. A DFRDB member's statutory right to commute is found in s 24(1) of the DFRDB Act:

> 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.

2.26. Eligibility to commute is therefore contingent on also meeting the requirements for retirement pay. Section 23 states, relevantly:

> (1) A contributing member is entitled, on the member's retirement, to retirement pay ….. if:
>
> (a) the member retires and is not entitled to invalidity benefit; and
>
> (b) on the member's retirement:
>
> (i) the member's total period of effective service is not less than 20 years; or
>
> (ii) the member's total period of effective service is not less than 15 years and the member has attained the retiring age for the rank held by the member immediately before the member's retirement.

2.27. Thus contributing members who have met the minimum period of effective service (the minimum service period) will generally[26] also have a statutory right to elect to commute.

2.28. The **rate of retirement pay** is a percentage of the person's salary immediately before discharge. Percentages depend on the number of complete years of effective service and are set out in a table in Schedule 1 of the DFRDB Act.[27] For example, a member retiring with 20 complete years of effective service will receive retirement pay at a rate of 35 per cent of their salary at discharge. The rate increases with each additional year of completed service until 40

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[25] Currently form D21 https://www.csc.gov.au/Search/?terms=dfrdb%20commutation%20election%20form.

[26] There are several qualifications to this broad right to commute. Section 23(1)(a) provides that members who are eligible for an invalidity benefit may not commute; ss 24(1A) and (1B) exclude certain former invalidity pay recipients. A person who elected to commute on their initial discharge, who subsequently re-entered the ADF and discharges, is also prohibited from commuting again.

[27] DFRDB Act, s 23(2); Schedule 1—Retirement pay expressed as a percentage of annual rate of pay.

years' service when the retiree will receive retirement pay at a rate of 76.5 per cent of their salary at discharge.[28]

2.29. Subsection 24(1AA) places a **time limit** on the election to commute. A notice to commute must generally be given either in the three months before, or the 12 months after discharge.

2.30. Subsection 24(2) requires the member to **specify the amount** they wish to commute in their election notice (i.e. on the form). The maximum amount a member can commute (including any earlier commutation payments) is equal to their annual retirement pay, multiplied by the maximum commutation factor.[29] When the scheme commenced in 1972, the maximum commutation factor was four times their annual retirement pay. Between 1 July 1983 and 30 June 2002 the maximum amount a member could commute was increased by 0.05 each year, with the result that the amount increased from 4 to 5 times the member's annual retirement pay.[30] So for example, in August 1987, the maximum amount a member could commute was 4.25 times their annual retirement pay.

2.31. Subsections 24(3) and (4) explain the steps to be taken if a commutation election is made:

> (3) Where a person makes an election under this section, then…:
>
> > (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. (*emphasis added*)

2.32. The substance of this wording has not changed since commencement of the scheme in 1972.[31]

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[28] However, there is a penalty rate reduction, for members with 20 years effective service, if they retire at their own request or following disciplinary action, before reaching the notional retiring age for their rank (Schedule 2). The retirement pay reduction is three per cent (3 per cent) for every year that their actual age is below the notional retiring age (s 23(3)-(4)).
[29] DFRDB Act, s 24(2A).
[30] *Defence Legislation Amendment Act 1984* introducing s 24(2B).
[31] This wording has not changed since commencement of the scheme in 1972, except for adding references to s 24(8) and (9) and s 98K—neither of which are directly relevant for present purposes (s 24(8) and 24(9) relate to certain situations where a person has a surcharge debt with the tax office and s 98K relates to certain situations where a person held an acting or temporary rank on retirement).

2.33. Subsection 24(3)(a) means that if a member elects to commute, CSC has no discretion to refuse, and must pay the commutation lump sum. Paragraph 24(3)(b) contains a statutory process for calculating the resulting reduction to retirement pay: the commutation lump sum is divided by the person's 'expectation of life factor' to produce the annual reduction for commutation. The expectation of life factor is worked out according to their age and gender using a table in Schedule 3.[32] For the purposes of this report, we refer to the expectation of life factor as the 'commutation divisor'.

2.34. Importantly, subsection 24(3)(b) specifies that the reduction commences **'on and after the date the election takes effect',** which is the later of the day CSC receives the election notice, or the date of retirement.[33]

2.35. The words 'on and after' are used in legislation[34] to indicate that a legislated outcome is to commence and continue. If the words 'on or after' are used without being qualified by a fixed time frame or end date the legislated outcome will continue forever, unless another legislated outcome displaces it, for example due to:

- another legislative provision (which may be in the same or another act), comes into operation, or
- parliament amending the provision, e.g. to insert a fixed time frame.

2.36. Where it is intended that a legislated outcome will be for a fixed time frame, this will be specifically included by drafters, with phrases such as:

- for a period of six months commencing on and after [date/event]
- on and after [date/event] until such time as the person reaches [age]
- on and after [date/event] until a date to be determined by [decision maker][35]

2.37. In subsection 24(3)(b), the commutation reduction commences 'on and after' the election takes effect. There is nothing in 24(3)(b) which creates a fixed time frame or end date for the reduction. Nor is there any other provision, in the DFRDB Act or any other legislation, which would cease the reduction.

2.38. It was submitted to us that the complexity of the 1973 Bill meant that parliamentarians did not properly understand what they were voting on and that the commutation provision had been interpreted contrary to the intentions of the Jess Report, and the parliament. Some submitters asserted that a permanent reduction is inconsistent with the Jess Report recommendation of a 'proportionate' reduction, and that therefore the Jess Report should take precedence.

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[32] DFRDB Act, Schedule 3—Commutation of retirement pay and Class C invalidity pay—expectation of life factor.
[33] DFRDB Act, s 24(4).
[34] It is used, for example, throughout the *Acts Interpretation Act 1901*.
[35] An example of this can be found in the *Social Security (Administration) Act 1999* (SSAA). The Secretary may decide that a social security pension is not payable in situations where a person fails to comply with a reasonable requirement to attend the department (SSAA, s 64(1)). This in turn results in suspension (SSAA, s 80). However, the Secretary may later reverse the decision about payability 'on and after a date specified by the Secretary' (SSAA, s 64(4)). This means that the pension will again become payable indefinitely, unless a situation arises to trigger another legislated suspension or cancellation outcome (e.g. due to death, gaining employment, or again failing to attend the department).

2.39. Where the meaning of a provision is unclear or ambiguous, or the plain meaning appears inconsistent with the purpose of the DFRDB Act, it may be appropriate to look to extrinsic materials to ascertain the intention of parliament (such as explanatory memoranda and reading speeches).

2.40. However, that is not the case here. Although it may be difficult for a lay person to read subsection 24(3) and understand its meaning, in our view the legal meaning is plain and not capable of any other interpretation. Placing limits on the benefits to be provided is not inconsistent with the purpose of the DFRDB Act, which must necessarily contain some limits on entitlements. What individual parliamentarians understood is not relevant.[36] The DFRDB Act, as passed by parliament, requires a permanent reduction.

2.41. This was also the view of the Administrative Appeals Tribunal (AAT), which considered s 24(3) in the case of *Reynolds and Defence Force Retirement and Death Benefits Authority*.[37] In the case, the AAT found 'neither ambiguity nor obscurity' in the provision:

> [I]t is not reasonable to say that the phrase 'amount payable….on and after the day on which the election takes effect….' has a limitation based on the life expectancy factor used in a calculation to arrive at the amount. In the opinion of the Tribunal such an interpretation is simply untenable and would be counter to the plain words of the provision.[38]

2.42. The Office therefore considers that CSC was correct in its interpretation that s 24(3)(b) results in a permanent reduction to pension following commutation.

Commutation—definition and interpretation issues

2.43. Some submitters also raised concerns that the term 'commutation' is not defined in the DFRDB Act, and that the scheme administrators failed to effectively communicate its meaning to members.

2.44. The Office agrees that failure to effectively communicate the meaning of commutation to people is a matter for concern. This investigation has been focussed on what Defence and CSC information was provided about the meaning of commutation, and its effect on retirement pay.

2.45. However, the fact that the term commutation is not defined in the 'definitions' section of the DFRDB Act is not of itself a concern. This is because not all terms used in legislation need to be specifically defined.

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[36] The High Court observed in *Zheng v Cai* [2009] HCA 52 at [28]: '*It has been said that to attribute an intention to the legislature is to apply something of a fiction. However,* ***what is involved here is not the attribution of a collective mental state to legislators****. That would be a misleading use of metaphor. Rather, judicial findings as to legislative intention are an expression of the constitutional relationship between the arms of government with respect to the making, interpretation and application of laws. …. the preferred construction by the court of the statute in question is reached by the application of rules of interpretation accepted by all arms of government in the system of representative democracy* (emphasis added). This view was reaffirmed in *Lacey v Attorney General* [2011] HCA 10: ***The purpose of a statute is not something which exists outside the statute****. It resides in its text and structure, albeit it may be identified by reference to common law and statutory rules of construction* (emphasis added) at [43-44].
[37] [2001] AATA 599 ('Reynolds').
[38] Reynolds at [15].

2.46. Where terms are not defined in an Act, and some ambiguity arises, courts will look to whether there may be a common law definition, or their ordinary meaning is applied.[39]

2.47. The DFRDB Act's commutation provisions are not ambiguous from a legal point of view, even though its meaning may not be immediately apparent to a lay person. A definition of the word commutation is not required, because the DFRDB Act comprehensively sets out the steps involved in commutation, including eligibility, calculating the commutation and permanently reducing retirement pay using the formula in the statute.

2.48. However, as a matter of good administration, even if a term is not defined in an Act it will often be appropriate for an administrator to provide a plain English definition of legislated concepts for people affected by the legislation. For example, the DFRDB Authority could have provided a plain English definition of commutation which clearly explained the permanence of future retirement pay reductions.

2.49. Given a decision to commute will involve weighing the benefits and risks of taking an early lump sum against a permanent reduction to retirement pay, it was important that members be provided with sufficient information to either make an informed decision or alert them to the need to obtain further information or advice.

[39] Although there is no need for a specific definition of commutation in the DFRDB Act, we note that commutation, as set out in s 24, is not inconsistent with the ordinary or legal definition of the word 'commutation'. Commutation is defined in a number of leading dictionaries, including the Collins English Dictionary, the Oxford English Dictionary and the Butterworths Australian Legal Dictionary, as involving a substitution or exchange of one thing for another. In legal terms, commutation often involves substitution of a greater thing for a lesser one. Thus, for a convict whose sentence of hanging is commuted to a sentence of seven years deportation, commuting a sentence means reducing it. It is therefore consistent with legal and ordinary meanings of commutation, that members who commute may receive less in the lump sum commutation itself than the total amount of retirement pay reductions over their actual lifetime.

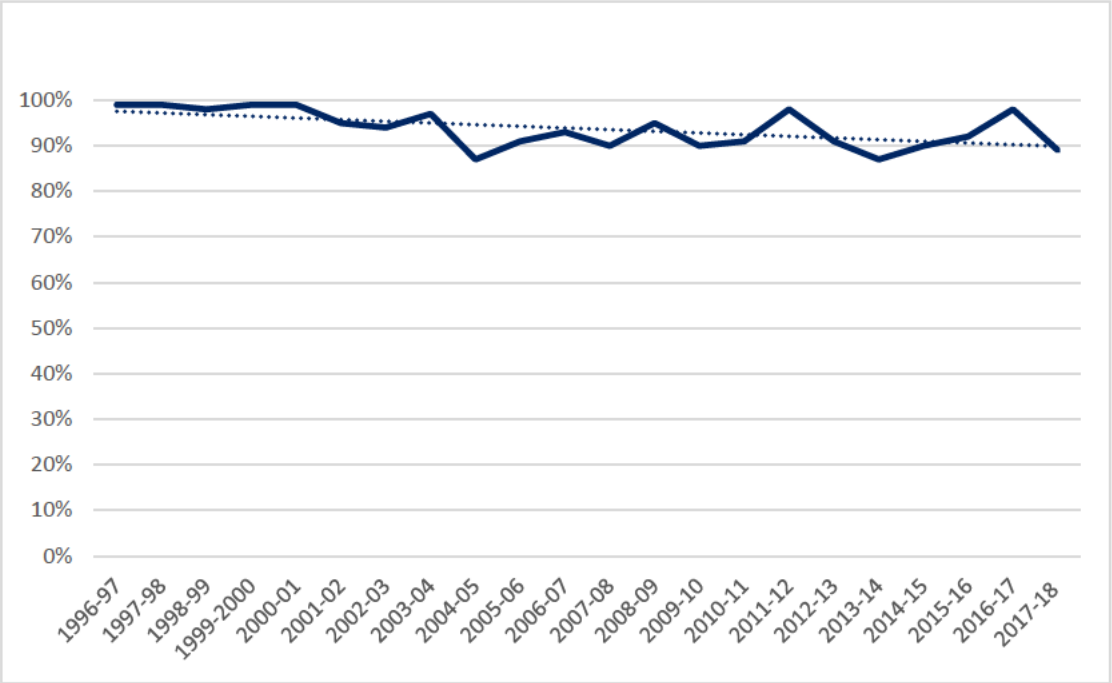
Part 3: Issues arising out of Investigation—Commutation

Commutation data

3.1. At 30 June 2019 the DFRDB had 53,163 members, of whom 39,400 are receiving retirement pay and 12,549 are receiving either a reversionary or invalidity pension.[40] A further 1,214 contributing members are yet to discharge from the ADF.

3.2. The majority of people who were eligible to commute[41] chose to do so. We noticed that the uptake of commutation has dropped slightly in recent years, but still remains high (at or above 85 per cent) as Figure 2 shows.

Figure 2—Commutation as a percentage of eligible retirement exits



3.3. Some stakeholders suggested that the downturn in the number of people electing to commute coincided with the publication of more explicit information about the 'permanency' of the reduction of post commutation retirement pay in CSC documents from 2004.[42] This was pointed to as evidence that people would not have commuted had they always been aware that the reduction was permanent.

3.4. There does appear to have been a decrease in commutation since 2001, particularly in 2004 (although 86 per cent of eligible members still decided to commute). It is worth noting that the AAT decision in Reynolds was also handed down in 2001, making it clear that

[40] A reversionary pension is payable on the death of a retirement pay recipient to an eligible spouse or child.
[41] All retirement, redundancy and Invalidity C benefits where a commutation election was possible.
[42] The first explicit mention of the commutation reduction being permanent was contained in the June 2004 edition of the Retirement Benefits information sheet (discussed at para. 1.95).

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retirement pay cannot revert to the pre commutation rates once life expectancy factor age is achieved.

3.5. It is also important to note that while there is a downward trend, there have also been peaks as well. There may also be other reasons why commutation rates may have been dropping in recent years. Without purporting to be an exhaustive list, reasons could include the following:

- Lower interest rates, particularly since around the year 2000, may have reduced the attractiveness of receiving a lump sum payment on discharge from the ADF, when compared to the maximum indexed pension.

- Other schemes may have affected the rate of uptake including the introduction of the Defence Home Ownership Assistance Scheme[43] on 1 July 2008 which extended access to subsidised home loans to serving members. As more members became eligible to access a subsidised home loan under other schemes, there may have been less need for members to access a commutation lump sum.

- As the scheme has been closed since 1991, members who discharged recently have longer periods of service, are from higher ranks and are receiving higher salaries than members who discharged in the 1970s through to the 1990s. A discharging DFRDB member is now more likely to be closer to conventional retirement age—with less need for a lump sum, and a higher age meaning a lower commutation divisor (and so a greater reduction in retirement pay).

- It is also possible that changes to superannuation and tax legislation may also have had an impact on the uptake, depending on a person's personal circumstances.

What DFRDB scheme members told us

3.6. The office received 3,436 submissions during the course of the investigation, with a relatively even spread across the three Defence services. Concerns raised in the submissions fell broadly into three categories:

- Concern that members had been misled to believe that the reduction to their retirement pay was temporary, and would cease on reaching life expectancy factor age. Members asserted that they had relied on this information, to their detriment.
- Dissatisfaction with the DFRDB Act provisions which make the reduction permanent. These submitters argued government should take steps to ensure the scheme operates as it had been represented to them (i.e. amend the DFRDB Act so that reduction ceases on reaching life expectancy factor age).
- Assertions that the reduction amount is increasing each year following indexation.

3.7. Some submitters felt that CSC, in applying a permanent reduction, had misinterpreted the commutation provisions in the DFRDB Act. We also heard concerns about the absence of a definition of commutation in the DFRDB Act, and concerns about CSC's interpretation of the commutation provision.

[43] *Defence Home Ownership Assistance Scheme Act 2008.*

3.8. However, most submitters were primarily concerned with what they perceived to be inaccurate information from Defence and CSC's predecessors about the permanent effect commutation would have on their retirement pay.

Submission data

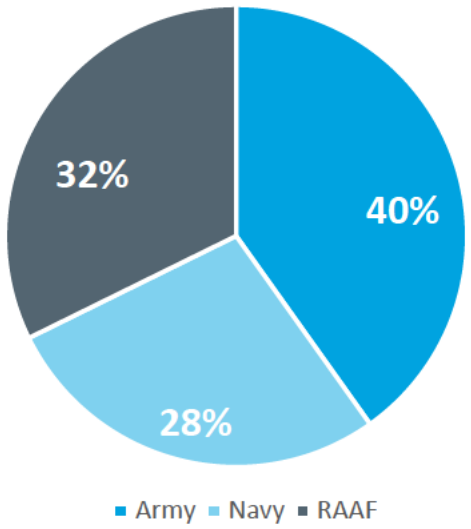
3.9. The 3,436 submissions consisted of 2,694 substantive tailored submissions and 739 standard form statutory declarations.

3.10. Of the substantive submissions, 97 per cent of submitters told us they had elected to commute. Less than 2 per cent told us they decided not to commute.[44]

3.11. The statutory declarations were not prepared specifically for this investigation. However we treated them as if they were submissions and have extracted from them information relevant to the investigation.

3.12. There was an even spread of submissions from across the three Defence services, of those submitters who identified their service[45] (see Figure 3). The reported experiences were also broadly consistent across the three Defence services.

Figure 3—Submissions by service

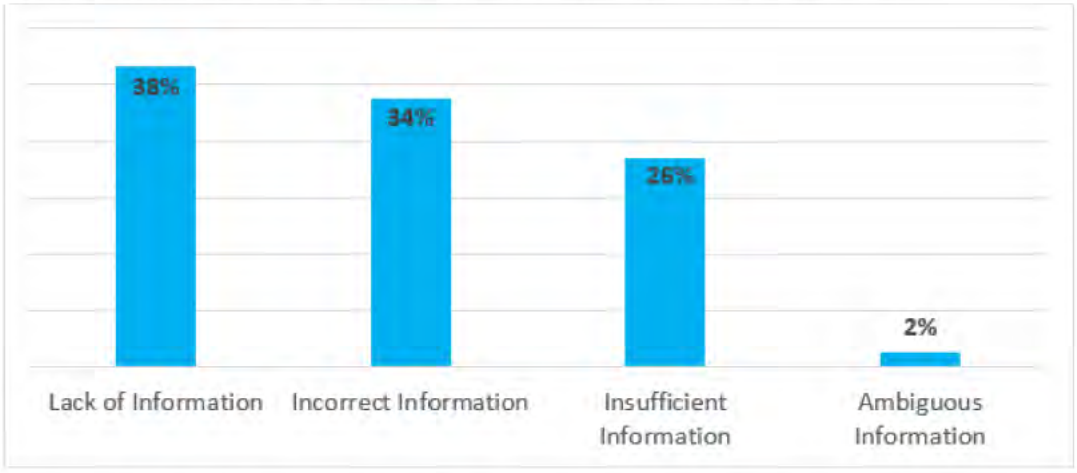


3.13. Eighty nine percent of submitters identified an issue with the information they were provided, or were not provided, about commutation. Of these, 60 per cent said they received insufficient information or incorrect information. Only a small proportion, about 2 per cent, identified ambiguity or inaccessibility being their primary issue. The statutory declarations (26

[44] The remaining submissions did not indicate whether they had commuted or not.
[45] Twenty three per cent of total submissions were statutory declarations which did not clearly identify a service.

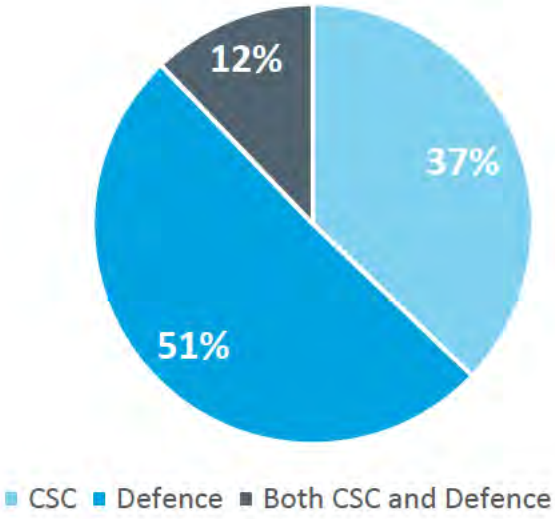
per cent) indicated that the information provided by the DFRDB Authority was insufficient (see Figure 4).

Figure 4—Primary commutation issue (where primary issue was specified)



3.14. Of those who told us where the information came from, 51 per cent said Defence, 37 per cent said CSC (or the DFRDB Authority, as it was at the time) and 12 per cent said both (see Figure 5):

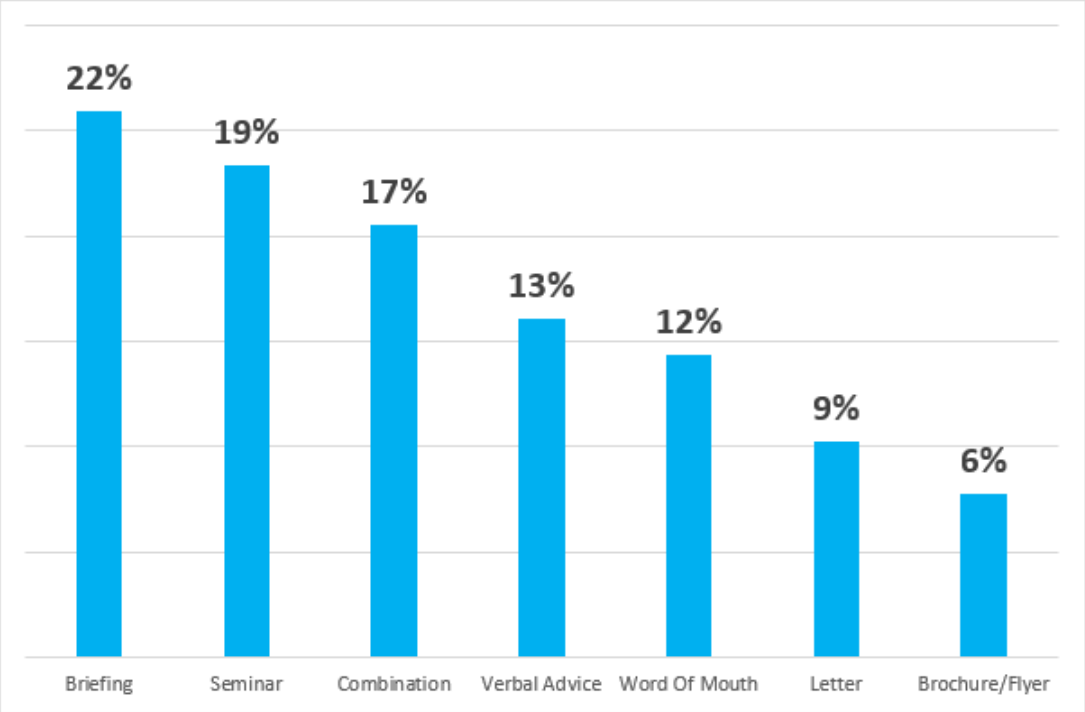
Figure 5—Commutation information source



3.15. Seventy one per cent of people who identified their information source said it came from a briefing, seminar, verbal advice or a combination of sources. Mediums such as letters, brochures and handbooks were identified, but as less common sources of information (see Figure 6).

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Figure 6—Common information mediums[46]

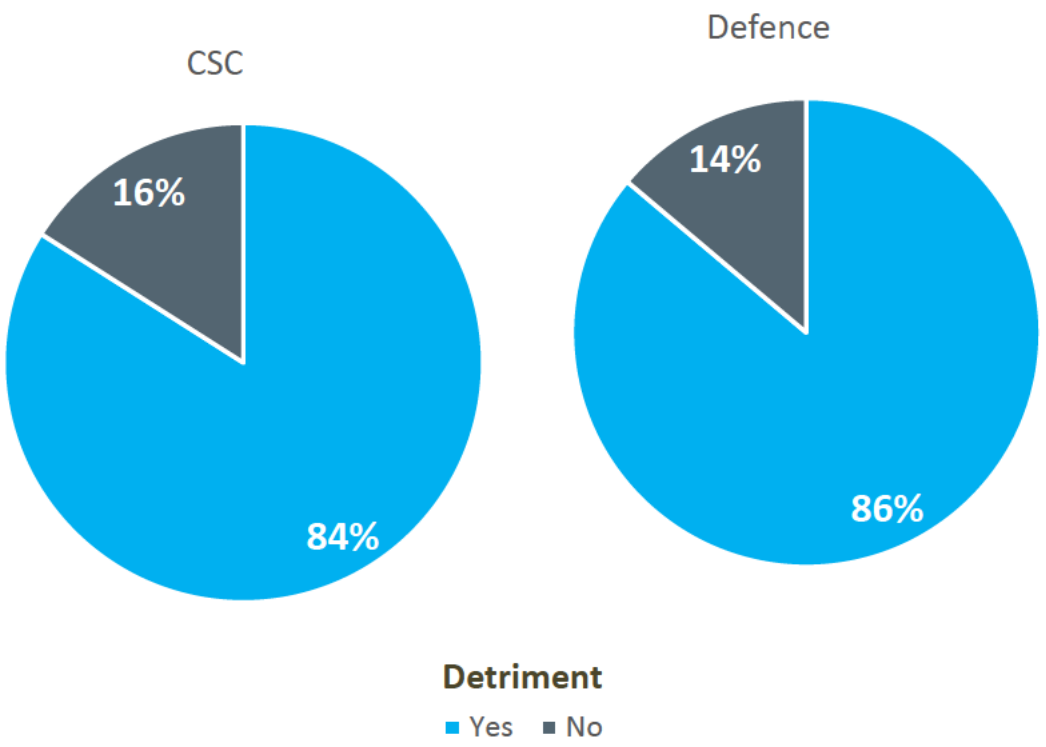


3.16. Overall 81 per cent of submitters provided information that either clearly stated, or from which we could imply, they considered themselves financially worse off than they expected they would be on reaching life expectancy factor age.[47] However, almost all of the reported financial 'detriment' related to the higher amount members felt they should have been paid after reaching life expectancy factor age. A small number of people (less than 10 total) also considered they had experienced non-financial 'detriment' (for example, exacerbation of existing depression).

3.17. Eighty six percent of people who identified Defence as their information source reported experiencing financial 'detriment', a slightly higher percentage than where the source of information was CSC or the DFRDB Authority (84 per cent, see Figure 7).

[46] The chart represents 98 per cent of information sources identified. The remaining 2 per cent included various other sources.
[47] The submission form asked 'Do you believe that reliance on this information caused you detriment? If yes please provide a very brief description'. Our investigation team assessed from the description what type of detriment we understood them to mean.

Figure 7—Submitters who identified their information source, by whether they experienced detriment



3.18. Forty six per cent of submitters could not recall when they received the information about commutation. Of those who could, 81 per cent told us it was within 12 months of their retirement date. However, for some submitters there was a large gap in the period between when they received information about commutation and their date of retirement of more than 12 months or in some cases, more than 10 years.

3.19. Only a small proportion of submitters (around 12 percent) had obtained independent financial advice before deciding to commute. Based on our conversations with individual submitters, it appears likely that some who said they received financial advice may have been referring to conversations with private sector financial representatives who attended seminars, about investment strategies for the lump sum.

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What agencies told us

3.20. CSC asserted that comprehensive material about commutation was issued over the years, including circulars, letters and publications. CSC provided a large quantity of historical documents of this kind.

3.21. CSC considers that there was consistency and uniformity in the message conveyed by the previous administrators of the DFRB and DFRDB schemes. It said that for each scheme, the message was that a person who commuted their pension to a lump sum would not have their pension restored if they outlived their life expectancy factor age.

3.22. CSC asserted that this was made explicitly clear in scheme literature, benefit application form instructions and in material provided by the DFRDB Authority to Defence. It asserted it had been explicit in its communication from commencement of the scheme, with the use of wording that said the commuted portion 'cannot be restored' and that retirement pay will reduce 'on and after' or 'from' the time the election is received, or will reduce 'thereafter'.

3.23. In reference to the RAAF Personnel Handbook which was the subject of recent media attention, CSC said that it had been unaware of the contents of this handbook prior to the media attention and it held no records that indicated that the DFRDB Authority was aware of this publication either.

3.24. Defence provided a large quantity of historical information, including publications, explanatory memoranda and reports, Ministerial responses and Pay and Administration Branch documents.

3.25. Defence advised it is possible that Army members were required to provide information to transitioning members, but what that information was can no longer be ascertained. Navy found no material indicating that staff were required to brief on the DFRDB in the course of their duties.

3.26. Defence advised the Air Force's Directorate of Personal Services 'had responsibility for DFRDB matters, including consultation on legislative changes, representation as part of the DFRDB Authority and drafting/clearing general information news articles …. (notably, with disclaimers to consult the DFRDB Authority for official advice)'. Defence also noted that, at that time, there would have been no restriction on the Directorate proffering advice in response to DFRDB issues raised with them directly.

What we found

Current communication

3.27. The current 'Retirement Benefits' factsheet published by CSC clearly and explicitly advises members that a commuted pension does not revert to the pre-commutation rate on reaching life expectancy factor age. It reads:

> There are some other things you should know about commutation. One of them is that once the conversion has been made the portion you commute cannot be restored **regardless of you exceeding your life expectancy** (see Table 2 on the next

> page). Also, your retirement pay will be reduced from the date your commutation takes effect (*emphasis added.* [48]

3.28. The earliest occurrence of this explicit messaging is in the **June 2004** edition of the Retirement Benefits factsheet, which stated:

> commutation gives you the option of converting part of your retirement pay to a lump sum ... once the conversion has been made the portion you commute cannot be restored **regardless of you exceeding your life expectancy** (*emphasis added*).[49]

3.29. Similarly, the current 'DFRDB Book' entitled 'About Your Scheme'[50] explains that the reduction is permanent. It highlights this information by applying visual markers and bold green font to signify the importance of this information:

> Note: Commutation of a benefit results in a **permanent reduction** in your retirement benefit based on your life expectancy, see factors at Table 3 on page 15. Your retirement benefit will not be set to the pre-commutation rate, even if you attain or exceed your life expectancy (*original emphasis*).

3.30. The earliest occurrence of this precise 'permanent reduction' wording appears to be in the 2007 edition of the DFRDB Book.

3.31. The addition of the words 'regardless of you exceeding your life expectancy' and 'permanent reduction' significantly improved CSC's communication about this issue to DFRDB members. In our view, this wording serves to remove any reasonable misunderstanding about the permanence of the commutation reduction. The only reasonable conclusion a reader can draw, *even if they received incorrect information from another source*, is that the reduction will be permanent and continue regardless of the age they achieve.

3.32. Both the Factsheet and the DFRDB Book are readily available on the CSC website and can be conveniently found.

3.33. We saw examples of submitters receiving current CSC information who said they understand the reduction is permanent.[51]

Mr A is a current serving member of the Royal Australian Navy (RAN). He intends to discharge in the near future and plans to commute a portion of his retirement benefit into a lump upon retirement.

Mr A has obtained information from the CSC website, CSC DFRDB fact sheets and has attended a Transition Seminar. Mr A has also met with a CSC representative. From the information provided about his DFRDB entitlements, Mr A understands that he can commute a portion of his retirement benefit as a lump sum and his retirement pay will be permanently reduced.[52]

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[48] Factsheet DB04 06/14 at https://www.csc.gov.au/Members/Advice-and-resources/Factsheets-and-publications/?dfrdb, accessed 20 August 2019.
[49] CSC response document p. 175.
[50] At https://www.csc.gov.au/Members/Advice-and-resources/Factsheets-and-publications/?dfrdb, accessed 20 August 2019.
[51] These submitters made submissions on the basis they consider the scheme design is unfair (i.e. that while acknowledging the reduction *is* permanent, they don't believe it *should be*).
[52] Submission 676.

3.34. CSC provided copies of current letters sent immediately prior to and after commutation. While correct, these letters do not use the improved language contained in brochures and the DFRDB Book to warn about the permanency of the commutation reduction to retirement pay, although the letter sent prior to commutation does refer the reader to scheme literature. CSC also sends copies of the factsheet/brochure to members on request.

3.35. Similarly, the current form for members to elect to commute[53] does not use the improved language used in brochures and the DFRDB book to warn that there will be a 'permanent' reduction in retirement pay if a person elects to commute. Like the letters, the form also recommends readers read the DFRDB book, with text on the first page under the headings 'Important information about this form' and 'Before you use this form'.

3.36. Defence advised that the ADF does not provide specific commutation information to DFRDB members but refers people to CSC for information and advice. Defence records show that CSC continues to present at Defence Community Organisation transition seminars. ADF transition coaches draw attention to transition resources but do not give advice.

Historical Defence communication

3.37. As part of this investigation we looked closely at what historical information was provided to staff and members about the consequences of commutation, and whether this information was accurate and adequate in the circumstances.

3.38. There are numerous examples of incorrect written and verbal information being disseminated within Defence from commencement of the scheme in 1973 onwards. This information helped create and reinforce a relatively widespread misunderstanding among DFRDB members that the retirement pay reduction due to commutation would cease on reaching life expectancy factor age.

3.39. For example, the Navy News incorrectly described commutation as a 'loan' to be 'repaid':

> Many people separate from the Service just for the commutation. When family expenses are high, the prospect of a considerable amount of money can be enticing, but commutation is not designed to help you meet your expenses. Its purpose is to provide **an interest-free loan** to help you settle into a new career when your relatively short career in the service is over (*emphasis added*).[54]

3.40. A number of ADF handbooks also incorrectly described commutation as a loan to be repaid over a person's life expectancy. For example, the RAAF Personnel Information Handbook read:

> When you receive retired pay (ie, pension) you will have the right to 'commute'. This means that you are able to **borrow** an amount equal to several times your retired pay at the time of your discharge and **repay that amount over your life expectancy** (*emphasis added*).[55]

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[53] Form D20, at https://www.csc.gov.au/Members/Advice-and-resources/Forms/, accessed 20 August 2019.
[54] Navy News, 8 October 1982, p. 17.
[55] RAAF Personnel Information Handbook, February 1993, p. 92. This wording remained substantially the same in all versions of the RAAF handbook we received, up to and including the 6th edition (1993).

3.41. In April 2008, Comsuper wrote to one submitter (who had drawn its attention to the incorrect statement in the RAAF Personnel Information Handbook) to advise that it had contacted Defence and been assured this information had now been removed.

3.42. Similar wording appears in the Royal Australian Navy Pre-Discharge Handbook (June 1988), supplied by a submitter:

> If you commute, your annual pension will be reduced accordingly so that the commuted amount is **'repaid' over your remaining life expectancy** (*emphasis added*).

3.43. Other Defence publications we have seen either did not mention the commutation reduction at all, or where they did, did not address the issue of the permanence or otherwise of the reduction to retirement pay.

3.44. However, we did find examples where Defence had clarified this point. For example, in an 'Official Reply' from the Acting Assistant Secretary, Defence Industrial, Mr Peter Skinner, published in the Army News in December 1988:

> Commutation is a lump sum advanced to a retiree and 'repaid' through a reduced pension. The number of years over which these payments are made is calculated by referring to the DFRDB Act……Should the member die at this average age the equation would be considered square. However few retirees actually die at this age, causing most to either fall short of, or extend beyond this theoretical commitment. The reason no attempt is made to adjust for this is that the present result is considered fair for the great majority of members. Thus if a serviceman dies shortly after retirement, his widow is not asked to repay the balance of her husband's commutation. By the same philosophy, **retirees fortunate to live beyond expectancy are not granted an increased pension from that point onward'** (*emphasis added*).

3.45. We also interviewed a number of former ADF members whose role had involved providing information about the DFRDB scheme during the discharge process. These former ADF members said they had provided incorrect information to thousands of discharging DFRDB members.

Mr B worked in a discharge unit explaining entitlements and assisting with resettlement. Other than the DFRDB brochure and on the job training from his predecessor, he received no training or guidance on the scheme. Mr B said that, in accordance with what his predecessor trained him to say, he told members commutation was an advance on their pension and once paid back, the member would go back onto a full pension. He explained that he in turn trained the person who replaced him to do the same.

Mr B said he spoke about the DFRDB at a resettlement seminar again explaining that the pension would go back up once the commutation was paid off. Mr B said he was responsible for 17 staff, all of whom were providing the same incorrect information.

Mr B estimated this incorrect information would have been provided to around 1500 people who went through his discharge unit during his employment there in two separate periods totalling four years in the 1970s and 80s.[56]

[56] Submission 1354.

3.46. A number of the former ADF members we spoke to provided similar accounts:

> Mr C worked in the financial area of the RAAF for 20 years. He spoke at retirement seminars and says he was involved in the discharge of thousands of members. He says he told people they would pay their commutation back until they reached life expectancy, then the pension would go back to the normal full rate because they had paid the commutation back.
>
> Mr C was in the service when the DFRB transitioned to DFRDB. He said he remembered that the DFRB literature had provided a warning, but he recalled that the DFRDB brochure did not say the reduction continued after life expectancy.
>
> He said he and other advisers received no training on the DFRDB, but if he had a question he would ring the DFRDB Authority. He said he thought the scheme was simple. He thought it made sense that the pension would revert to the full amount on reaching life expectancy, because this is what happens when a person actually dies (the members dependents receive a portion of the full pension, as if the member had never commuted).[57]

3.47. Other submitters expressed a similar view to Mr C. The fact the pension reverts to the pre-commutation amount for calculating *spouse benefits* when a member dies[58] led them to assume this reversion also occurred on reaching life expectancy factor age.

3.48. Defence said it also spoke with former ADF members who had worked as former administrative clerks responsible for discharge. They said their role had included providing information on DFRDB and how to fill in forms, answering questions and who to contact. They also conceded there was no formal training and information passed from more experienced, longer serving clerks.

3.49. Former ADF members we spoke to who told us they developed documents and presentations about the DFRDB scheme described clearance processes which involved superior officers checking their speaking notes for seminars, but none could recollect information being sent to DFRDB Authority prior to publication or presentation.

3.50. One former DFRDB Authority staff member we interviewed recalled that the three Defence services had a representative on the DFRDB Authority Board, who could act as a conduit for information between the agencies, but was unable to recollect specific examples of Defence information being reviewed by the DFRDB Authority.

3.51. While there was incorrect information provided by some handbooks we saw and by ADF members we interviewed, the handbooks also encouraged people to contact DFRDB Authority, as did some of the former ADF members we spoke with.

3.52. The Office also received video footage of two Defence retirement seminars.[59] The videos record the information provided by DFRDB Authority staff invited to speak at the seminars. Both speakers give correct information that retirement pay will not go back up on reaching life expectancy factor age. In the first video, the issue is not addressed in detail until an audience member specifically asks a question about it. In the second, while the speaker is

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[57] Submission 2525.
[58] Eligible dependents are entitled to five eighths (62.5 per cent) of the DFRDB member's pension, calculated using the pension rate that would have applied had the member not commuted.
[59] While not precisely dated, information in the videos indicate that they were likely recorded in 1984 and 1989 respectively.

explaining a worked example, he initially states that the repayment is over the life expectancy period, but later corrects this statement.

3.53. Based on interviews with submitters, it appears that some people misunderstood the information provided at resettlement seminars, and spread the misunderstanding to colleagues during conversations with their peers when they returned to their units.

Historical DFRDB Authority Communication

Operational guidelines

3.54. In addition to the video footage described above, we examined contemporaneous copies of CSC brochures, forms, and letters from 1973 to present, examples of which were provided by CSC and individual submitters. We also had regard to how commutation had been explained in the predecessor DFRB scheme literature.

3.55. The DFRB book included a warning about the effects of commutation on a pension under that scheme:

> 251. Every pensioner should think carefully before relinquishing portion (*sic*) of his continuing pension entitlement to obtain an immediate lump sum payment. Factors such as the following are significant:
>
> > Once commutation is approved, the **relevant portion of the pension** is cancelled and **cannot be restored subsequently** (*emphasis added*).[60]

3.56. At the commencement of the scheme in 1973, the DFRDB Authority issued a circular to all Defence service agencies,[61] explaining how the scheme would operate. This circular clearly explained the permanence of the commutation reduction:

> Although a life expectancy factor is used, **full retirement pay is not restored should the member live beyond normal life expectancy**. By the same token, should the member die before attaining the expected age, no attempt is made to recover the amount of the lump sum outstanding from the dependents or the estate (*emphasis added*).[62]

3.57. In our view, the inclusion of this paragraph when explaining the new scheme in 1973 demonstrates an awareness by the DFRDB Authority that what happens after reaching life expectancy factor age might be an issue on which people would seek clarification, or not otherwise immediately understand to be the case.

3.58. We were not provided with any other internal DFRDB guidelines, other than the first issue of the DFRDB Manual compiled by the Australian Government Retirement Benefits Office in 1983. This manual stated:

> A member who commutes has his or her pension reduced. **The reduced pension cannot be restored during the member's lifetime.** The reduction is calculated

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[60] Defence Forces Retirement Benefits Board, July 1970, DFRB Booklet, para. 251, p. 94.
[61] Prior to their amalgamation into the Department of Defence on 30 November 1973, the Department of the Navy, Department of the Army and Department of Air Force were responsible for the administration and finances of the Royal Australian Navy, the Australian Army and the Royal Australian Air Force respectively.
[62] DFRDB Authority, August 1973, Defence Force Retirement and Death Benefits Scheme Circular, issued to all service departments, p. 17.

> according to life expectancy. Effectively, the member notionally repays the commutation lump sum by recovery from pension (*emphasis added*).[63]

3.59. Due to the passage of time, there were no other internal (staff only) DFRDB Authority or Defence procedural guidelines that could be provided to the investigation.

3.60. Based on our interviews with former ADF members and DFRDB Authority staff there does not appear to have been sufficient training or instruction (if any) that staff in either organisation should proactively and specifically explain to members that full retirement pay is not restored should the member live beyond their life expectancy factor age. Despite what appears to be an absence of guidance to proactively provide such advice, we are satisfied that DFRDB Authority staff were aware of how the legislation works, and would provide correct information if a specific question about duration of the reduction came up.

Brochures

3.61. At commencement of the scheme, DFRDB Authority produced a brochure on transfer arrangements which explained:

> the annual rate of retirement pay is reduced by an amount which is calculated by dividing the lump sum amount received, by the retired members life expectancy.[64]

3.62. In 1975, another brochure described commutation as the option:

> to receive a lump sum **prepayment** of a portion of future payments and a **reduced benefit thereafter** (*emphasis added*).[65]

3.63. Like the DFRDB Act itself, these brochures say that retirement pay is reduced, and do not indicate any end date to the reduction. In 1975, the use of the word 'thereafter' also indicates that the reduction is continuing. It also refers to commutation as a 'prepayment' of a portion of future payments. However, neither brochure explicitly states that the reduction will continue after reaching life expectancy factor age.

3.64. Similar wording was used in brochures until the early 2000s. The Retirement Benefits leaflet continued to describe the election as an option to receive a 'lump sum prepayment' and that 'your reduced retirement pay following commutation is determined in accordance with your life expectancy on the date the election is received'.[66] From July 1995 the Retirement Benefits leaflet also stated 'the portion you commute cannot be restored'.

Forms

3.65. The original 1973 form required members to sign an acknowledgement:

> I realise that under the provisions of Section 24 future retirement pay payments will be reduce as a consequence of this election **on and from** the date the election is received by the Authority (*emphasis added*).

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[63] Australian Government Retirement Benefits Office, 1983, DFRDB Manual, para. 6.3.
[64] DFRDB Authority Brochure, October 1972, Transfer to the new scheme of existing contributors as at 1 October 1972, p. 2.
[65] DFRDB Authority Brochure, June 1975, Preservation of Rights, p. 12.
[66] For example letters we received dated December 1981, January 1985, 1987, September 1989.

3.66. The form also contained the relevant extract from s 24 explaining calculation of the reduction 'on and after the day on which the election takes effect'.

3.67. The acknowledgement and extract of s 24 were removed from the forms in 1978. However, from 1978 the form was accompanied by 'Explanatory Notes' which explained that the member should obtain a brochure on retirement benefits from their unit or the DFRDB authority and stated:

> Commutation is a conversion of a portion of future retirement pay payments to a one time lump sum. Once the conversion is made the portion commuted **cannot be restored during the member's lifetime** (*emphasis added*).

3.68. As discussed in the analysis section below, members told us that they understood that 'cannot be restored' meant that the election to commute could not be reversed.

3.69. Forms were often accompanied by a printout of the commutation calculation and future rate of retirement pay.

Letters

3.70. There are two categories of letters to members that were examined during this investigation. The first is letters that were sent to a person who contacted the DFRDB Authority prior to discharge, and the second is the letter sent to members after discharge and the election to commute had been made.

3.71. The DFRDB Authority provided a service where members could contact the DFRDB Authority to ask for detailed information about their retirement benefits. This could be done by telephone, in writing, or in person.

3.72. The DFRDB Authority would provide information about entitlements, including a letter setting out calculations which explained how much a person would receive if they decided to commute and the amount of retirement pay they would receive.

3.73. These letters used phrases such as:

> Retirement pay is reduced with effect from [date]….
>
> Retirement pay thereafter would be at the rate of [$amount] per annum
>
> Reduced retirement pay following commutation - [$amount]

3.74. Letters sent to a person following discharge were similar, using phrases such as:

> Your election to commute became effective on [date] and accordingly your retirement pay entitlement is reduced from that date to [$amount] per annum.

Analysis

3.75. Although the passage of time means many corroborative historical records are no longer available, we are satisfied that the former ADF members and DFRDB Authority staff we interviewed were credible and the information they provided to us was reliable.

3.76. We are satisfied that some information about the long term impact of commutation on retirement pay provided by some Defence publications and former Defence personnel (in

administrative roles) was incorrect. While the scale of dissemination of incorrect information cannot be known, it is likely that the count of members who received incorrect information numbers in the thousands.

3.77. The DFRDB Authority brochures, forms and letters did not explicitly state that the reduction would be permanent, nor did they suggest that the reader obtain independent financial advice prior to making their election to commute. They mirrored the 'on and after' language in the legislation, explaining only that there would be a reduction in retirement pay after commutation. It appears a similar approach was taken in the verbal advice that was provided by the DFRDB Authority.

3.78. This meant the member had to impute meaning from what was **not** said.

3.79. To receive the correct message, members had to understand that the absence of language limiting the period for reduction meant the reduction was permanent. This is possible where the member is experienced in reading technical or legal language, but is harder for members whose skills lay elsewhere, and harder still if they have already received incorrect information which has influenced their views.

3.80. We were told by some submitters we spoke to that the absence of an end date did not alert them to the fact that the pension reduction was permanent. We understand this was because they either assumed, or had been led to believe, that the year they reached life expectancy factor age was their 'end date'. In effect, they understood 'thereafter' meant during what they thought was the 'repayment period'. Others told us it simply did not occur to them to think beyond life expectancy—perhaps not surprising given retirees were as young as 36 so life expectancy factor age could be many decades into the future.

3.81. This understanding of the word 'thereafter' appears to have been shared by the authors of the RAAF Handbook which, after describing commutation as being an amount you borrow and repay over your normal life expectancy, says that 'this is achieved by paying you a lump sum, and a reduced amount of retired pay **thereafter**' (emphasis added).

3.82. The absence of explicit information was compounded by the use of words capable of misinterpretation. It appears likely some members may have misunderstood the use of the word 'prepayment' to mean a fixed amount in the nature of an advance or loan to be repaid.

3.83. Use of the word 'prepayment' without a fuller explanation was also, with retrospect, unfortunate. Commutation is not a simple prepayment similar to a loan or advance. It is an exchange of one type of entitlement for another.

3.84. We interviewed 20 people who had attached copies of letters to their submissions. Only three of the people we spoke to understood the letter to be saying that the reduction was permanent, and of these:

- two had already known the reduction was permanent when they read the letter
- the other was the only one of the 20 who had no prior understanding (they had not previously heard or thought about the effect of commutation) when they read the letter.

3.85. The remaining 17 said they did not understand from the letter that the reduction would be permanent, as the example of Mr D shows:

> Mr D served in the Royal Australian Navy (RAN) and discharged in 1983 where he chose to commute a portion of his retirement benefit. Prior to commuting Mr D received a letter in 1982 from the DFRDB Authority which detailed his entitlements and retirement pay.
>
> Mr D stated there was nothing contained in the letter that made him think his retirement pay wouldn't go back up eventually. The use of the words 'reduced with effect from that date' and similar in the letter, did not cause him concern, as he did not interpret them as meaning a permanent reduction.
>
> Mr D stated that the use of life expectancy tables made him not worry about the length of the reduction. He said "by using life expectancy figures in the calculation, it gave me the impression it would go back to normal." Prior to receiving the letter, Mr D already held an understanding that his pension would revert at some stage. As far as he was concerned the letter appeared straight forward and answered all the questions he had at the time. [67]

3.86. Members we spoke to also indicated that they misunderstood the warning that 'the portion you commute cannot be restored'[68] as meaning only that they could not reverse their decision to commute. They said they did not realise that it meant the pension would not be restored on reaching life expectancy factor age.

> Mr E interpreted the phrase "once the conversion is made the portion commuted cannot be restored" as, once you sign up to it, that sets the agreement in stone and changes to the agreement won't be accepted. [69]

3.87. In our view, at least for some members, these interpretations were influenced or reinforced by the misunderstanding they already had following incorrect information from Defence publications, staff involved in discharge, and their peers (including members returning from resettlement seminars).

3.88. However we also saw examples of relatively financially astute members (who did not have a misunderstanding of the nature of commutation when they received information about entitlements) yet still misinterpreted the DFRDB Authority information. This is illustrated in the example of Mr F:

> Mr F was a commissioned officer in the RAAF who discharged and commuted his retirement pay in 2002. Mr F already owned his home outright at the time he discharged and says he was therefore ambivalent about whether he should commute or not, having no immediate need for a lump sum and was primarily concerned at the time with maximising future retirement income.
>
> He attended a retirement seminar. He heard from a DFRDB speaker and spoke with the financial advisor present. Mr F says that he listened to the explanations about the scheme and read the brochure materials carefully. He said the DFRDB presenter did not specifically state that the pension would go back up on reaching life expectancy factor age, however this is how

[67] Submission 2459.
[68] As it happens, since 1988 the decision to commute *can* be reversed in some circumstances. The DFRDB Act, s128A, states that a person can apply to CSC to cancel the election within three months after making the election (or such further period as CSC may allow in special circumstances).
[69] Submission 858.

he had understood commutation, putting together the information he had received about it being like a loan and the fact it was worked out using life expectancy tables.

At the time, he put his commutation into his superannuation fund. He currently directs all of his remaining retirement pay into superannuation. He thinks, with hindsight, he may have decided instead to 'trickle invest' the full pension, rather than taking and investing a commutation lump sum. He is unsure whether he has suffered an overall financial benefit or detriment.[70]

3.89. Having considered the documentation and personal statements from individuals, we are satisfied that Defence at times provided incorrect information to members.

3.90. We are satisfied the information provided by DFRDB Authority was correct. However, prior to 2004, when the words 'regardless of you exceeding your life expectancy' were added, followed by the addition of the word 'permanent' in 2007, the stand alone statement that the pension 'cannot be restored' was, as illustrated above, often misunderstood.

3.91. It also appears likely this information was rarely given in verbal DFRDB presentations and discussion, as the question was not often asked by members and DFRDB staff had not been directed to include explicit explanations on this issue.

[70] Submission 1756.

Did this amount to defective or deficient administration?

3.92. The Commonwealth government process for compensating loss caused by poor government administration is the *Scheme for Compensation for Detriment caused by Defective Administration* (CDDA).

3.93. The purpose of the scheme is to provide a mechanism for government to compensate people who have experienced detriment as a result of defective or deficient administration.

3.94. The principles underpinning the CDDA are a useful guide for our analysis in this case. This is because CDDA focuses on whether there is a moral obligation to pay compensation in situations where legal compensation is not payable.

3.95. The CDDA scheme cannot compensate financial disappointment or unmet expectations.[71] Nor can it be used to make payments that would effectively override a legislated cap on a statutory entitlement.[72] As a matter of principle, this means compensation cannot be used to pay members the pre-commutation rate of retirement pay after reaching life expectancy factor age, because to do so would involve paying members more retirement pay to which they are entitled under the legislation.

3.96. However, if a person suffered a financial or economic loss as a result of defective administration, the CDDA scheme principles would suggest that compensation may be appropriate.

3.97. In considering whether, as a matter of principle, compensation ought to be paid, the first question to answer is whether there was any defective administration.

3.98. Giving advice to a person that was, in all circumstances, incorrect or ambiguous may amount to defective or deficient administration.[73]

3.99. Administration can also be defective if there is an unreasonable failure to give a person proper advice that was within an agency's power and knowledge to give.[74]

Defence

3.100. While Defence was not directly responsible for administration of the DFRDB scheme, there can be no doubt that people understood Defence personnel, particularly those involved in the discharge process or from the Directorate of Service Conditions, to be speaking authoritatively and providing definitive advice. This is illustrated by submission comments such as the following:

> The explanation at the seminar was that we could 'borrow' this money as a commutation and then pay it back over a protracted period of time and then revert back to our normal pension after the commutation had been repaid……..The information offered was insufficient for me to realise that I was about to enter into

[71] Department of Finance, November 2018, Scheme for Compensation for Detriment caused by Defective Administration Resource Management Guide No 409 ('CDDA Guideline 409'), para. 57.
[72] CDDA Guideline 409, para. 24.
[73] CDDA Guideline 409, para. 17.
[74] As above.

> a never-ending debt. It was not 'sold' by professional 'spin doctors' but by a uniformed officer in whom I had complete confidence and trust.[75]

3.101. Defence personnel provided information to DFRDB members about the longer term impacts of commutation on retirement pay. Some of this information was incomplete or misleading, enabling people to reasonably draw the wrong conclusion. Some information provided was simply wrong, including information that retirement pay would be restored to the pre commutation amount on reaching life expectancy factor age.

3.102. We were not provided with internal guidelines given to DFRDB Authority staff or Defence personnel working in discharge or other relevant areas. While this may be because they have been lost due to the passage of time, our discussions with former staff working in these areas suggest it may be because such written policy guidance never existed. Whatever the reason, we have seen examples of Defence handbooks with information that is plainly misleading.

3.103. Further, although we have not seen any written documents from Defence that used the phrase to the effect of 'your pension will be restored', we have spoken with former discharge workers who confirm they did provide this exact advice, understanding it to be true. We can say that the incorrect information provided was not an isolated incident, or only attributable to one or two individuals.

3.104. It appears the *absence* of clear policies, good records and adequate process enabled incorrect information to be provided. The Defence personnel whose job it was to provide information to DFRDB members were not given adequate information or training which would have ensured that only accurate information was provided.

3.105. Information provided by the DFRDB Authority in a Circular to Defence at the commencement of the scheme in 1973 explicitly addressed this issue, stating:

> Although a life expectancy factor is used, full retirement pay is not restored should the member live beyond normal life expectancy.

3.106. Appropriate policies and guidance should have been in place within Defence to ensure only accurate information was provided, particularly when the correct information had been provided to Defence by the DFRDB Authority at the commencement of the scheme.

3.107. Defence is to be commended for its decision to host retirement seminars and provide discharge services to ensure that its personnel were well informed of their rights and entitlements on discharge. However, in doing so, it was incumbent upon Defence, both the ADF and the department, to ensure accuracy in the information provided.

3.108. Defence's practices were not sufficiently rigorous to ensure this accuracy. We find that Defence was responsible for allowing the incorrect information to be provided. We are satisfied that the deficient practices that allowed this to occur amount to defective administration by Defence.

CSC/DFRDB Authority

3.109. In contrast, we did not identify any information provided by the DFRDB Authority that was incorrect, either in its written materials or in its verbal briefings. Although not as clear as

[75] Submission 1150.

subsequent publications, which used the word 'permanent' or referenced the reduction 'not being restored regardless of you exceeding your life expectancy', we do not think the information was ambiguous, in the sense that it was capable of two meanings. Like the legislation itself, when read correctly, the meaning was unambiguous.

3.110. Overall, the DFRDB Authority provided a high quality and accessible information service which meant members could contact the DFRDB Authority at any time to seek and clarify their understanding of any aspect of the scheme.

3.111. Information about these long term consequences was centrally relevant information for members making decisions about whether, when and how much to commute. With the benefit of hindsight, the DFRDB Authority could have used clearer language to explain the long-term impacts of commutation on retirement pay from the commencement of the scheme. In our view, the misunderstanding that ensued may have been avoided if it had included in its brochures the same clear language currently found in the DFRDB Book, or even the level of detail found in its 1973 circular to agencies.

3.112. However, while it would have been preferable if the brochures and information provided by the DFRDB Authority had been clearer on this issue, the information it provided was in fact correct.

3.113. For this reason, while we can point to better practice with the benefit of hindsight, we do not find that the DFRDB Authority's conduct amounted to defective administration or was otherwise wrong.

Did the defective administration result in detriment?

3.114. Defective administration does not automatically mean compensation is payable to the people affected. For compensation to be payable a person must have suffered 'detriment' which was directly caused by the defective administration.

3.115. Having found defective administration on the part of Defence, the second question to consider is whether the defective administration caused any detriment.

What can constitute detriment?

3.116. Detriment is the amount of quantifiable financial loss caused by the defective administration.[76] **Financial disappointment and unrealised expectations are not compensable**. For example, a person will not be eligible for compensation if they are incorrectly granted a pension, and are disappointed when their pension is later cancelled.

3.117. This is because the person must suffer a **financial detriment** as a result of a decision they made relying on the incorrect advice. Further, it must have been reasonable to rely on the incorrect advice, and they must have taken reasonable steps to minimise the loss.

3.118. Where it is impractical to demonstrate part or all of the quantifiable loss, the decision-maker assessing whether compensation should be paid may make whatever assumptions as to the amount as are reasonable and necessary in all the circumstances.[77]

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[76] While the CDDA scheme and other compensation processes can address detriment stemming from personal injury or damage to property, we have not received any information alleging either of these types of detriment.
[77] CDDA Guideline 409, para. 55.

Financial detriment and the initial decision to commute

3.119. For most people, the relevant decision they made relying on the incorrect information was the decision of whether or not to commute. We therefore had to consider: did the incorrect information influence members to commute, and if so, did members suffer a detriment as a result of their decision to commute?

3.120. As part of our interviews with some DFRDB members, we specifically explored whether they would have commuted even if they had known at the time that the reduction would be permanent. With very few exceptions, we were told they would have still commuted, because at the time they needed access to capital, for example to purchase a home or business.

3.121. Some members said in their submissions they would not have elected to commute, but only a handful pointed to specific alternative course of action they felt they would have taken, as the following case studies illustrate.

> Mr G discharged in 1992. He says he invested half his commutation into a franchise business, and put the remaining half into superannuation. He said 'If I had known that my retirement pay would be reduced for life I would simply have borrowed the funds to purchase the business, and received my full retirement pay. If I had followed this course I believe that I would be much better off financially today'.[78]
>
> Mr H stated '…. the vital factor that I would be paying the lower pension for the rest of my life would have been of huge significance. I was buying a home after years of postings and occupying poor quality married quarters - If I had known that vital information I could have made enquiries to a bank for advice on a housing loan, repayment details, etc., I would at least have known that there was an end to bank repayments and it would have been an important comparison with commutation arrangements'[79]

3.122. In our view, it is likely many submitters would have commuted, even if they had received correct information about its permanent effect on retirement pay. However, there may be some submitters who, having less immediate need of a lump sum, may have otherwise decided not to commute their retirement pay.

3.123. While there was abundant evidence of financial disappointment, frustration and unmet expectations, this was based on financial disappointment from not receiving the entitlement *to which they believe they were entitled* (i.e. a restored pre-commutation amount) as opposed to the entitlement permitted by law.

3.124. The submitters who asserted they would not have chosen to commute if they had understood the reduction was permanent claimed they would have been better off financially not commuting.

3.125. To test this claim, we sought financial modelling of the two outcomes available under the law (that is, to commute with a permanent reduction, or to not commute and maintain a higher retirement pay).

3.126. Our modelling does not compare the hypothetical outcome if the law had permitted retirement pay to increase on reaching life expectancy factor age. While DFRDB members would undoubtedly be better off financially under this approach, it is not a suitable point of

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[78] Submission 2402.
[79] Submission 1285.

comparison. This is because, while disappointment and unmet expectations are legitimate causes for concern, particularly where they are the consequence of defective administration, they are unlikely to be financially compensable, in court proceedings, as a person was never entitled to this financial outcome.

3.127. As proof of financial loss, some submitters provided the results of an online tool that had been developed by and circulated among DFRDB members, known as the DFRDB Loss Calculator Version 2.[80] However, the calculator does not compare the two available legal scenarios (commuting or not commuting). Rather, it compares actual benefits received to the benefits that would be received if the law was changed (see further Part 5).

3.128. The modelling we commissioned is, in our view, a more accurate way of determining the likelihood of a person experiencing an actual loss (as opposed to financial disappointment) as the result of deciding to commute when compared to not commuting. It takes into account, using conservative assumptions, the economic benefits of both options.

Modelling financial outcomes of the two available options

3.129. The Office commissioned external modelling from two sources, the Australian Government Actuary (AGA) and KPMG. Both firms were provided with relevant data from 12 de-identified real life cases[81] and asked to model and compare the financial outcomes which flowed from the two options available under the DFRDB Act:

- commutation, with reduced retirement pay (which is what occurred in all 12 cases)
- no commutation and higher retirement pay.

3.130. To compare the options that were available under the DFRDB Act, we asked the actuaries to assume two investment scenarios for each case.

3.131. The first scenario is based on the lump sum being invested in **the purchase of a home** (thereby saving mortgage interest which would otherwise be payable on that lump sum amount). According to the submissions received, interviews we conducted and historical presentations we viewed, this is likely to have been the most common use of the lump sum.

3.132. The second scenario is based on the lump sum being placed in **a term deposit**. It is important to consider detriment in the context of likely financial outcomes for people who were not savvy investors. While it stands to reason that some financially astute members would have achieved better investment returns than others, we wanted to understand the likely returns for a member with no relevant financial skills or capital investment experience.

3.133. We therefore sought to model outcomes for conservative human behaviour and economic circumstances. The actuaries were instructed to use actual historical term deposit and home loan rates, and to assume the current historically low rates (four percent for home loans and two percent for term deposits) would continue into the future.

3.134. A person who commutes would start with a higher initial lump sum. We therefore asked the actuaries to consider how this sum grew relative to a person who received no lump

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[80] The calculator is published on the Australian Defence Force Retirees Association website at https://www.adfra.org/ref.php, accessed 21 October 2019.

[81] The sample was selected to include at least one commissioned officer and other rank members from each service, one retiree from each decade since 1973, one third females, a range of ages on retirement and lengths of service.

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sum but a higher annual pension. We asked the actuaries to indicate the 'break-even' points in the various scenarios. This is the point at which a person, with hindsight, may have been better off had they not commuted.

3.135. Given the conservative assumptions we have used, it is likely that the real-life 'break-even' age for many people would be considerably higher than the result of the modelling. This is because the outcomes do not take into account the other benefits of commutation which may have been associated with use of the lump sum, including:

- capital gains to property or the increase in value of assets purchased with the lump sum
- income streams from the purchase of income generating assets, superannuation or businesses
- beneficial taxation treatment—all outcomes are in gross figures (i.e. before tax) and ignore all tax implications.[82]

3.136. Although the financial modelling used real-life figures, we are not suggesting it represents the outcomes for any particular individual. The modelling does not take into account situations where a member diminished the value of their lump sum by spending or investing it in a way that lost value (or indeed invested it to result in a significant *increase* in value).

3.137. Equally, modelling cannot account for non-financial benefits able to be obtained from a lump sum, such as education (some submitters told us they used the lump sum to fund their children's education), health or other lifestyle benefits. It also does not take into account the possibility that the commutation could have been spent or invested in a way that delivered even lower returns than simply putting the lump sum in the bank. In such a case, the financial loss is clearly due to spending or investment choices, rather than the decision to commute.

Results of the modelling

3.138. AGA's and KPMG's reports have been published in full on our website along with this report. Each report contains a detailed explanation of the scenario, methodology and assumptions used to produce each set of outcomes.

3.139. The results of the two sets of modelling are different. This is because the two actuaries have used slightly different interest rates and different methodology.

3.140. For example, AGA has compared only the portion of a person's retirement pay that was commutable (and therefore comparing it being taken as a lump sum with it being provided on an annual basis). This is because that part of the pension that was *not* taken as a lump sum is available to the member regardless of whether they commuted or not. By taking this approach, the modelling is only comparing the outcome of taking the commutable amount as a lump sum

[82] This was done because tax scenarios are different for every individual and tax laws have changed regularly since the commencement of the DFRDB scheme. As a result it would have required too many assumptions to be meaningfully modelled in bulk. However, for most people, ignoring tax implications also ignores significant financial benefits that come from commutation (for example, prior to 1 July 1983, only 5 per cent of a person's commutation was taxed compared to all of their pension). As there are no limits to use of the lump sum, a person could choose to invest it in a way that attracts beneficial taxation treatment or concessions.

to taking it in fortnightly instalments. In contrast, KPMG has considered the full pension received in both scenarios.

3.141. There are also difference in how the actuaries have modelled the outcomes for the purchase of a home. KPMG's methodology is based on the savings which result from investing the lump sum in a home loan being the equivalent of a person 'earning' at home loan interest rates on the lump sum amount.

3.142. The AGA methodology (which is explained in detail in its report) involved calculating the lower repayments which would be made if a person was able to borrow less for their home loan because they had access to the lump sum. The AGA modelled the effect of depositing the amount equal to the difference in repayments into a term deposit (thereby earning term deposit interest rates), from which they withdrew the commutation reduction amount annually. That is, in either scenario, the person has access to the same commutation reduction amount, either through drawing down on this account or by receiving this sum annually as part of their pension payment.

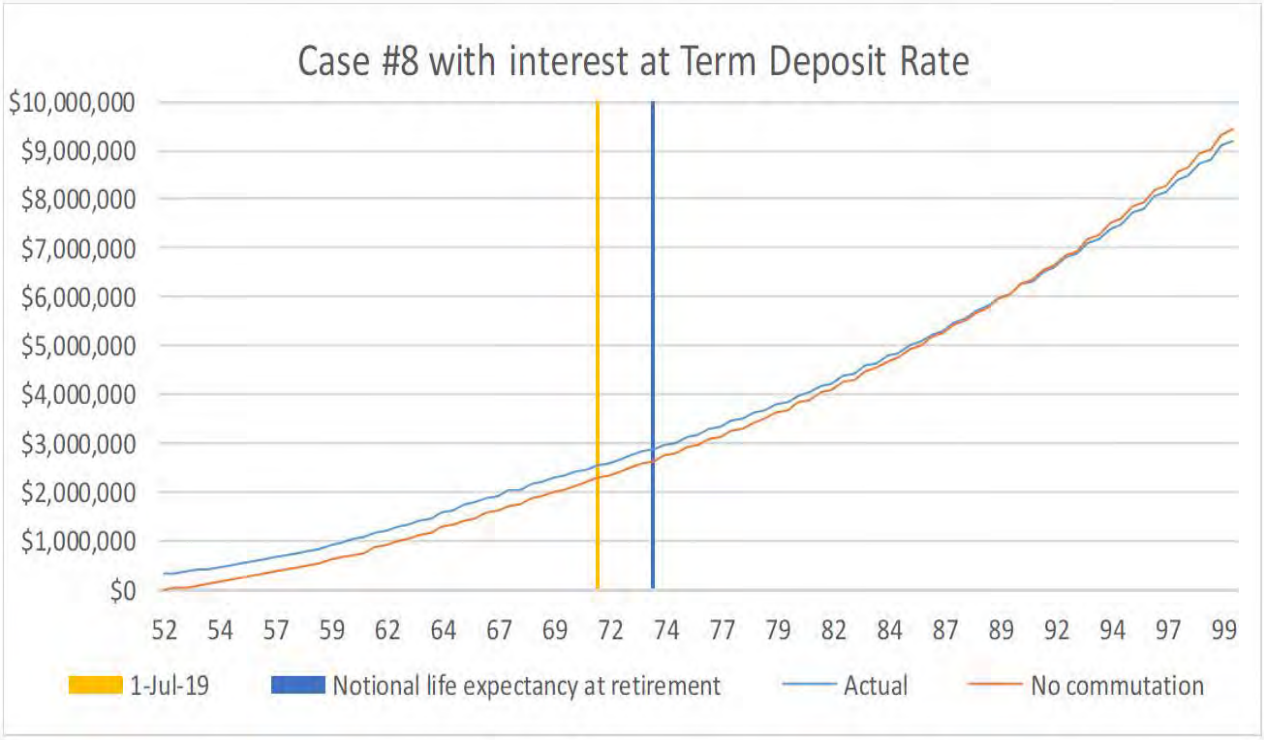
3.143. The AGA modelling further assumes that once the home loan is paid off after 25 years no further savings payments are made into the account (although the account would continue to earn term deposit interest). The commutation reduction amount continues to be withdrawn annually until the account has a zero balance. The 'break-even' point occurs when the account balance reaches zero.

3.144. Despite these differences in methodology, both sets of modelling produce broadly consistent overall results. Both sets of modelling suggests people would have been better off financially commuting if they exercised even a very conservative investment strategy. Further, the modelling does not identify any cohort of people who commuted prior to CSC clarifying its information, who experienced actual financial loss, compared to the other available option.

3.145. To illustrate this, Figure 8 shows the term deposit rate modelling completed by KPMG for one set of figures ('case #8'). It shows the 'break-even' point (where the orange and blue lines intersect) as being age 89.

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Figure 8—KPMG modelling outcome—Case #8 Term deposit scenario[83]

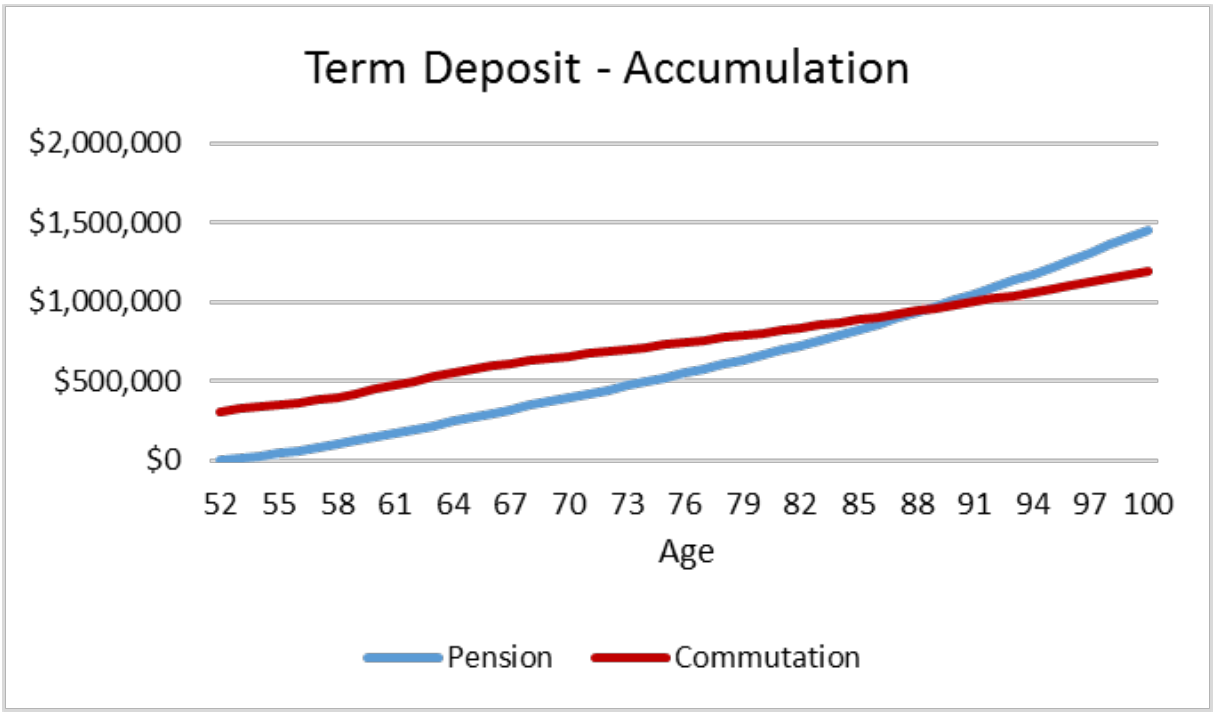


3.146. Figure 9 below shows the term deposit rate modelling completed by the AGA for the same set of figures. It shows the 'break-even' point (where the red and blue lines intersect) as being age 88.

[83] KPMG report, p. 25.

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Figure 9—AGA modelling outcome—Case #8 Term deposit scenario[84]

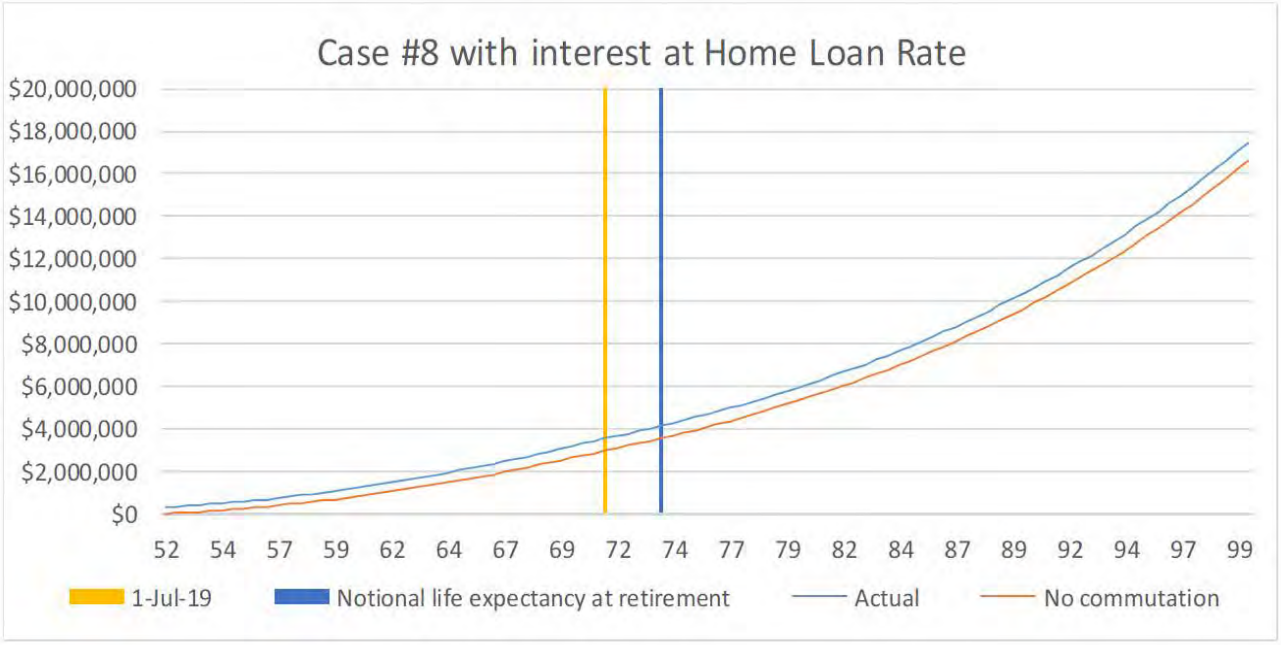


3.147. The results when modelling the use of a commutation lump sum to assist with purchase of a home show an even stronger financial benefit from commuting when compared to not commuting. The results are again broadly consistent between the two sets of modelling, even though the methodology used by the AGA and KPMG is different as outlined above.

3.148. Figure 10 shows the results of the KPMG modelling of using the commutation lump sum for the purchase of a house, again using the same set of figures. There is no 'break-even' point as the orange and blue lines do not cross before age 100 (the limit of the modelling).

[84] AGA report, p. 28.

Figure 10—KPMG modelling outcome—Case #8 Home loan scenario[85]

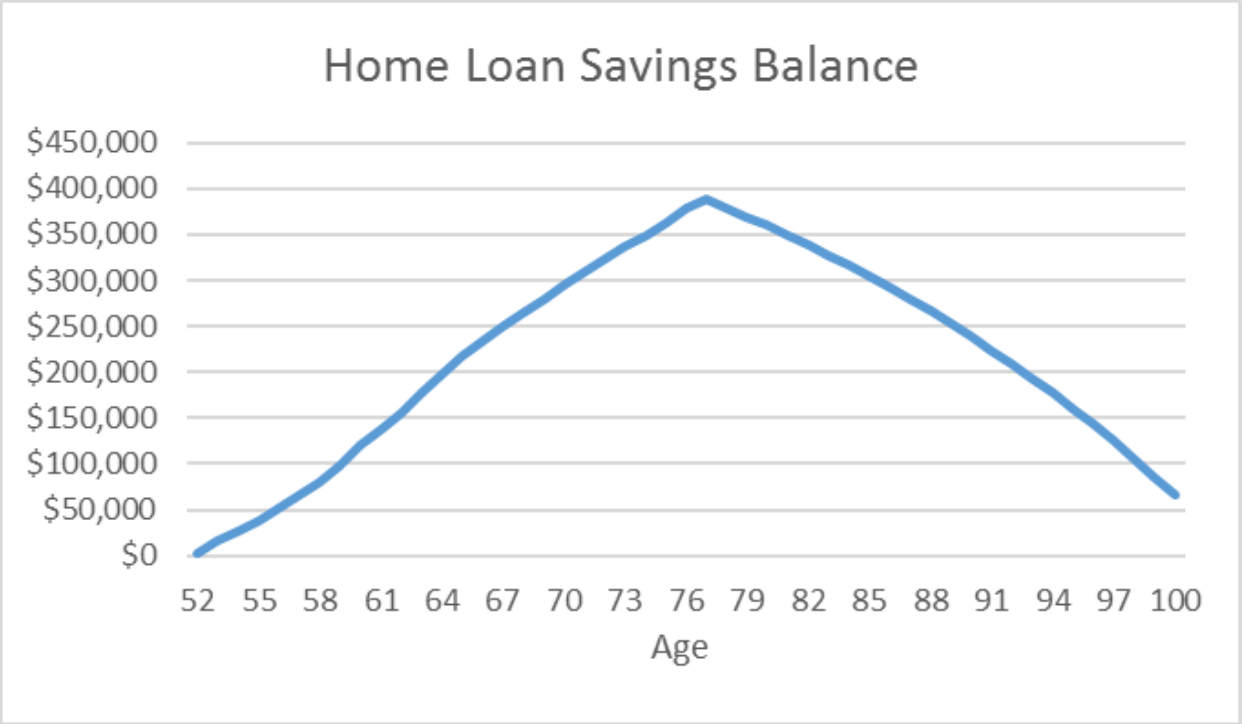


3.149. Figure 11 shows the results of the AGA modelling of using the commutation lump sum for the purchase of a house. Again, there is no 'break-even' point before age 100, because the blue line does not reach the zero dollar axis on the chart.[86]

[85] KPMG report, p. 25.
[86] For comparative purposes, the AGA graph also ends at age 100, although it modelled beyond this age and found a break-even age for the home loan scenario in case #8 of 104 (AGA report, p. 12).

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Figure 11—AGA modelling outcome—Person #8 Home loan scenario[87]



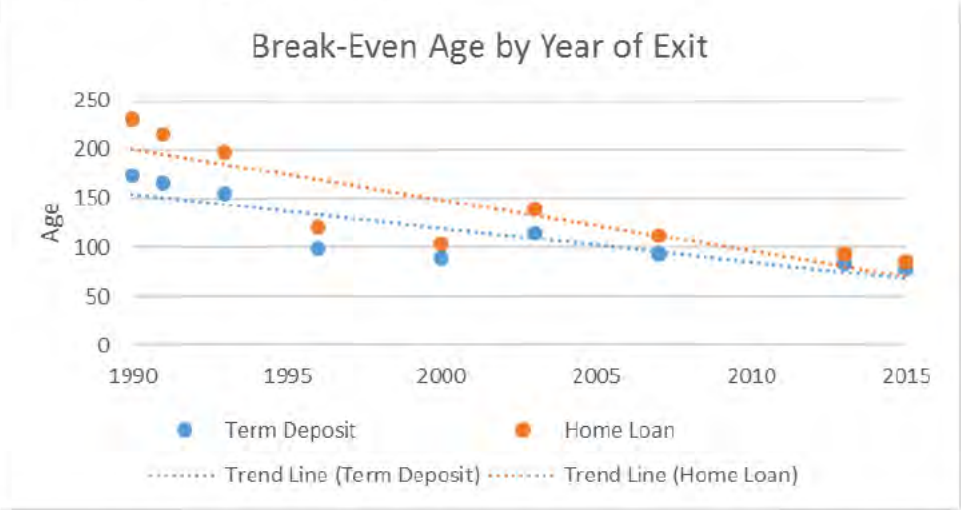
3.150. Despite the ADF's defective administration in providing incorrect information about the long-term effects of commutation decisions on retirement pay, the modelling suggests that it did not lead to financial detriment relative to the other available choice of not commuting. The modelling shows the opposite: that choosing to commute, even if on the basis of misleading information, would likely have been to a person's financial benefit.

3.151. As can be seen in Figure 12, a member who discharged prior to 1990 is unlikely to ever suffer a financial detriment as a result of that decision, irrespective of whether the commuted amount was used to fund the purchase of a house or placed in a term deposit.

3.152. Figure 12 shows that a member who discharged between 1990 and 2010 may live to their 'break-even' age, and ultimately be better off having not commuted. This would only arise if they live well beyond current life expectancy (currently approximately 80 years for males and 84 for females).[88] As noted above, this is based on conservative modelling scenarios—in particular, the modelling shows that it is unlikely that any person discharging in this period would have been better off not commuting compared to using the commutation amount to fund the purchase of a house.

[87] AGA report, p. 28.
[88] Australian Bureau of Statistics Life Expectancy Tables, at https://www.abs.gov.au/AUSSTATS/abs@.nsf/DetailsPage/3105.0.65.0012014?OpenDocument, accessed 19 September 2019.

Figure 12—'Break-even' age by year of exit[89]



3.153. It is also important to note that even in the conservative scenarios modelled, the modelling suggests the earliest *year* in which a 'break-even' age may be reached is 2037. While we did not model each individual who provided a submission, the modelling suggests that even if financial detriment is ever experienced, it is unlikely to occur until many years in the future (see Table 1).[90]

Table 1—'Break-even' year[91]

Case	Year of Exit	Age at exit	Break-Even Year (Term Deposit)	Break-Even Year (Home Loan)
1	1976	44	Never	Never
2	1976	38	Never	Never
3	1986	37	Never	Never
4	1990	48	2116	2173
5	1991	36	2120	2171
6	1993	40	2108	2150
7	1996	49	2046	2068
8	2000	52	2037	2052
9	2003	39	2078	2103
10	2007	41	2059	2078
11	2013	60	2037	2046
12	2015	56	2037	2044

[89] AGA Report, p. 13.
[90] AGA Report, p. 12.
[91] AGA Report, p. 12.

3.154. The modelling does show that a person who discharged after 2010 may reach their 'break-even' age at or about their current *actual* life expectancy.[92] However, three points are important to note here:

- First, this still involves conservative modelling, using term deposit rates rather than the home loan scenario, and ignoring any tax implications or capital gains.
- Second, by this time, CSC had included information in its publications which explicitly stated that the reduction to retirement pay would be permanent, so that the written information being relied on by DFRDB members was now clear. Even if a person did receive incorrect information from Defence personnel, the information produced by CSC and provided to DFRDB members was capable of clearly correcting any misunderstanding.
- Third, the modelling also shows the earliest *date* a person retiring in this period would reach their 'break-even' age is 2037. This would mean there remains ample time for a person to plan for their retirement based on accurate information available to them, and to take steps to mitigate the risk of financial loss, such as by seeking financial advice.

3.155. It is possible, of course, that some individuals may have made poor decisions about what to do with their lump sum. Equally, poor decisions could have been made by individuals about how to spend their fortnightly retirement pay, irrespective of whether the person commuted or not.

3.156. However, for most people, the real-life benefit from commuting is likely to far exceed the outcomes modelled, for the reasons described above.

3.157. It is true this benefit got less over time, for those who discharged more recently, and also for those who discharged at a later age. However, the modelling does not identify any cohort of people who commuted and made appropriate, if conservative, use of the benefit, who can point to both defective administration and a financial detriment relative to the only other option available under the DFRDB Act, namely to not commute.

3.158. Nevertheless, because our modelling has not considered people's individual circumstances, we cannot rule out the possibility, however unlikely, that there may be one or more individuals who can point to actual overall financial detriment caused by the defective administration. In these circumstances, we consider that the CDDA scheme is the appropriate mechanism for such cases to be considered. To avoid raising false hope and to facilitate streamlined processing of any claims under that scheme, we have included at Appendix F a list of considerations we suggest would need to be satisfied before a CDDA claim would need to be assessed.

[92] Australian Bureau of Statistics, October 2018, Life tables, States, Territories and Australia, 2015-2017 at https://www.abs.gov.au/AUSSTATS/abs@.nsf/DetailsPage/3302.0.55.0012015-2017?OpenDocument, accessed 19 September 2019.

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Part 4: Issues Arising from the Investigation – Indexation

Overview

4.1. Indexation is the process by which pensions are increased over time, according to a statutory formula.

4.2. We received many submissions from DFRDB members who were dissatisfied with indexation arrangements. The issues fell broadly into two categories:

- concerns that the current statutory indexation formula leads to an increase in the commutation reduction over time
- concerns about the statutory formula as enacted by parliament.

4.3. Complaints that the statutory indexation formula increases the commutation reduction over time is in scope of this investigation. This is because, if the commutation reduction does increase over time it is necessary to look at whether this was clearly explained to DFRDB members so they could consider the impact before deciding to commute.

4.4. The indexation arrangements in the DFRDB Act are complex and have a complicated history. This section therefore seeks to explain the legislative framework, both what has changed over the years as well as how indexation currently works.

4.5. Concerns about the statutory formula as enacted by parliament are beyond the scope of this investigation. Nevertheless, it is clear from the submissions we received, that there is a high level of confusion and dissatisfaction with current policy settings as expressed through the statutory arrangements and many members are hoping for legislative reform. Thus, while we have made no comments or findings on the suitability of the statutory formula we have included a section summarising the concerns raised by submitters. Given uncertainty in the DFRDB member cohort, it may be appropriate for government to make its position clear on this issue.

Legislative background

4.6. While the predecessor DFRB scheme was operating, pensions were not regularly indexed. Rather pensions were increased by government decision.

4.7. When it was passed by parliament in 1973 there was no provision in the DFRDB Act that allowed for pensions to be increased. DFRDB pension increases were authorised by separate annual Acts between 1 October 1972 and mid-1976. The indexation basis was the lesser of 1.4 times the increase in the CPI, or increases in male average weekly earnings.[93]

4.8. In 1977 the DFRDB Act was amended by the *Defence Force (Retirement and Death Benefits Amendments) Act 1977,* which inserted Part XA into the DFRDB Act. This change allowed the pension to be indexed from 1 July 1976. As a result, pensions were increased if

[93] See *Defence Forces Retirement Benefits (Pension Increases) Act 1973*, s 4(2), and *Defence Force Retirement and Death Benefits (Pension Increases) Act 1976*, ss 6-7, for increases between 1973–74 and 1975–76.

there was an upward movement in the Consumer Price Index (CPI). Pensions were not decreased if there is a downward movement in the CPI.

4.9. The *Superannuation and Other Benefits Legislation Amendment Act 1986* temporarily reduced the annual CPI indexation by 2 per cent from 23 October 1986 until 20 October 1989, at which point the published CPI indexation was once again applied each year.[94]

4.10. From 1 January 2002, retirement pay indexation frequency was increased to twice a year.[95]

4.11. In 2014, the *Defence Force Retirement Benefits Legislation Amendment (Fair Indexation) Act 2014* added Division 3 of Part XA of the DFRDB Act. Generally speaking, the purpose of this Division, which applies to pensioners who are over 55 years of age, is to ensure DFRDB indexation arrangements for this group operates similarly to the indexation arrangements that apply to the age pension.

How indexation works

4.12. Indexation is applied in January and July each year.[96]

4.13. For members who are under 55, the relevant indexation rate is the Consumer Price Index (unless the CPI is negative, in which case the pension is unchanged. This ensures pensions are not reduced if there is downward movement in the CPI).

4.14. For members who are 55 and over, the relevant indexation rate is the higher of CPI or the Pensioner and Beneficiary Living Cost Index. There is an additional safeguard which means the increase must be sufficient to ensure a hypothetical 'indicative' pension does not fall below 27.7 per cent of Male Total Average Weekly Earnings.[97]

How does commutation impact the indexation rate?

4.15. A member's retirement pay is not indexed in full if the person did not commute, or commuted less than four times their annual retirement pay.

4.16. The DFRDB Act provides that if a person *did not* commute (or commuted a sum which was less than four times their annual retirement pay entitlement), the amount by which their retirement pay is increased is determined by applying the relevant indexation rate *to the*

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[94] The Parliamentary Library observed: 'These actions were undertaken as a budget measure in response to the unusually high rates of inflation of the period combined with a shortfall in government revenue. The rates of increase in CSS pensions were also discounted in the same way during this period', January 2008, Research Paper No. 16 2007-08, Military superannuation myths and reality, at https://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/rp/RP0708/08rp16#_ftn39, accessed 26 September 2019.

[95] *Superannuation Legislation Amendment (Indexation) Act 2001*.

[96] DFRDB Act s 98B—Increase in certain pensions.

[97] DFRDB Act s 98GA provides an overview: Each 1 January and 1 July, the amount of the hypothetical pension, as indexed by the higher of CPI and LCI, is compared with what the amount of the hypothetical pension should be if it is to continue to be at least 27.7 per cent of MTAWE. If the CPI/LCI result is higher than the MTAWE result, the 55-plus percentage is the higher of the percentage movements in CPI and LCI. If the MTAWE result is higher, the 55-plus percentage is the percentage increase needed to maintain the hypothetical pension at 27.7 per cent of MTAWE.

retirement pay they would be receiving if they had commuted four times their annual retirement pay entitlement.[98]

4.17. In effect, the DFRDB Act operates to divide a person's annual retirement pay into two portions—one which is indexed and one which is not. The amount of these portions are connected to the amount the person can commute:

- The maximum portion of retirement pay which is *indexed* is the amount of retirement pay which would be payable if they had decided to commute four times their annual retirement pay entitlement. This is the case regardless of whether they:
    - actually commuted or not, or
    - commuted more, less or exactly four times their annual pension.

  For the purposes of this report, this portion is the '*indexed retirement pay*'.

- An *unindexed* portion of retirement pay is only payable if the person commutes less than four times their annual retirement pay entitlement, which we refer to as '*unindexed retirement pay*' (see Figure 13).

4.18. Prior to 1983, the maximum amount a retiring member could elect to commute was four times their annual retirement pay entitlement. This means a person could commute some or all of their *unindexed* retirement pay, but commutation did not impact their *indexed* retirement pay.

4.19. This had the practical effect that a member's annual pension increased by the same dollar amount each year, regardless of whether and how much they commuted. This is because the person was receiving the same dollar amount of *indexed* retirement pay (to which the indexation factor was applied). If they commuted less than the maximum four times their annual pension, they would receive an additional amount each year, but this would be a portion of their *unindexed* retirement pay, and therefore was fixed from year to year.

4.20. Between 1983 and 2002 the maximum amount that could be commuted was increased by 0.05 times annual retirement pay each year.[99] However, the DFRDB Act was not also amended to increase the unindexed portion of retirement pay to align with the new maximum amount that could be commuted.

4.21. Accordingly, the indexed portion of retirement pay has remained at the amount of retirement pay which would be payable annually if a person had decided to commute four times the annual retirement pay entitlement, even though since 1983 a person can commute *more* than four times.

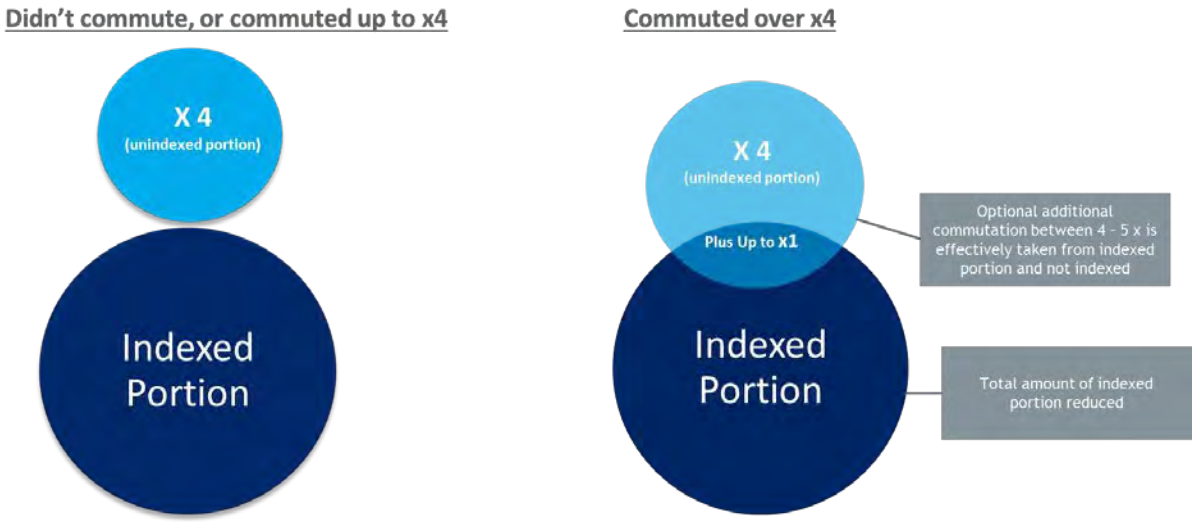
4.22. In effect, a person who elected to commute more than four times their annual retirement pay is exchanging a portion of their indexed retirement pay, as illustrated in Figure 13.

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[98] DFRDB Act s 98B(4)(b). If the current recipient did not commute four or more times their annual retirement pay, indexation applies to the notional rate they would have received if they had commuted four or more times their retirement pay.
[99] *Defence Legislation Amendment Act 1984*.

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Figure 13—Effect of commuting more than four times annual retirement pay



4.23. This means that a person who commuted more than four times their annual retirement pay would be left with an annual pension less than the maximum available indexed retirement pay.

Why does this impact indexation?

4.24. The indexation factor is applied twice a year to the *indexed* retirement pay the person is receiving.

4.25. For people who did not commute, or who commuted an amount less than or equal to four times their annual retirement pay, they are receiving the full indexed retirement pay. Therefore, the indexation factor is applied to that full amount.

4.26. However, where a person commutes more than four times their annual retirement pay, they are receiving *less* than the full indexed retirement pay. In this case, indexation is only applied to the actual pension paid. Therefore the indexation factor is applied to that lower amount.

4.27. The modelling performed by the AGA and KPMG took into account the actual indexation as described in the DFRDB Act.

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4.28. The following table illustrates the operation of indexation, according to the commutation decisions made by the member:

Figure 14—Commutation options

Decision	Retirement benefit comprises

Does not commute	• No lump sum
	• Ongoing annual retirement pay is partly indexed
	  ○ The amount indexed is the amount of retirement pay the person *would have* received if they commuted four times their retirement pay entitlement *is* indexed
	  ○ Remaining retirement pay *is not* indexed

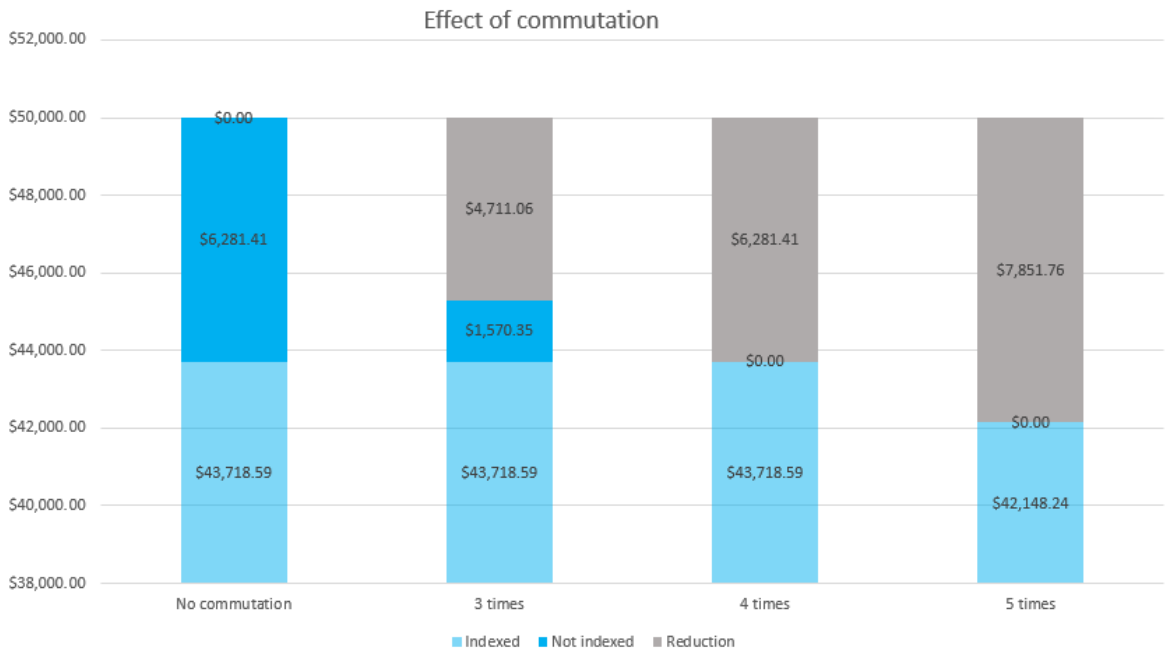
Commutes less than 4 times (e.g. 3 times)	• Receives lump sum of (e.g.) three times their annual retirement pay
	• Ongoing annual retirement pay, reduced using the statutory formula, is partly indexed:
	  ○ The amount of retirement pay the person *would have* received if they commuted four times their retirement pay entitlement *is* indexed
	  ○ Remaining retirement pay *is not* indexed.

Commutes exactly 4 times	• Receives lump sum of four times their annual retirement pay entitlement • Ongoing annual retirement pay, reduced using the statutory formula, is fully indexed.
Commutes more than 4 times (e.g. 5 times)	• Receives lump sum of (e.g.) five times their annual retirement pay entitlement • Ongoing annual retirement pay is reduced using the statutory formula • The reduced retirement pay is fully indexed, but is *less* than the amount indexed under each of the above scenarios.

4.29. To demonstrate, the following chart shows how different commutation factors have an impact on the indexed and unindexed portions of the retirement pay. The following assumptions apply:

- Person is 40 year old male, with a commutation divisor of 31.84
- Pre-commutation retirement pay is $50,000

Figure 15 – Effect of commutation



What were members told?

4.30. In response to a request for information, CSC provided us with copies of approved publications about the DFRDB scheme, including brochures, booklets and letters provided to members.

4.31. Members who elected to commute a portion of their retirement pay were advised the dollar figure for the rate of retirement pay they would receive if they did not commute. They were also given the dollar figure of their new reduced rate of retirement pay if they were to elect to commute.

4.32. Brochures produced by CSC explained how the pre commutation retirement pay rates were calculated and included the methodology used to calculate the reduction to retirement pay.

4.33. Each brochure has a section explaining pension increases. The explanation provided, which varied over time, is that retirement pay increases are based on the upward movement of the Consumer Price Index.

4.34. Brochures published after 1985 explain that retirement pay increases are also based on the amount of retirement pay that would be applicable if four times the amount of retirement pay been commuted.

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4.35. The brochures and booklets do not explicitly state the impact of commuting more than four times the annual dollar amount of retirement pay, and in particular, that the annual increases to the member's retirement pay will be less than if they commute four times or less.

Analysis

4.36. We are satisfied, in the absence of any contrary information, that indexation has been properly applied to DFRDB pensions by the administrators.

4.37. For people who commute up to four times the amount of their retirement pay, the difference between what they receive and what they would have received if they had not commuted (the 'commutation reduction amount') is fixed—it remains the same dollar amount from year to year throughout their life, unaffected by indexation.

4.38. However, a person who commutes more than four times the amount of their retirement pay has a smaller amount of indexable retirement pay (as a result of the initial reduction). This means the difference between their retirement pay and the retirement pay they would have received if they had not commuted will grow over time in accordance with the indexation factor.

4.39. The provisions for indexation in the DFRDB Act are extremely complex which is not uncommon across Commonwealth law. This is why it is good administrative practice for agencies administering those complex laws to explain them in a way lay people can understand.

4.40. The information provided by CSC did not advise the longer term consequences of electing to commute more than four times a person's retirement pay. In particular, this information could have made clearer that doing so has the effect of commuting a portion of a member's *indexed* retirement pay, which in turn would lower the amount by which their remaining annual retirement pay would grow through indexation.

4.41. While we acknowledge that the impact of indexation is unlikely to be the primary motivator to the decision to commute or not, it is still important that people have all relevant information in front of them when making a decision. The more complex a legislative scheme, the more critical it is that administrators of the scheme provide plain language explanations of how it operates.

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Part 5: POLICY ISSUES RAISED WITH US

5.1. During the course of this investigation, many people raised issues with us that go to the policy design of the scheme itself. This goes beyond matters of administration which are part of this investigation.

5.2. However, as these issues have been raised with us, this section summarises the concerns of submitters which fell outside the scope of this investigation, to bring these matters to the Government's attention.

5.3. In addition to concerns about being misled, many submitters, including those who now understand that the reduction after commutation is permanent, have expressed dissatisfaction with the fact that legislation does not permit an increase to retirement pay on reaching life expectancy factor age.

5.4. Many members also felt that the commutation divisor and indexation benchmarks used in the DFRDB Act were unfair or inadequate. This section endeavours to summarise the views of submitters on these two issues.

5.5. We also observed confusion among members about how legislative provisions relevant to the commutation divisor and indexation operate. We have provided a further explanation below to assist in understanding of these aspects of the scheme (noting indexation is also discussed in Part Four).

Expectation of life factor—the 'commutation divisor'

5.6. The 'expectation of life factor' is better described as a 'commutation divisor'. It is the divisor for the purposes of calculating a reduction to a person's retirement pay following commutation. It is found in a table in Schedule 3 to the DFRDB Act.

5.7. In effect the formula is as follows:

Reduction = amount commuted ÷ commutation divisor

5.8. The 'expectation of life factor' table in Schedule 3 creates the commutation divisor using the figures in the 1960-1962 life expectancy table published by the Australian Bureau of Statistics (ABS).[100] The legislation does not use the ABS table itself, but rather creates its own table based on the ABS table figures.

5.9. These figures have been the same since the DFRDB Act commenced in 1973. Members submitted that this was unfair, given the considerable increase in life expectancy since 1962.

5.10. It is understandable why members would prefer the use of later life expectancy figures. If the commutation divisor had increased in line with changes to life expectancy, the flow on effect would have been increased retirement pay for those who commuted (because a higher commutation divisor results in a smaller reduction).

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[100] For life expectancy tables from 1881 see Australian Bureau of Statistics *3105.0.65.001 Australian Historical Population Statistics 2019*. For 1960–1962 figures see column I in Tables 6.2 (Males) and 6.6 (Females) at https://www.abs.gov.au/AUSSTATS/abs@.nsf/DetailsPage/3105.0.65.0012014?OpenDocument, accessed 19 September 2019.

5.11. This option was open to the government and parliament of the day. The legislation could have provided for the use of a particular external actuarial table as updated from time to time.

5.12. However this was not the path that was chosen. This suggests that the scheme drafters never envisaged use of current tables, but rather, preferred a static commutation factor. With retrospect, if it had been formally named a 'commutation divisor' rather than a 'life expectancy' factor, it is possible the misunderstanding that ensued could have been avoided.

Indexation arrangements

5.13. In 2014, the *Defence Force Retirement Benefits Legislation Amendment (Fair Indexation) Act 2014* was enacted so that retirement pay for members over 55 are now indexed in the same way as aged pensions (i.e. more beneficially).[101]

5.14. While these changes were broadly welcomed, some of the ex-service organisations we spoke to felt the 2014 changes did not go far enough:

- Some wanted to see these more beneficial arrangements also apply to the indexation arrangements for those DFRDB members who are under 55.
- Some also wanted to see 2014 retirement pay rates reset to a higher amount (i.e. calculating the pension that would have been payable in 2014 if those indexation arrangements had been in place since 1973), rather than the actual retirement pay levels in 2014 based on the actual indexation arrangements that had applied.

5.15. In addition, we heard concerns about the overall impact of commutation on indexation arrangements, which mean a portion of the annual retirement pay of a person who did not commute is not indexed (see Part Four above).

Observations

5.16. The impact of the permanency of the commutation reduction, and the impact of commutation on indexation, have been addressed earlier in this report. Indexation arrangements more generally have been the subject of numerous government reviews and inquiries. There is no reason to believe that each of these issues are not the intended policy outcome following deliberate and considered government policy decisions.

5.17. Nevertheless, many members are dissatisfied with these government decisions and are hoping for change. It is understandable why-any of these steps would, if applied, leave scheme members better off financially, with commensurate expense to the taxpayer.

5.18. We have seen letters and complaint responses from Ministers, Defence, CSC and local MPs sent to individual members which provide insight into the Government's policy position to date. For example, in June 2018 the Office of the Hon Darren Chester MP wrote to one member noting the Government had enacted beneficial changes to indexation in 2014 and stated '*there are no plans to make further changes to the DFRB and DFRDB schemes*'.

5.19. Other correspondence draws attention to the fact that, if further changes are made to DFRDB, this may cause unfairness to members who decided not to commute. A temporary retirement pay reduction was never an option at law, so if the law were changed now to make it available, it could place commuters at an unfair advantage over those who understood the

[101] How indexation works is explained in detail in Part 4 of this report.

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scheme properly and chose not to commute. It may also cause unfairness to other current and former ADF members, for example those who chose to move to the MSBS scheme in the early 1990s based on the understanding the scheme was closing and would not be significantly reformed.

5.20. However, given the breadth of concern about these issues, it may be appropriate for the Government to publicly clarify its policy position to the broader DFRDB member cohort. In saying this, the Office makes no comment on the appropriateness of these policy settings, which are rightly the domain of government and parliament. We do, however, note that if changes are to be considered, the Government should have regard to the potential impact on other members, namely those who did not commute or transferred to other schemes.

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Part 6: CONCLUSION AND RECOMMENDATIONS

6.1. We have found historical deficiencies by Defence which warrant remedial action. While we have not found any errors by CSC, we have identified actions that may further improve communication about the long term effects of commutation on retirement pay.

Defective administration by Defence

6.2. Defence personnel in administrative positions of authority provided incorrect information to DFRDB members about their retirement benefits. Many DFRDB members, likely numbering in the thousands, were misled to believe that the commutation related reduction to their retirement pay would cease upon reaching life expectancy factor age.

6.3. This information was misleading, and providing it amounted to defective administration by the ADF.

6.4. This defective administration resulted in disappointment, distress, anger and frustrated expectations for many DFRDB members. We consider remedial action is appropriate. Defence should acknowledge the wrong that was done and the impact this has had on some members of the scheme. The Secretary of Defence and Chief of Defence Force should issue an unreserved apology to DFRDB members.

Recommendation 1

1.1 The Secretary of Defence and Chief of Defence Force should issue an apology for the incorrect advice provided to some DFRDB members about the long term effects of commutation on retirement pay, and for the distress it caused.

1.2 The apology should be published on the Defence and CSC websites and be available to DFRDB members on request to Defence.

Consideration of separate compensation scheme

6.5. Not all defective administration results in a compensable financial loss. Modelling has shown that the early access to capital provided by commutation is generally to the substantial benefit of DFRDB members, relative to the lawfully available alternative of not commuting. It also indicates that, where a person is not better off overall for having commuted, this is likely to be due to the member's subsequent choices about how to spend or invest the lump sum.

6.6. This means that a separate compensation scheme for all people who commuted is not appropriate, even if that incorrect or insufficient information may have caused a person to commute where they otherwise would not have.

Outlying cases

6.7. We considered whether there could be outlying cases with circumstances that may warrant compensation under the CDDA scheme. We did not identify any cases where compensation would be appropriate (although our investigation has not involved review of the personal circumstances of each individual DFRDB member).

6.8. It would do a disservice to falsely raise hopes of compensation among the members. Futile claims result merely in further inconvenience and frustration to the member, and an

unnecessary use of public resources for assessment processes. However, as with any modelling process, we cannot rule out that an outlying case may exist.

6.9. We have therefore set out the criteria (Appendix F) that we think should be satisfied for a CDDA claim to have any chance of success. This may assist members to self-assess prior to lodging a CDDA claim, and may assist Defence to determine whether a claim needs to be fully assessed.

6.10. The principle underpinning these criteria is that, in the absence of evidence to the contrary, our report stands as a finding in relation to two of the core elements of a CDDA claim – that there *was* defective administration by Defence, and that the defective administration *did not* cause financial detriment.

6.11. These findings could be rebutted by a person being able to point to, with some evidence, specific financial detriment based on their individual circumstances.

6.12. This could be to explain why the modelling assumptions do not apply to their personal circumstances, or that there is another financial detriment directly caused by their reliance on the misleading information provided by Defence. Financial disappointment due to the scheme operating differently to how people were told, and loss due to the person's subsequent investment decisions or life events, would be unlikely to meet this test.

6.13. In our view, Defence decision-makers would be entitled to finalise any claim, without further detailed assessment, that does not clearly show on its face why the person's circumstances differ from the findings in this report.

Improvements to CSC information

6.14. The information CSC provided was accurate and people could obtain information and confirm their understanding prior to making an election to commute. However, CSC messaging was not sufficiently explicit to correct the misunderstanding that had originated from within the ADF, because the nature of the misunderstanding meant that many:

- did not realise they needed to seek clarification from CSC and/or
- inadvertently read an alternative meaning into CSC 's written materials which fitted with their understanding derived from ADF sources.

6.15. While CSC's information could have been clearer, it was accurate and cannot be said to have been defective.

6.16. However, while CSC's brochures have been improved on numerous occasions since 2004, we have identified some additional improvements to current forms and letters that may further assist to remove any doubt for DFRDB members that the commutation reduction is permanent.

6.17. While a lesser issue than the permanence of the reduction in pension, we have also identified that CSC's brochures could more clearly explain the impact of commutation on indexation arrangements :

Recommendation 2

2.1 Commutation election forms and standard letters (sent to members in advance of their retirement and immediately after commutation) should clearly explain commutation will result in a permanent reduction to retirement pay.

2.2 CSC should also identify whether there are any members who have discharged and have already received the existing standard letter, but who are still in time to either commute, or ask CSC to reverse their commutation election. CSC should write to this cohort to explain that commutation will result in a permanent reduction to retirement pay.

Recommendation 3:

3.1 CSC should amend its DFRDB About Your Scheme and Retirement Benefits publications to clearly explain there may be longer-term indexation related consequences of commuting more than four times the annual amount of retirement pay.

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APPENDIX A—MINISTERIAL CORRESPONDENCE

The Hon Darren Chester MP
Minister for Veterans' Affairs
Minister for Defence Personnel
Minister Assisting the Prime Minister for the Centenary of ANZAC

MS19-000686

Mr Michael Manthorpe PSM
Commonwealth Ombudsman
GPO Box 442
CANBERRA ACT 2601

Dear Mr Manthorpe

On 25 March 2019, I announced, together with the Assistant Minister for Treasury and Finance, Senator the Hon Zed Seselja, an independent inquiry into the Defence Force Retirement and Death Benefits (DFRDB) superannuation scheme.

I intend that the inquiry will examine the accuracy of the information provided by scheme administrators and relevant departments to members of the DFRDB scheme.

The DFRDB scheme, which was established in 1972 and closed to new members in 1991, allowed members to commute (exchange) part of their pension for a lump sum.

There are different views within the veteran community about certain provisions within the scheme and the accuracy of information provided to members, particularly in relation to commutation.

The current scheme administrator is the Commonwealth Superannuation Corporation. Prior to 1 July 2015, CSC was the Trustee and ComSuper was the administrator. ComSuper was previously known as the Australian Government Retirement Benefits Office and the Board was the DFRDB Authority. Commonwealth Superannuation Corporation took on the Board function in 2011 following the establishment of the *Governance of Australian Government Superannuation Schemes 2011*.

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 held by the Department of Veterans' Affairs. Accordingly, I ask that you consider undertaking an investigation to bring resolution to this important matter.

My Department will be available to assist you as needed. My contact in the Department is Mr Patrick Hetherington, First Assistant Secretary, People Policy and Culture Division. Mr Hetherington can be contacted on [redacted]

Parliament House
CANBERRA ACT 2600

Telephone: 02 6277 7820
Email: minister.personnel@defence.gov.au

I thank you for considering my request.

Yours sincerely

s22 [redacted]

DARREN CHESTER

Encl

05 APR 2019

COMMONWEALTH OMBUDSMAN

File ref: qA32890

11 April 2019

The Hon Darren Chester MP
Minister for Veterans' Affairs
Minister for Defence Personnel
Minister Assisting the Prime Minister for the Centenary of ANZAC
Parliament House
CANBERRA ACT 2600

Cc: Mr Greg Moriarty, Secretary of Defence
Ms Liz Cosson AM CSC, Secretary of Department of Veterans' Affairs

Dear Minister

Investigation into the Defence Force Retirement and Death Benefits superannuation scheme

Thank you for your letter of 5 April 2019 requesting that I commence an own motion investigation into the Defence Force Retirement and Death Benefits (DFRDB) superannuation scheme.

Following consultation with the Department of Defence and having considered your request, I have decided, under paragraph 5(1)(b) of the *Ombudsman Act 1976* to commence an own motion investigation into the accuracy of information provided by scheme administrators and relevant departments to DFRDB scheme members in relation to commutation.

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

Throughout the course of the investigation, my Office will work closely with your department, DVA and the relevant scheme administrators. We will also invite affected DFRDB members to provide information to contribute to our investigation. I anticipate the investigation will be completed by the end of 2019.

If you would like to discuss the DFRDB investigation, you are welcome to contact me directly on [redacted] Alternatively, officers from your department can contact Mr Paul Pfitzner, Senior Assistant Ombudsman, on [redacted]

Yours sincerely

s22 [redacted]

Michael Manthorpe PSM
Commonwealth Ombudsman

Influencing systemic improvement in public administration

Defence FOI 0044/26/27
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APPENDIX B—DVA RESPONSE

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Australian Government
Department of Veterans' Affairs
OFFICE OF THE SECRETARY
PRESIDENT REPATRIATION COMMISSION

EC19001015

Mr Michael Manthorpe PSM
Commonwealth Ombudsman
GPO Box 442
CANBERRA ACT 2601

Dear Mr ~~Manthorpe~~ Michael,

Thank you for your letter of 8 July 2019, about your Own Motion investigation into the administration of Defence Force Retirements and Death Benefits (DFRDB) commutation. I welcome the opportunity to provide information about any commutation advice given to DFRDB members by the Department of Veterans' Affairs (DVA).

There are a significant number of veterans who have received or currently receive DFRDB benefits. Many of these veterans would be in receipt of DVA entitlements, and some of these entitlements require means testing, which includes income from defined benefit superannuation schemes, such as DFRDB.

From time to time delegates from our income support area provide information to a veteran, or their representative, regarding how a DFRDB income stream or commutation may affect the rate of a means tested pension. These delegates do not, however, provide advice to DFRDB members regarding the operation of commutations. If a specific query is raised, a delegate would direct the client to the Commonwealth Superannuation Corporation (CSC) for advice.

Searches of our system records also suggest that any information given to clients about DFRDB and commutation is limited to general information. We have noted various Ministerial Correspondence documents that contain references to DFRDB and commutation. From the sample undertaken, the information provided in responses from DVA is limited to general statements about the effect of DFRDB on certain pensions and entitlements.

In the 1990s, DVA operated a Veterans Affairs Financial Information Service (VAFIS), which provided a financial advice service similar to the Department of Human Services' (DHS) Financial Information Service. The service was set up to assist veterans in understanding legislative changes to income and assets tests, but was eventually abolished. Unfortunately information about VAFIS and how it recorded client engagement is no longer available due to the passage of time. However, it is my understanding that, like the DHS Financial Information Service, which our clients are also entitled to use, the service provided information about the impacts of financial decisions but did not provide tailored financial advice.

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While it is not possible to unequivocally state that DVA has never provided advice to clients about DFRDB commutation, our investigations show that the departmental approach has been to direct specific enquiries to CSC or Defence.

I hope this information assists your office with its investigation. If you require any additional information from my department, you are welcome to contact me directly, or alternatively your investigation team can contact [redacted] Assistant Director, Portfolio Assurance Coordination and Reporting section, on [redacted].

I thank you for the ongoing commitment from your office in working with us towards positive outcomes for our veterans and their families.

Yours sincerely

s22 [redacted]

Liz Cosson AM CSC
Secretary

13 August 2019

Defence FOI 0044/26/27
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APPENDIX C—DEFENCE RESPONSE

Australian Government
Department of Defence
PO Box 7900 CANBERRA BC ACT 2610

EC19-005771

Mr Michael Manthorpe PSM
Commonwealth Ombudsman
GPO Box 442
CANBERRA ACT 2601

Dear Mr Manthorpe

Thank you for your letter of 25 October 2019 regarding your investigation into the administration of the Defence Force Retirement and Death Benefits (DFRDB) Scheme.

We thank you for the opportunity to comment on your report.

Defence notes that the investigation examined a large number of historical cases regarding the DFRDB Scheme and steps have been taken by the Department in recent years to minimise the likelihood of incorrect information being disseminated about commutation of retirement pay. It was encouraging to see that the report was unable to identify any cases where a financial loss occurred as a result of any inaccurate information having been provided to DFRDB Scheme members. We acknowledge, however, that some information provided to members in the past may have caused confusion and distress amongst members.

Defence values its workforce and veterans highly and seeks to provide the highest level of support, particularly on transition from the ADF to civilian life. Defence will continue to work with the Commonwealth Superannuation Corporation (CSC) to ensure that our members and veterans are well informed about their retirement options.

A letter to DFRDB members is at Enclosure 1 for publication in your final report and it will also be posted on both the Defence and CSC websites, and available to DFRDB members on request.

Yours sincerely

s22 [redacted]

Greg Moriarty
Secretary

18 November 2019

s22 [redacted]

Angus J Campbell, AO, DSC
General
Chief of the Defence Force

19 November 2019

Enclosure:
1. Letter to DFRDB members

Defence FOI 0044/26/27
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APPENDIX D—DEFENCE APOLOGY TO DFRDB MEMBERS

Australian Government
Department of Defence
PO Box 7900 CANBERRA BC ACT 2610

EC19-006342

DFRDB Members

Dear DFRDB member

On 10 April 2019, the Commonwealth Ombudsman, Mr Michael Manthorpe PSM, decided to commence an own motion investigation into the accuracy of information about commutation of retirement pay provided to members of the Defence Force Retirement and Death Benefits (DFRDB) by scheme administrators and relevant departments. The scope of the investigation was limited only to the administration of the DFRDB scheme.

The Ombudsman found that, on occasions in the 1980s and 1990s, information that was disseminated to some DFRDB members on the long term impact of commutation was incorrect. From the early 2000s onwards Defence has provided members with the correct information regarding commutation and all Commonwealth Superannuation Corporation (CSC) publications were rectified in 2004. Drawing on expert actuarial examination, the Ombudsman also found that the incorrect information was unlikely to have caused financial detriment to members.

While it would have been provided by well-meaning administrators and managers, it was incumbent on Defence to ensure the accuracy of the information provided. We apologise for providing incorrect advice to some DFRDB members and for the confusion and emotional impact that it may have caused.

Defence values its workforce and veterans highly, and always seeks to provide the highest level of support, particularly on transition from the ADF to civilian life. As superannuation is a complex subject, members have been encouraged to seek the most accurate information from CSC (or its predecessors), and Defence also continues to educate our administrators and managers on such matters.

While the Ombudsman found that a decision to commute was unlikely to have resulted in overall financial detriment, should you believe you experienced an actual loss due to your reliance on information that was incorrect, you may apply for Compensation for Detriment caused by Defective Administration (CDDA). Guidance for applying under the CDDA scheme is available at https://www.defence.gov.au/Legal/Directorates/dsfc.asp.

We thank our veterans for their service, and their families for the support provided to them.

Yours sincerely

s22 [redacted]

Secretary

3 December 2019

s22 [redacted]

Angus J Campbell, AO, DSC
General
Chief of the Defence Force

3 December 2019

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APPENDIX E—CSC RESPONSE

Australian Government
Commonwealth Superannuation Corporation

20 November 2019

Mr Michael Manthorpe PSM
Commonwealth Ombudsman
GPO Box 442
Canberra ACT 2601

Dear Mr Manthorpe

Thank you for providing your Office's draft report on the Administration of the DFRDB Scheme. CSC is pleased the Ombudsman conducted an investigation, as we understand DFRDB commutation is a key concern for our customers.

CSC acknowledges the issues raised in the report and appreciates your recognition of CSC's unique operating environment, as an entity that received responsibility for DFRDB administration relatively recently, in 2015.

Noting that your report does not find any defective administration by CSC, CSC accepts the recommendations from your report in full and will implement these opportunities for improvement as soon as practicable. CSC is determined to continually improve the way we administer the superannuation funds for which we are the trustee, and we are committed to striving for the best possible outcomes for all of our valued customers.

CSC is committed to being open and transparent. During this investigation, we have fully co-operated with your staff, sourced complex data from multiple systems and provided historical documents spanning five decades. I acknowledge the CSC staff who have at all times exhibited their professionalism, expertise and commitment to the task of providing your office with the information that was sought.

We appreciate you providing CSC the opportunity to comment on the draft report and for the professionalism of your staff throughout the investigation process. Please contact me at any time if you would like to discuss this important issue.

Yours sincerely

s22

Peter Carrigy-Ryan
Chief Executive Officer

Defence FOI 0044/26/27
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APPENDIX F—CDDA CONSIDERATIONS

Purpose of this Appendix

Despite the finding of defective administration in this report, modelling indicates that compensation is unlikely to be payable to many (if any) DFRDB members, because a decision to commute is unlikely to have resulted in financial detriment.

However, because modelling does not consider a person's individual circumstances, it is theoretically possible that a person may be able to demonstrate financial detriment in their own specific circumstances.

If such a case exists, the Scheme for Compensation for Detriment caused by Defective Administration (CDDA scheme) is an appropriate avenue for assessing whether compensation may be payable.

Some DFRDB members have already experienced financial disappointment due to defective government administration. Given our view that few, if any, would be likely to qualify for CDDA compensation, we are concerned that the possibility of futile claims may lead to further inconvenience and disappointment to DFRDB members.

Decisions under the CDDA scheme are ultimately a matter for authorised decision-makers (in this case, within Defence) applying the CDDA guidelines published by the Department of Finance.[102]

We have outlined below our views on how the findings in this report might assist in the assessment of CDDA claims against these guidelines. Our hope is it will help members understand what might realistically be required for a successful claim and facilitate streamlined assessment of any CDDA claims by Defence.

Considerations for DFRDB members

The following is not an exhaustive list of the requirements for a successful CDDA claim, but rather our view on matters you should consider before making a claim.

In our view, for a claim to have any chance of success, you would need to demonstrate (supported by evidence) why your circumstances are different to the outcomes modelled in this report.

This means you either need to demonstrate that:

- your **decision to commute** resulted in an ***overall*** financial detriment (based only on the options permitted under the legislation) ***in your particular circumstances***, or

[102] Department of Finance, November 2018, *Scheme for Compensation for Detriment caused by Defective Administration*, Resource Management Guide No 409 https://www.finance.gov.au/individuals/discretionary-financial-assistance/scheme-compensation-detriment-caused-defective-administration-cdda-scheme accessed 8 November 2019.

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- you made a **later decision** which resulted in a financial detriment ***directly caused by*** the misleading information provided by Defence.[103]

Important: financial detriment:

- *must* be shown to have been caused by the misleading information
- *must not* be the result of other factors, such as subsequent spending and investment decisions, unforeseen life events or poor financial advice.

You would also need to meet all the criteria set out in the CDDA guidelines to qualify for compensation and you may be required to provide evidence to support your assertions.

Considerations for CDDA decision-makers in Defence

In our view, this report can be treated as a starting point for CDDA decision-makers. This means decision-makers can be satisfied, in the absence of evidence to the contrary, that both:

- **there *was* defective administration** due to misleading information about commutation benefits (further evidence of the misleading statement should not generally be required)
- unless the member is able to provide a plausible explanation of why their circumstances fall outside the circumstances modelled in this report, the defective administration **did *not* cause financial detriment**.

[103] For later decisions, it must also have been reasonable to still rely on the original misrepresentation, despite the passage of time.

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APPENDIX G—GLOSSARY

Australian Defence Force (ADF)	The military organisation which is responsible for the defence of Australia and its national interests. It consists of three branches, including the Australian Army, the Royal Australian Air Force and the Royal Australian Navy.
Commonwealth Superannuation Corporation (CSC)	The agency which currently manages and administers the DFRDB Scheme, as well as other superannuation funds designed specifically for Australian Government and ADF members.
Consolidated Revenue Fund (CRF)	A fund established by s 81 of the Constitution, consists of all revenues and moneys raised or received by the executive government of the Commonwealth. The CRF is self-executing in nature, which means that all money received by the Commonwealth automatically forms part of the CRF.[104]
Consumer Price Index (CPI)	The CPI measures the changes in the price of a fixed basket of goods and services, acquired by household consumers who are resident in the eight State/Territory capital cities.[105]
Defined Benefit Scheme	A scheme where entitlements are set by a predetermined formula and does not depend solely on contributions and investment returns.
Department of Defence (Defence)	Australian Government department which is responsible for defending Australia and its national interests. The department serves the government of the day through efficiently and effectively carrying out the government's Defence policy.[106]
Defence Forces Retirement Benefits Act 1948 (DFRB Act)	The Act of Parliament which established the DFRB scheme. The DFRB Act specifies requirements for eligibility to and administration of entitlements under the scheme.
Defence Forces Retirement Benefits scheme (DFRB scheme)	A scheme to provide retirement benefits, including a defined benefit pension, to certain members of the Australian Defence Force who met minimum length of service requirements (ordinarily, 20 years). Eligible members could, in limited circumstances, commute a portion of their defined benefit pension to a lump sum when they discharged. The scheme commenced in 1948 and closed to new entrants from 30 September 1972.

[104] Department of Finance—https://www.finance.gov.au/resource-management/pgpa-glossary/consolidated-revenue-fund, accessed 21 October 2019.
[105] Australian Bureau of Statistics—https://www.abs.gov.au/ausstats/abs@.nsf/Lookup/6467.0Feature+Article1Mar+2017, accessed 21 October 2019.
[106] Department of Defence—https://www.defence.gov.au/AboutUs.asp#role, accessed 21 October 2019.

Defence Force Retirement and Death Benefits Act 1973 **(DFRDB Act)**	The Act of Parliament which established the DFRDB scheme. The DFRDB Act specifies requirements for eligibility to and administration of entitlements under the scheme.
Defence Force Retirement and Death Benefits scheme (DFRDB scheme)	A scheme to provide retirement benefits, including a defined benefit pension, to certain members of the Australian Defence Force who met minimum length of service requirements (ordinarily, 20 years). Eligible members had an unfettered option to commute a portion of their defined benefit pension to a lump sum when they discharged. The scheme commenced in October 1972 and closed to new entrants in October 1991.
Defence Force Retirement and Death Benefits Authority (DFRDB Authority)	The authority which was responsible for managing and administering the DFRDB Scheme prior to the Commonwealth Superannuation (CSC) assuming responsibility in 2011.
Funded Scheme	A funded scheme must be able to meet all of its current and future obligations to retirees, and must have sufficient assets to provide for all accrued benefits. A funded scheme depends on capital contributions and returns on its investments to achieve stability
Government administration	The steps taken by government departments and agencies to implement: • the laws passed by parliament • departmental policy The Ombudsman's role is to investigate government administration.
Departmental policy guidelines	Guidelines developed by departments to guide officials in how to apply the legislation and laws created by parliament and the courts. These 'policy guidelines' may be published publically or may be internal. They are subordinate to legislation and are part of the administration of the legislation, so they can be investigated by the Ombudsman. Officials must also apply departmental policy guidelines, except where to do so would contravene legislation, or there are cogent reasons not to do so.
Government Policy Decisions	The approach a government has decided it will take in dealing with a particular issue. A government will often use legislation to implement a policy. Government policy decisions are not investigated by the Ombudsman.

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Living Cost Index	A living cost index reflects changes over time in the purchasing power of the after-tax incomes of households. It measures the impact of changes in prices on the out-of-pocket expenses incurred by households to gain access to a fixed basket of consumer goods and services.[107]
Male Total Average Weekly Earnings (MTAWE)	A measure of average before tax earnings of all male employees including any overtime payments. It is calculated by dividing an estimate of male gross—before deductions—weekly total earnings by the number of male employees. MTAWE is a standard measure for wage levels and is enshrined in a range of legislation. For example, MTAWE is used as a benchmark in setting pensions.[108]
Own Motion	The Commonwealth Ombudsman in accordance with s 5(1)(b) of the *Ombudsman Act 1976* may, of his or her own motion, investigate any action, being action that relates to a matter of administration, by a government department or by a prescribed authority.
Scheme administrator	An administrator is responsible for the overall operation of a fund including investment, fund performance, taxation and legislative requirements. The administrator's responsibilities are typically defined in legislation.
Trust	A trust is an obligation imposed on a person or a company to hold property for the benefit of beneficiaries. Trusts are widely used for investment and business purposes. A trustee is responsible for managing the trust's affairs.[109]
Unfunded scheme	In unfunded pension schemes, no contributions are made to the scheme in advance and no investment fund is built up. A member's benefits are not financed until just before they become payable. The benefits are generally paid by the employer. Unfunded defined benefit funds mostly cover government employees and are paid from the Australian Government's Consolidated Revenue Fund.[110]
Statutory entitlement	An entitlement enshrined in law. A person who meets the statutory criteria for payment cannot be refused it.
Statutory formula	A set of mathematical rules or equations set out in legislation.
Discharge	For DFRDB purposes, discharge includes transfer to Reserves.

[107] Australian Bureau of Statistics—https://www.abs.gov.au/AUSSTATS/abs@.nsf/Lookup/6467.0Explanatory%20Notes1Sep%202018, accessed 21 October 2019.
[108] Parliament of Australia—https://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id:%22library/prspub/WUKX6%22, accessed 21 October 2019.
[109] Australian Taxation Office—https://www.ato.gov.au/General/Trusts/, accessed 21 October 2019.
[110] Australian Taxation Office—https://www.ato.gov.au/Individuals/Super/In-detail/Growing-your-super/Super-contributions---for-defined-benefit-funds-and-untaxed-funds/?page=4, accessed 21 October 2019.

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APPENDIX H—CHRONOLOGY

Year	Significant Events	Communication
1972	DFRDB Scheme Commenced	**Transfer to the new scheme brochure** published stating *'the annual rate of retirement pay is reduced by an amount which is calculated by dividing the lump sum amount received, by the retired member's life expectancy'.*
1973	Pollard Review	**DFRDBA Circular** issued to all agencies *'full retirement pay is not restored should the member live beyond normal life expectancy'*.
		DB55A commutation election form published. Extracts commutation reduction s 24 (3)(b) in full. Requires acknowledgement *'I realise that under the provisions of s 24 future retirement pay payments will be reduced as a consequence of this election on and from the date the election is received by the Authority'.*
		Retirement benefits **brochure** published, describes commutation as the option to *'receive a lump sum prepayment of future retirement pay'.*
1976	Indexation in line with CPI introduced	
1978		**DB55A commutation election form updated** – s 24 (3)(b) and acknowledgement removed. New explanatory notes state *'Commutation is a conversion of a portion of future retirement pay payments to a one time lump sum. Once the conversion is made the portion commuted cannot be restored during the member's lifetime'.*
1983	Maximum commutable amount increases	**Internal AGRBO DFRDB Manual** states *'A member who commutes has his or her pension reduced. The reduced pension cannot be restored during the member's lifetime.'*
1985		**Retirement Benefits** brochure updated – no substantive changes in relevant text.
1988	Elections permitted in 3 months prior to retirement	**D20 commutation election form replaces DB55A**. No substantive changes in relevant explanatory notes text.
1991	DFRDB Scheme closes to new members	
	MSBS Scheme commences	
1994		**About Your Scheme booklet** published. No substantive changes in relevant text.
1995		**Retirement Benefits brochure** updated. No substantive changes in relevant text.
2001	*Reynolds and Defence Force Retirement and Death Benefits Authority (2001) AATA 599*	**D20 (commutation election) and D21 (retirement benefits) forms merged**, members referred to DFRDB booklet and other literature. No substantive changes in relevant explanatory notes text.
2002	Maximum commutable amount reaches 5 times annual retirement pay	
2004		**Retirement Benefits brochure** updated to include clearer information about commutation reduction - *'once the conversion has been made the portion you commute cannot be restored regardless of you exceeding your life expectancy'.*
2007	Podger Review	**About Your Scheme booklet** updated to clearly state reduction is *'permanent'.*
2010		**About Your Scheme booklet** updated to include further clarifying information – *'your retirement benefit will not be set to the pre-commutation rate, even if you exceed life expectancy'.*
2014	Current indexation arrangements introduced	

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Australian Government
Commonwealth Superannuation Corporation



About your scheme

A summary of the Defence Force Retirement and Death Benefits Scheme

CSC — DFRDB

Defence Force Retirement & Death Benefits Scheme

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csc.gov.au

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Any financial product advice in this document is general advice only and has been prepared without taking account of your personal objectives, financial situation or needs. Before acting on any such general advice, you should consider the appropriateness of the advice, having regard to your own objectives, financial situation and needs. You may wish to consult a licensed financial advisor.

Commonwealth Superannuation Corporation (CSC) ABN: 48 882 817 243 AFSL: 238069 RSEL: L0001397
Trustee of the Defence Force Retirement and Death Benefits Scheme (DFRDB Scheme) ABN: 39 798 362 763

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A guide to this booklet

This booklet provides a general description of Defence Force Retirement and Death Benefits Scheme (DFRDB Scheme). DFRDB is governed by the Defence Force Retirement and Death Benefits Act 1973 (the DFRDB Act) and associated rules and regulations.

Please note that this booklet is not a substitute for the legislation, or for matters requiring specific interpretation of the legislation.

For further information about DFRDB enquiries should be directed to:

DFRDB
GPO Box 2252
Canberra ACT 2601

Members: 1300 001 677
Pensions: 1300 001 877
Facsimile: (02) 6272 9616
Email: members@dfrdb.gov.au
pensions@dfrdb.gov.au
Website: csc.gov.au

Introduction

The purpose of this booklet

This booklet has been designed to provide you with information on the main features of DFRDB.
This booklet covers how your benefits are calculated when you leave the Australian Defence Force (ADF).

You should use this booklet to help gain an understanding of your entitlements under DFRDB.
You can do this by working through the examples provided. However, should you need any additional information, please call DFRDB on **1300 001 677** or visit **csc.gov.au**

Any information in this document is general information only and does not take account of your personal financial situation or needs. You may wish to obtain financial advice tailored to your personal circumstances.

Information in this document may change from time to time. Information that is not materially adverse to you may be updated on our website **csc.gov.au** or contact us for a free paper copy.
You can find information about product dashboards, director and executive officer remuneration, and other mandated disclosure materials in the About us section of the website.

The offer to which this document relates is available only to persons eligible to become a member of DFRDB under the *Military Superannuation and Benefits Act 1991*, receiving this document (electronically or otherwise).

About DFRDB

DFRDB provides eligible members with an income when they leave the ADF, and also with security during their working life, by covering eligible members and their dependants in the event of their invalidity, retirement or death.

DFRDB is a defined benefit superannuation scheme where the benefits are financed by you and the Department of Defence. DFRDB provides benefits for members who entered the ADF between 1 October 1972 and 30 September 1991, and also for contributors to Defence Force Retirement Benefits (DFRB) Scheme who were compulsorily transferred to DFRDB from its inception in 1972.
If you are receiving retirement or invalidity pay and are resuming full-time ADF service you should read the special requirements on page 37.

The DFRDB was closed to new members on 30 September 1991.

From 1 October 1991 until 30 June 2016, former members who had deferred benefit rights or who were in receipt of DFRDB pensions were able to resume membership of the DFRDB under certain circumstances.

From 1 July 2016, former serving DFRDB members who are in receipt of DFRDB pensions are not able to join the DFRDB or MilitarySuper if they return to the Permanent Forces or become continuous full-time Reservists. Instead, they are covered by the new ADF superannuation arrangement, which includes ADF Super and ADF Cover.

What are DFRDB's main features?

Briefly, DFRDB offers:

- retirement benefits that become available when you have completed 20 years service, or 15 years service and you have reached your retiring age for rank
- invalidity benefits if you retire from the ADF on invalidity grounds
- benefits for your dependants when you die.

Who manages DFRDB?

DFRDB is managed by Commonwealth Superannuation Corporation (CSC). DFRDB's governing legislation is the Defence Force Retirement and Death Benefits Act 1973 (the DFRDB Act).

CSC is responsible for making sure that the provisions of the DFRDB Act are applied fairly to all members of DFRDB. CSC has delegated most of its powers and functions under the Act so that delegates and authorised officers make the majority of primary decisions. CSC reserves the right to reconsider any of those decisions.

Contributions

How much?

As a DFRDB member, you are required to contribute 5.5% of your fortnightly salary for superannuation purposes. Your superannuation salary is the maximum incremental rate of pay for your substantive, provisional, or probationary rank, and includes any service allowance or recognised environmental allowance that is payable. Your contributions are paid into the Consolidated Revenue Fund (CRF) and do not earn any interest.

Contributions after 40 years service

After 40 years of effective service, you are no longer allowed to contribute to DFRDB. Should this apply to you, DFRDB will maintain a record of your salary for superannuation purposes, so that when you leave the ADF, your benefit is based on your final salary.

Leave Without Pay (LWOP) provisions

If you go on LWOP for 21 days or less, you must continue to pay contributions.

However, for periods of LWOP that exceed 21 days, you cannot continue to pay contributions, and such periods will be counted as non-effective service. This is important because your retirement pay is based on your years of effective service.

Providing your Tax File Number (TFN) to DFRDB

Superannuation funds cannot accept contributions from members who do not provide their TFN.

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Ancillary contributions

If you are a current DFRDB contributor you may choose to make voluntary superannuation contributions to MilitarySuper, these voluntary contributions are known as Ancillary contributions.

Should you choose to make voluntary Ancillary contributions to MilitarySuper, you do not become a member of MilitarySuper. You will however be a beneficiary of MilitarySuper, for the purpose of your Ancillary Benefit.

What are Ancillary contributions?

'Ancillary contributions' describes a range of voluntary contributions or transfers you can make to MilitarySuper for yourself, or on behalf of your spouse. When they become payable they are paid as an additional benefit to your DFRDB Benefit. There are seven types of Ancillary contributions offered by MilitarySuper. These seven types are described in detail below.

Who can make Ancillary contributions?

To be eligible to make Ancillary contributions you must be a contributing DFRDB member. MilitarySuper cannot accept some Ancillary Contributions if you have not provided your Tax File Number (TFN).

More information is available online at **csc.gov.au**

1. Additional personal contributions

Additional personal contributions are contributions you can voluntarily make in addition to your regular DFRDB contributions. Additional personal contributions are classed as non-concessional contributions (i.e. non-taxed). There is a cap on the amount of non-concessional contributions you can pay into your superannuation without incurring additional tax.

No tax is payable on these contributions on entry to MilitarySuper, as these contributions are paid from your after-tax salary. However, if you exceed your non-concessional limit, these contributions will be taxed at the highest marginal rate at the end of the financial year.

2. Salary sacrifice

Salary sacrifice contributions are contributions from your pre-tax salary that you can voluntarily make in addition to (not instead of) your regular contributions to DFRDB. Even though they're voluntary contributions paid from your own salary, salary sacrifice contributions are classed as employer contributions. However, they don't count towards the minimum amount Defence is required to pay into your super on your behalf.

When we receive your salary sacrifice contributions, we'll deduct tax at a concessional rate of 15% and report the contributions against your concessional contributions cap. Salary sacrifice is an arrangement between yourself and Defence, so you'll need to contact your pay unit to set it up.

3. Transfer amounts

You can transfer benefits from any of the following institutions to MilitarySuper:

- another regulated superannuation fund
- a Retirement Savings Account (RSA)
- an approved deposit fund
- the Special Account, previously called the Superannuation Holding Account Reserve (SHAR).

You cannot transfer a DFRDB benefit into MilitarySuper.

15% tax is deducted from any untaxed portion of the transfer amount on receipt in to MilitarySuper.

Amounts transferred into MilitarySuper from other superannuation funds will not count towards the contribution caps. Further information about the tax consequences of contributions made to superannuation funds is available from the Australian Taxation Office (ATO) website at **ato.gov.au**

4. Spouse contributions

Spouse contributions are contributions you can make on behalf of your spouse. Your spouse will have a MilitarySuper interest established on their behalf and their contributions will be kept in a separate Ancillary account to yours. If you make spouse contributions, the benefit will belong to your spouse and will be payable to them as a lump sum—you'll have no right to the benefit, even if they cease to be your spouse. Spouse contributions are paid from your after-tax salary, so we won't apply tax when the contributions are received.

Your spouse must be a person who you are in a marital or couple relationship with to be eligible for spouse contributions. A marital or couple relationship exists if you've been living together as spouse or partner on a permanent and bona fide domestic basis for a continuous period of at least three years. If the period is less than three years, we'll need to consider evidence and determine if spouse contributions can be received.

Because these contributions belong to your spouse, only they can choose an investment option for these contributions. Spouse contributions will only count towards your spouse's non-concessional contributions cap and not your own. Your spouse will need to meet a condition of release to be eligible to claim their spouse contributions. Visit **ato.gov.au** for more information about conditions of release.

5. Co-contributions

In certain circumstances the Government may make additional contributions to your super. You don't need to apply for these contributions. If you're eligible, and we have your tax file number, they'll be paid into your benefit automatically. Super co-contributions are payable to low or middle-income earners (the thresholds change each financial year) who make personal after-tax contributions to their super. The amount of government co-contribution you receive will depend on your income and the amount you contribute, and is subject to an annual cap. For more information about Government contributions, including the current income thresholds and caps for these payments, please visit the ATO website **ato.gov.au**

6. Super Guarantee (SG)

Amounts received from the ATO

These are contributions collected from your previous employer by the ATO under the Superannuation Guarantee (SG) scheme.

Amounts received from the Department of Defence

From 1 July 2008, all employers in Australia have been required to use ordinary time earnings (OTE) as the earning base for SG purposes.

Ordinary time earnings encompasses a wider range of payments than salary and includes payments such as disability allowances and completion bonuses. Reimbursement-type allowances and amounts included under Fringe Benefits Tax laws are excluded from OTE.

SG employer contribution may not be achieved for some members who are in receipt of certain allowances and bonuses. To ensure there is no shortfall, Defence will pay additional employer contributions on the difference between salary for superannuation purposes and OTE. For the latest SG rate visit **ato.gov.au**

Under the SG legislation, employers are required to contribute the relevant percentage of OTE to superannuation for their employees (subject to a cap).

7. Low-Income Super Tax Offset (LISTO)

The low-income super tax offset (LISTO) is payable to individuals with an adjusted taxable income below the threshold set by the ATO. If you're eligible, you'll receive up to 15% of the total concessional (before-tax) super contributions that you make in a financial year, subject to an annual cap. The low income super contribution (LISC) was a similar scheme to LISTO, but ceased from 1 July 2017 when LISTO was established.

For more information about Government contributions, including the current income thresholds and caps for these payments, please visit the ATO website **ato.gov.au**

Investment choice for Ancillary contributions

Your Ancillary contributions plus investment returns make up your Ancillary Benefit. MilitarySuper offers a range of investment strategies in which you can choose how to invest your Ancillary Benefit (including any co-contributions).

Important: Before making an investment choice, you should read the MilitarySuper PDS. If you do not already have a copy, you can obtain one from the MilitarySuper website at csc.gov.au or by calling 1300 006 727.

MilitarySuper investment options

MilitarySuper offers you four investment options—Cash, Income Focused, Balanced and Aggressive—for the investment of your Ancillary contributions. You can choose different options for your existing member account balance and your future Ancillary contributions. You can change your investment options online or by completing an investment choice form available from **csc.gov.au**

When choosing an investment option you should consider the information provided in the MilitarySuper Product Disclosure Statement (PDS), available from **csc.gov.au** or calling **1300 006 727**.

Family Law and your Ancillary Benefit

As your Ancillary Benefit is an entitlement within MilitarySuper, this benefit may be valued separately from your DFRDB entitlement, and be included as part of your Family Law settlement if a splitting order or superannuation agreement was to be served on us.

Should you wish to split your MilitarySuper Ancillary Benefit the court order or superannuation agreement must specifically bind MilitarySuper in this regard.

How is an Ancillary Benefit paid?

When an Ancillary Benefit is payable, it will be paid as a lump sum only.

When can you claim your Ancillary Benefit?

You can claim your Ancillary Benefit either:

- when you have reached preservation age and permanently retired from the workforce
- when you reach 60 and you then cease employment, or change employers
- when you reach 65 years of age
- if we are satisfied that you have met the requirement of total and permanent incapacity
- if we are satisfied that you meet the requirements for severe financial hardship
- if the Department of Human Services (DHS) approves payment on specified grounds.

Your benefit will also be payable to an eligible spouse, eligible child or children, or your estate, in the event of your death.

Rolling over your Ancillary Benefit

You can rollover your Ancillary Benefit to another regulated superannuation fund, RSA or approved deposit fund at any time. However, you will not be able to claim the benefit from that rollover institution until you satisfy the age/employment conditions (or conditions of release) as outlined above.

Further details can be obtained from the MilitarySuper website at **csc.gov.au** or by calling **1300 006 727**.

Table 1: Preservation ages

Date of birth	Preservation age
Before 1/7/60	55
1/7/60 to 30/6/61	56
1/7/61 to 30/6/62	57
1/7/62 to 30/6/63	58
1/7/63 to 30/6/64	59
After 30/6/64	60

DFRDB benefits

General

Benefits from DFRDB are payable to you on your resignation or retirement. DFRDB's range of benefits may be summarised as follows:

- 'transition' benefits, which become payable on:
  - your voluntary or compulsory age exit or your eventual claim date after electing to defer your benefit

or

- 'in-service' benefits, which become payable on either:
  - your retirement due to physical or mental incapacity (i.e. invalidity)
  - your death, leaving eligible dependants
  - your death, leaving no eligible dependants

or

- 'post-service' benefits, which become payable following your death to your eligible spouse and children, provided you are receiving a pension at the time of your death.

Form of benefits

The primary form of DFRDB benefit is a combination of an indexed pension, and a lump sum payment referred to as commutation. See page 14 for more details.

Productivity benefit

You are also entitled to a productivity benefit under the Defence Force superannuation productivity benefit determination (issued under the *Defence Act 1903*). The amount of the benefit varies according to the circumstances under which you leave the ADF. DFRDB pays the productivity benefit at the same time as other benefits. See page 35 for more details.

Payment of benefits

Generally, a retirement/invalidity superannuation benefit is paid fortnightly by direct deposit to an account with any approved bank, building society, or credit union. The account must be with a financial institution in Australia and must be in your name. It may be a joint account, provided your name is one of the account holders.

Family Law

From 28 December 2002, changes to the Family Law Act 1975 came into effect. The legislation allows for superannuation to be split on marriage breakdown either by:

- a court order (that is, an order made by a court, or exercising Family Law jurisdiction such as the Family Court or the Federal Magistrates Court)

or

- a superannuation agreement between the parties (that is, an agreement between the parties that meets the requirements in the Family Law Act 1975).

On 18 May 2004, further legislative changes came into effect which allow a separate superannuation interest (i.e. account) to be created for a member's spouse or former spouse once a valid court order or superannuation agreement has been received.

From 1 March 2009, the Family Law Act 1975 allows couples in a de facto relationship access to property settlements under the Act. As a result superannuation can be split in the event of a de facto relationship breakdown.

Further details of the splitting arrangements and requirements are available from the **Family Law and splitting super** booklet on the CSC website at **csc.gov.au**

The consequence of a Family Law payment split depends on whether the member's benefit is in the 'payment phase' or 'growth phase'.

Payment phase

If a DFRDB retirement or invalidity benefit is being paid fortnightly, it is regarded as being in 'payment phase' for Family Law purposes.

If a DFRDB retirement or invalidity benefit is subject to a Family Law split, the non-member spouse will become an **Associate** in DFRDB and will start to receive a fortnightly pension in his or her own right. The entitlement is indexed twice yearly.

If an Associate is in receipt of an Associate's fortnightly benefit, there is no residual benefit for their dependants.

Growth phase

Each of the following entitlements are regarded as being in 'growth phase' for Family Law purposes:

- an accruing DFRDB benefit
- a DFRDB deferred benefit that has not been claimed (see page 36 for more information on deferred benefits)
- an entitlement under the productivity benefit scheme.

If any of these entitlements are subject to a Family Law split, the non-member spouse will become an **Associate** in MilitarySuper, with an **Associate B** benefit.

For Family Law purposes, DFRDB and productivity benefit scheme are regarded as two separate schemes. Therefore, if the benefit is still in the growth phase, and the parties wish to bind the superannuation interests in both schemes, there will need to be a separate order or separate clauses within a single order or agreement, for each scheme.

Retirement benefits

General

If you retire on non-medical grounds and have:

- 20 or more years of effective service

or

- 15 or more years of effective service and have reached your retiring age for rank

you are entitled to a retirement benefit. There is also an option to commute part of your future retirement benefit to a lump sum.

Your retirement benefit becomes effective on the day after the date of your separation from the ADF, and it will be paid to you fortnightly for the rest of your life, unless you resume continuous full-time ADF service.

Calculation of retirement benefit

Your retirement benefit is worked out as a percentage of your salary when you retire. The two factors used to work out your retirement benefit are:

- your annual rate of pay, and
- your completed years of effective service.

Your rate of pay, for DFRDB purposes, is the maximum rate of pay which applies to your rank and pay level, including any service allowance or recognised environmental allowance.

Effective service is the total of your full-time contributory service, plus any periods of past service you may have bought back. You can find out how much effective service you have by looking at your most recent annual member statement and then adding the effective service that you have accumulated since the date on the statement.

Table 2 on the next page shows the amount of retirement benefit you can expect to receive, depending on your annual rate of pay and your completed years of effective service. You can use the table and the following example to estimate how much retirement pay you will be entitled to when you leave the ADF.

There is a quickguide to calculating DFRDB retirement benefits on page 18.

To estimate your potential retirement benefit you can also use the i-Estimator on the DFRDB website at **csc.gov.au**
You will need an Access Number to use this service. Please call **1300 001 677** to obtain an Access Number.

Table 2: Retirement pay as a percentage of annual salary

Complete years	%	Complete years	%	Complete years	%	Complete years	%
15	30.00	22	38.00	29	49.25	36	65.25
16	31.00	23	39.50	30	51.25	37	67.75
17	32.00	24	41.00	31	53.25	38	70.50
18	33.00	25	42.50	32	55.50	39	73.50
19	34.00	26	44.00	33	57.75	40 or more	76.50
20	35.00	27	45.75	34	60.25		
21	36.50	28	47.50	35	62.75		

Example A: Calculation of retirement pay (before commutation)

Alex, a 42-year-old Squadron Leader with 22 years of effective service, has decided to retire from the ADF. Alex has a salary for superannuation purposes of $83,398 (the highest increment for his rank is always used).

Using **Table 2**, we see that as Alex has 22 years of effective service, therefore the percentage to apply to his final salary is 38.00. His annual retirement benefit is worked out as follows:

Step 1 **$83,398 × 38% = $31,691.24 per year (before tax)**

This figure, $31,691.24, is his annual retirement benefit, before tax, and is arrived at by multiplying his final annual salary for superannuation purposes and a percentage determined by his years of effective service (22 years service = 38% see Table 2).

Step 2 **$31,691.24 × 14 ÷ 365 = $1,215.55 per fortnight (before tax)**

The fortnightly entitlement is worked out by multiplying annual retirement benefit by 14 and then dividing it by 365. In Alex's case, he would be paid a fortnightly benefit of $1,215.55 before tax.

Commutation

General

Commutation is the lump sum prepayment of part of your future retirement benefit.

Elligibility

- If you have retired and are entitled to retirement benefit, you can elect to commute (that is, exchange) a portion of that future retirement benefit for a lump sum.
- Similarly, if you are classified Class C after being medically separated from the ADF (see page 24), and you would have been entitled to receive retirement benefit had you voluntarily transitioned out, you can elect to commute a portion of your benefit.
- If you have an entitlement to a deferred benefit (see page 36), you may also elect to commute a portion of that benefit.

An election to commute a portion of your retirement benefit may be made up to three months before, or up to 12 months after your retirement, or the date on which a deferred benefit becomes payable. An election to commute can only be made by completing the Application for **DFRDB retirement pay, commutation and superannuation productivity (D20)** form available at **csc.gov.au**

From 2002, the maximum amount that you may commute is five times your annual rate of retirement benefit on exit.



Note: Commutation of a benefit results in a **permanent reduction** in your retirement benefit based on your life expectancy—see factors at **Table 3** on page 15. If you choose to claim a commutation lump sum, this will **permanently** reduce your pension. The ongoing reduction in your pension is based on your age, and therefore your life expectancy, the day following your transition from the ADF, or the day that CSC receives your election, whichever is later. This may result in a higher pension reduction and therefore a lower pension amount. Your pension entitlement will not change if you outlive the life expectancy used to determine your reduction.

If you have accessed a commutation during a previous separation from the ADF and re-entered the ADF, you must elect the same commutation amount in all subsequent separations.

Date of effect

A commutation election becomes effective on the later of:

- the date the election is received by DFRDB
- the day immediately after retirement
- the date a deferred benefit becomes payable.

For taxation purposes a commutation election should be made within 12 months of exit.

Commutation amount and retirement pay increases

If you commute less than the maximum entitlement, and you elect to commute between four and five times your retirement pay, the total amount of the remaining retirement pay is indexed.

However, if no election is made to commute, or you elect to commute less than four times your retirement pay, indexation will only be applied to your notional retirement benefit, which is the rate of retirement pay that would be payable if you had elected to commute four times retirement pay.

These differences are demonstrated in the example on the next page.

Example B: Calculation of commutation

David is 43 years old and a Sergeant in the army. He retires after 25 years in the ADF.
David elects to commute a portion of his future retirement pay to a lump sum. His final salary for superannuation purposes is $66,709, his commutation factor is 5 and his life expectancy factor is 29.14 (see **Table 3** on **page 15**).

Step 1 **$66,709 × 42.50% = $28,351.33 (retirement pay before commutation)**

This step is exactly the same as in **Example A**, and is the multiplication of David's annual salary for superannuation purposes and a percentage determined by his years of effective service. The resultant amount, $28,351.33, is his annual retirement pay, before commutation and before tax.

Step 2 **$28,351.33 × 5 = $141,756.65**

This step calculates David's commutation lump sum by multiplying his annual retirement pay and the maximum commutation factor that applies to members leaving the ADF from 1 July 2002 onwards (see **Table 1** on page 9).

Step 3 **$141,756.65 ÷ 29.14 = $4,864.68**

In this step, we divide the lump sum arrived at in **Step 1** by David's life expectancy factor, which for a 43-year-old male is 29.14 (see **Table 3** on page 15).

Step 4 **$28,351.33 – $4,864.68 = $23,486.65**

Here, we subtract the figure resulting from **Step 3** from David's pre-commutation annual retirement pay (**Step 1**). This figure, $23,486.65, is his annual retirement benefit after commutation and before tax.

Step 5 **$23,486.65 × 14 ÷ 365 = $900.86 (per fortnight, before tax)**

This step simply converts the annual retirement pay into a fortnightly amount, before tax.

Notes:

If David decided to commute only four times retirement pay, his gross commutation lump sum would reduce from $141,756.65 to $113,405.32. His remaining indexed pension would then increase from $23,486.65 to $24,459.59.

If David decided not to commute any retirement pay, the commencing rate of retirement pay would be $28,351.33, of which $24,459.59 would be indexed. If David elected to commute less than four times retirement pay, only $24,459.59 of the remaining retirement pay would be indexed.

Table 3: Life expectancy factors

Age	Factor		Age	Factor	
	Male	Female		Male	Female
30	41.12	46.49	48	24.80	29.69
31	40.18	45.53	49	23.96	28.80
32	39.25	44.57	50	23.13	27.92
33	38.31	43.61	51	22.31	27.05
34	37.38	42.65	52	21.51	26.18
35	36.45	41.70	53	20.72	25.32
36	35.51	40.75	54	19.94	24.47
37	34.59	39.81	55	19.18	23.63
38	33.67	38.86	56	18.43	22.79
39	32.75	37.92	57	17.70	21.96
40	31.84	36.99	58	16.99	21.13
41	30.93	36.06	59	16.29	20.32
42	30.03	35.13	60	15.60	19.51
43	29.14	34.21	61	14.94	18.72
44	28.25	33.29	62	14.29	17.94
45	27.38	32.38	63	13.67	17.17
46	26.51	31.48	64	13.06	16.42
47	25.65	30.58	65	12.47	15.68

Note: The life expectancy factors used for determining DFRDB benefits are set out in the DFRDB Act.

Notional Retiring Age (NRA)

Retiring before reaching NRA?

If you are an Officer, you are entitled to retirement pay, even if you retire before you reach your NRA for rank, as long as you have completed 20 years of effective service. However, if you do so, your retirement pay will be reduced by 3% for every year that your actual retiring age is less than your NRA. **Example C** on the next page shows you how a NRA reduction is applied.

The NRA provisions of the DFRDB Act exist to encourage Officers to serve until they reach a certain age. This age varies according to the rank that Officers hold at the time they retire. The notional retiring ages for the different ranks of Officers are outlined below in **Table 4**.

Note: The NRA provisions apply **only** to Officers.

Table 4: Notional Retiring Age

Rank			NRA (years)
Navy	Army	Air Force	
Admiral Vice Admiral	General Lieutenant General	Air Chief Marshal Air Marshal	55
Rear Admiral	Major General	Air Vice Marshal	52
Commodore Captain	Brigadier Colonel	Air Commodore Group Captain	50
Commander Chief Officer (WRANS) Matron (RANNS) Superintendent (Naval Police)	Lieutenant Colonel	Wing Commander Squadron Leader	45
Lower rank	Lower rank	Lower rank	42

NRA only applies to Officers who retire at their own request or are retired on disciplinary grounds. However, NRA does not apply to Officers who are either:

- made redundant
- separated medically unfit for further service
- on a short service commission, and completes that commission.

Example C: Calculation of retirement pay with NRA penalty

Paul, aged 40, is an army Captain retiring from the ADF after 20 years service. As the NRA for a Captain is 42 (see **Table 4** on page 16), Paul's retirement pay will be reduced by 6%, which is a 3% reduction for each year that his age at retirement is less than the NRA for his rank.

Step 1 **$85,538 × 35% = $29,938.30 (before tax)**

In this step, Paul's final salary for superannuation purposes is multiplied by the applicable percentage for his years of effective service as shown in **Table 2** (20 years service = 35% of final salary).

Step 2 **$29,938.30 × 6% = $1,796.30**

Because Paul is retiring two years before the NRA for his rank, a penalty of 6% is applied to the amount worked out in Step 1.

Step 3 **$29,938.30 – $1,796.30 = $28,142.00**

In this step, the NRA provisions are applied by subtracting the penalty resulting from **Step 2** from the amount worked out in **Step 1**.

In this example, Paul's annual retirement pay is $28,142.00, before commutation and before tax. Should he elect to commute a portion of his retirement pay to a lump sum, the steps are exactly the same as shown from **Step 2** in **Example B** on page 15.

DFRDB retirement benefits quickguide

If you retire on non-medical grounds and have:

- 20 or more years of effective service

or

- 15 or more years of effective service and have reached your retiring age for rank

you are entitled to retirement benefits. Retirement benefit becomes payable on the day after the date of your separation from the ADF, and it will be paid to you fortnightly for the rest of your life (unless you resume continuous full-time ADF service). Retirement benefits are subject to twice-yearly indexation.

Service

20 or more years

15 to 19 years AND reached retiring age for rank

15 to 19 years but NOT yet reached retiring age for rank

less than 15 years

Retirement pay 20 or more years

You are entitled to retirement pay based on the following:

Completed years	% salary*	Completed years	% salary*
15	30.00	29	49.25
16	31.00	30	51.25
17	32.00	31	53.25
18	33.00	32	55.50
19	34.00	33	57.75
20	35.00	34	60.25
21	36.50	35	62.75
22	38	36	65.25
23	39.50	37	67.75
24	41	38	70.50
25	42.50	39	73.50
26	44	40+	76.50
27	45.75		
28	47.50		

*Note: Salary means your salary for superannuation purposes, which may differ from your actual salary (see your annual member statement)

Refund and gratuity

Where you are not entitled to retirement pay, your benefit is:

- a lump sum refund of your contributions paid into the Scheme, plus
- a superannuation guarantee top-up, plus
- a gratuity in some cases

plus

Notional retiring age

If you are an officer your retirement pay will be reduced by 3% for each year that your age at retirement is less than your notional retiring age.

Rank	Notional retiring age
Major (or equivalent) and below	42
Lieutenant Colonel (or equivalent)	45
Colonel and Brigadier (or equivalent)	50
Major General (or equivalent)	52
Lieutenant General and General (or equivalent)	55

Commutation

You can elect to receive a lump sum prepayment of part of your future retirement benefit, up to a maximum of five times, AND your future retirement benefit will be permanently reduced to offset the commutation.

Productivity

If you have reached your preservation age and will not be working again, or you have reached age 60 and change employer, your productivity benefit is paid to you as a lump sum; otherwise it must be preserved in a rollover fund.

plus

Date of birth	Preservation age
Before 1/7/60	55
Between 1/7/60 & 30/6/61	56
Between 1/7/61 & 30/6/62	57
Between 1/7/62 & 30/6/63	58
Between 1/7/63 & 30/6/64	59
After 30/6/64	60

less

Surcharge

Any surcharge debt remaining at the time benefits are payable is normally recovered from the productivity lump sum but you can request that it be recovered from your commutation lump sum (if any), or retirement pay (if you do not elect to commute on transition) instead.

Resignation

If you leave DFRDB without an entitlement to a retirement benefit or invalidity benefit, you are entitled to a resignation benefit.

In these circumstances, you have the following options:

- a lump sum refund of your contributions paid into DFRDB
- plus a superannuation guarantee top-up
- plus a gratuity (depending on individual circumstances) (see below)
- preservation of your benefit (in limited circumstances) (refer to page 36).

Refer to the resignation benefits quickguide on page 21.

Gratuities

A gratuity is a sum of money paid to some members in the form of a one-off lump sum. Although gratuities are usually only payable to other rank members, some Officers are also entitled to receive them. These members will be informed of their eligibility upon separation. Once you become entitled to a retirement benefit or invalidity benefit you will not be eligible to receive a gratuity.

DFRDB resignation benefits quickguide

If you leave DFRDB without an entitlement to retirement benefit or invalidity benefit, you are entitled to a resignation benefit.

Refund and gratuity

Where you are not entitled to retirement benefit your benefit is:

- a lump sum refund of your contributions paid into DFRDB plus
- a superannuation guarantee top-up, plus
- a gratuity in some cases OR
- preservation of your benefit (in limited circumstances).

Productivity

If you have reached your preservation age and will not be working again, or you have reached age 60 and change employer, your productivity benefit is paid to you as a lump sum, otherwise it must be preserved in a rollover fund.

Date of birth	Preservation age
Before 1/7/60	55
Between 1/7/60 & 30/6/61	56
Between 1/7/61 & 30/6/62	57
Between 1/7/62 & 30/6/63	58
Between 1/7/63 & 30/6/64	59
After 30/6/64	60

less

Surcharge

Any surcharge debt remaining at the time benefits are payable is normally recovered from the productivity lump sum but you can request that it be recovered from your commutation lump sum instead.

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Redundancy

If you are made redundant, and you are not eligible to receive retirement benefit from DFRDB, you will receive a lump sum refund of the contributions you have paid into DFRDB, plus a gratuity where applicable.

If you are entitled to a retirement benefit this is determined in the same manner as for retirement, except if you are an Officer and you are made redundant, you will be exempt from the NRA provisions (see the section on NRA on page 16).

Service

- 20 or more years
- 15 to 19 years AND reached retiring age for rank
- 15 to 19 years but NOT yet reached retiring age for rank
- less than 15 years

Retirement pay 20 or more years

You are entitled to retirement pay based on the following:

Completed years	% salary*	Completed years	% salary*
15	30.00	29	49.25
16	31.00	30	51.25
17	32.00	31	53.25
18	33.00	32	55.50
19	34.00	33	57.75
20	35.00	34	60.25
21	36.50	35	62.75
22	38	36	65.25
23	39.50	37	67.75
24	41	38	70.50
25	42.50	39	73.50
26	44	40+	76.50
27	45.75		
28	47.50		

*Note: Salary means your salary for superannuation purposes, which may differ from your actual salary (see your annual member statement)

Refund and gratuity

Where you are not entitled to retirement pay, your benefit is:

- a lump sum refund of your contributions paid into the Scheme, plus
- a superannuation guarantee top-up, plus
- a gratuity in some cases

DFRDB redundancy benefits quickguide

If you are made redundant and have:

- 20 or more years of effective service

or

- 15 or more years of effective service and have reached your retiring age for rank

you are entitled to retirement benefit. Retirement benefits become payable on the day after the date of your separation from the ADF, and it will generally be paid to you fortnightly for the rest of your life.* Retirement benefits may be indexed bi-annually on the first paydays in January and July.

*Note: that there are some exceptions to this if you return to the Permanent Forces or become a continuous full-time Reservist before 1 July 2016.

Commutation

You can elect to receive a lump sum prepayment of part of your future retirement benefit, up to a maximum of five times, AND your future retirement benefit will be permanently reduced to offset the commutation.

plus

Productivity

If you have reached your preservation age and will not be working again, or you have reached age 60 and change employer, your productivity benefit is paid to you as a lump sum; otherwise it must be preserved in a rollover fund.

Date of birth	Preservation age
Before 1/7/60	55
Between 1/7/60 & 30/6/61	56
Between 1/7/61 & 30/6/62	57
Between 1/7/62 & 30/6/63	58
Between 1/7/63 & 30/6/64	59
After 30/6/64	60

plus

Surcharge

Any surcharge debt remaining at the time benefits are payable is normally recovered from the productivity lump sum but you can request that it be recovered from your commutation lump sum (if any), or retirement pay (if you do not elect to commute on transition) instead.

Invalidity benefits

General

Invalidity benefits are designed to address the circumstance of retirement from the ADF due to a physical or mental incapacity.

If you are separated from the ADF as medically unfit for service, you may be eligible for an invalidity benefit from DFRDB. However, you may not be eligible for an invalidity benefit if you have a pre-existing condition. You will also not be eligible for an invalidity benefit if you deliberately bring about your invalidity, or if you are absent without leave for a period exceeding 60 consecutive days, and your invalidity occurs after this period.

Although DFRDB is responsible for paying your invalidity benefits, compensation benefits are provided by the Department of Veterans' Affairs (DVA).

Entitlement to invalidity benefits

If you are retired on invalidity grounds, we are required to determine the percentage of your incapacity in relation to your ability to perform civilian employment.

When deciding whether or not you are entitled to an invalidity benefit, we (or a delegate) have regard only to the following:

a) your vocational, trade and professional skills, qualifications and experience

b) the kinds of civilian employment which a person with the skills, qualifications and experience referred to in (a), but without any incapacity, might reasonably undertake

c) the degree to which the physical or mental impairment that was the cause of the invalidity retirement has diminished your capacity to undertake the kinds of civilian employment referred to in (b).

Having determined the degree of your incapacity, we are required to classify you in accordance with a percentage of incapacity as follows:

- Class A, 60% or more
- Class B, 30% or more but less than 60%
- Class C, less than 30%.

How much?

If you are classified as **Class A**, you will receive invalidity pay based on 76.5% of your annual salary for superannuation purposes. If you are classified as **Class B**, you will receive invalidity pay based on half a **Class A** pension (38.25%). However, if you have completed 23 or more years of effective service and are classified as **Class B**, your invalidity pay will be higher as it is based on the number of years you have actually served, up to a maximum of 40 years.

A member who is classified as **Class A** or **Class B** has no entitlement to elect to commute. If you are classified as **Class C**, and you have less than 20 years service you will receive a lump sum benefit and, in some cases, a gratuity as well. Your lump sum will consist of a refund of your contributions made to DFRDB, multiplied by 1.5.

If you are classified as **Class C** but you would have been entitled to retirement pay if you had retired on grounds other than invalidity (that is, you have 20 years of service or have reached retirement age for rank), you will receive a benefit equivalent to retirement pay, at a rate determined by your length of service if this is greater than your invalidity benefit. In this situation, if you are classified as **Class C**, the commutation option is available.

If you require further assistance, please contact DFRDB. Contact details are available on page 48.

Example D: Calculation of invalidity pay

Alison and Ben, both Seaman, are injured in a training accident. Both have 21 years of effective service. Ben is classified by CSC as **Class B** invalidity, while Alison is classified as **Class A**.

Class A

In Alison's case, as she has been classified as **Class A**, her benefit will be based on 76.5% of her annual salary for DFRDB purposes ($56,543). To calculate her annual benefit, we simply multiply her annual salary by 76.5%

$56,543 × 76.5% = $43,255.40 per year (before tax)

Class B

As Ben has been classified as **Class B** invalidity, his invalidity benefit will be based on 38.25% of his annual salary for DFRDB purposes ($56,543). Again, to calculate his invalidity benefit, we simply multiply his annual salary by 38.25%

$56,543 × 38.25% = $21,627.70 per year (before tax)

In both cases—as with all ongoing benefits from DFRDB—the benefits may be indexed bi-annually on the first paydays in January and July.

DFRDB invalidity benefits quickguide

DFRDB invalidity benefits are designed to meet the possibility of your retirement from the Defence Force due to your physical or mental incapacity to carry out your duties and to cover your subsequent resettlement into the civilian workforce.
Invalidity pensions may be indexed biannually on the first paydays in January and July.

Incapacity

Class C: less than 30%
Class B: 30%—less than 60%
Class A: 60% or more

The amount of invalidity benefit depends on the percentage of your incapacity to undertake civilian employment

Class C invalidity pay

As a Class C retiree you would be entitled to a lump sum payment unless you would otherwise have qualified for retirement pay

20 or more years

15 to 19 years but NOT yet reached retiring age for rank

less than 15 years

Class B invalidity pay

You are entitled to invalidity pay based on the following:

Completed years	% salary*	Completed years	% salary*
under 23	38.25	32	55.5
23	39.50	33	57.75
24	41	34	60.25
25	42.50	35	62.75
26	44	36	65.25
27	45.75	37	67.75
28	47.50	38	70.50
29	49.25	39	73.50
30	51.25	40+	76.50
31	53.25		

*Note: Salary means your salary for superannuation purposes, which may differ from your actual salary (see your annual member statement)

Class A invalidity pay

Class A invalidity pay is 76.5% of your salary*

Class C invalidity pay

You are entitled to invalidity pay based on the following:

Completed years	% salary*	Completed years	% salary*
15	30.00	29	49.25
16	31.00	30	51.25
17	32.00	31	53.25
18	33.00	32	55.50
19	34.00	33	57.75
20	35.00	34	60.25
21	36.50	35	62.75
22	38	36	65.25
23	39.50	37	67.75
24	41	38	70.50
25	42.50	39	73.50
26	44	40+	76.50
27	45.75		
28	47.50		

Class C lump sum and gratuity

Where you are not entitled to retirement pay your benefit is either:

- a lump sum of 1.5 times your contributions paid into DFRDB
- plus a gratuity in some cases

OR

- preservation of your benefit

plus

Class C commutation

You can elect to receive a lump sum prepayment of part of your future invalidity pay, up to a maximum of five times, AND your future retirement pay will be reduced to offset the commutation.

Productivity

Your productivity benefit must be preserved in a rollover fund until you reach your preservation age.

Surcharge

Any surcharge debt remaining at the time invalidity benefits are payable is normally recovered from the productivity lump sum but you can request that it be recovered from your commutation lump sum (if any), or retirement pay (if you do not elect to commute on transition) instead.

Review of invalidity cases

As part of the 2009 Federal Budget, the Government announced a reduction in the number of employer initiated medical reviews of DFRDB invalidity recipients.

From 1 July 2009, there has been no employer initiated reviews of DFRDB invalidity recipients.

However, it is important to note that should you consider that your health has deteriorated, you retain the right to initiate a review to have your classification re-assessed.

If you think that the impairment that caused your retirement has become worse since you were first classified, or since you were last reviewed, you can request that your classification be reviewed. If you want a review, all you have to do is write to us and request one.

You can appeal against any decision that we make regarding your DFRDB entitlements.
For information on appeal procedures, see page 44.

Death benefits

General

Your DFRDB membership not only provides you with a superannuation benefit for your retirement, but it also guarantees a benefit for your eligible dependants or your estate in the event of your death. The eligibility criteria is set out in the DFRDB Act. We will decide whether or not your dependants satisfy the conditions in the Act and qualify for the payment of a benefit.

Your dependants may also be entitled to claim benefits from DVA or under the Social Security Act in addition to those from DFRDB.

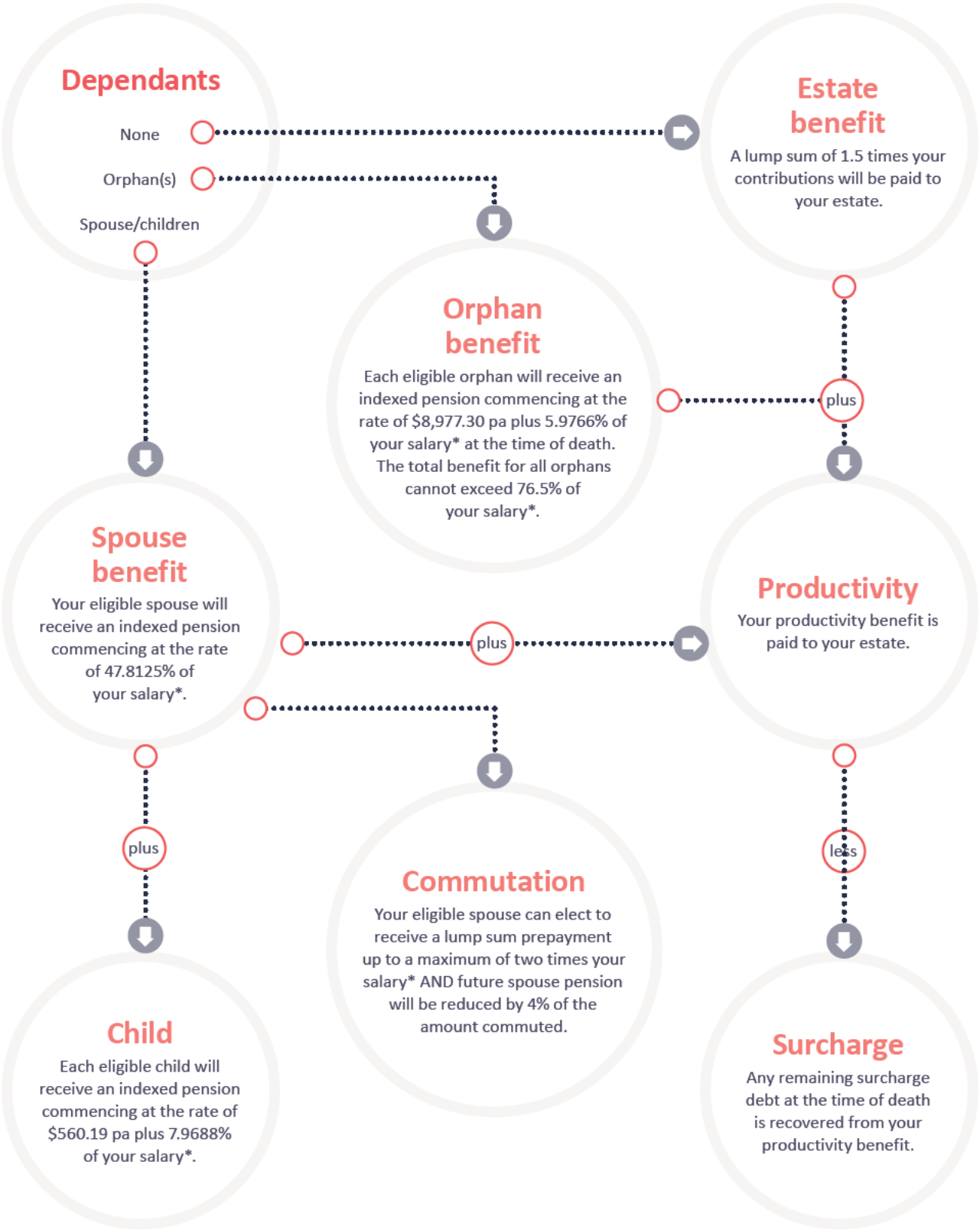
Who is eligible?

In the event of your death, benefits are payable to the spouse and child/ren (including orphans) of deceased members of DFRDB, and differ according to whether you die in service or after you retire. Examples of how these benefits are calculated and the eligibility requirements that need to be satisfied are explained on the next page.

DFRDB death benefits quickguide 1

Death in service (ie death while a contributor)

DFRDB membership provides benefits for your eligible dependants and/or estate when you die. We decide whether your dependants are entitled to benefits.



*Note: Salary means your salary for superannuation purposes, which may differ from your actual salary (see your annual member statement).

The rate of indexation applied depends on the age of your eligible spouse and not the age you would have attained. It is the age of your spouse on or after 1 July 2014, not the age you would have been, that dictates which method of indexation is to be applied to the notional rate of retirement pay for child and orphan pensions from your date of death or 1 July 2014, whichever is later.

Death in service

If you die in service, your spouse's benefit will be five-eighths of 76.5% (or 47.8125%) of your salary for superannuation purposes at the time of your death.

In addition, your spouse is entitled to commute (that is, exchange) part of his or her future pension to a lump sum. The maximum amount that your spouse can commute is twice the amount of your annual salary for superannuation purposes that you were receiving immediately prior to your death. If your spouse chooses this option, the initial rate of pension is determined by dividing the commutation lump sum by 25 and deducting the resultant amount from the annual pension that would have been received if there had been no commutation.

The following example shows how this is worked out.

Example E: Calculation of a spouse's commutation benefit

Brian, a Petty Officer, dies in service, and is survived by an eligible spouse and one child. At the time of his death he was receiving an annual salary of $66,709. Jenny, Brian's spouse, decides to commute the maximum portion of her future pension. Her benefit is calculated as follows:

Step 1 **$66,709 × 47.8125% = $31,895.24 (per year before tax)**

In this step, we calculate Jenny's pre-commutation pension by multiplying Brian's annual salary at the time of his death by 47.8125%.

Step 2 **$66,709 × 2 = $133,418**

Here, we simply multiply Brian's salary at the time of his death by two, in order to get the maximum lump sum amount payable to his spouse.

Step 3 **$133,418 ÷ 25 = $5,336.72**

This step calculates the reduction to apply to the initial pension by dividing the lump sum (calculated in **Step 2**) by 25.

Step 4 **$31,895.24 – $5,336.72 = $26,558.52 (per year before tax)**

In this step, we subtract the cost of commutation (**Step 3**) from the pre-commutation amount (**Step 1**). The resulting figure is Jenny's annual pension, before tax.

In summary, Jenny will receive a lump sum payment of $133,418, as well as an annual indexed pension of $26,558.52 before tax. The lump sum payment is tax-free and she would not lose her spouse's pension should she remarry or commence a new relationship.

As well as receiving a spouse's benefit from DFRDB, Jenny is also entitled to claim a benefit on behalf of her child. This is calculated in **Example F** on page 33.

Spouse benefits

Generally, DFRDB pays benefits to an eligible spouse upon the death of a DFRDB member or pensioner. The eligibility requirements are as follows:

- you must be a DFRDB member or pensioner
- your spouse must be in a marital or couple relationship with you at the time of your death
- the marital or couple relationship must have existed for a continuous period of at least three years immediately before your death.

For the purposes of DFRDB, a marital or couple relationship will exist if another person has been living with you as your husband, wife or partner (including a same sex partner) in a permanent and bona fide domestic basis at the time of your death.

If the marital or couple relationship existed for a continuous period of less than three years at the time of your death, your spouse may still be eligible for a spouse's benefit, at our discretion.

From 1 January 2008, if after becoming a pensioner you commence a marital or couple relationship after your sixtieth birthday, that relationship must exist for at least three years for your spouse to be eligible for a full spouse's benefit. Relationships of less than three years will result in a pro-rata reduction in the pension payable.

The final category of eligibility for spouses concerns a situation where you are legally married or in a registered relationship, but you are not living in a marital or couple relationship at the time of your death. To receive a spouse's benefit in these circumstances, your husband, wife or partner will have to prove to us that they were wholly or substantially financially dependent on you at the time of your death.

Where two surviving spouses meet the criteria for eligibility for benefits—for example, a dependent legal spouse and a dependent de facto spouse—the benefit will be apportioned at the rate of a minimum of 37.5% of the total benefit to each spouse, with the remaining portion allocated at our discretion, which will have regard to the financial needs of each of the spouses. In these circumstances, the total of the two pensions cannot exceed the total of the pension that would have been payable if there had only been one eligible spouse.



Note: It is a common misconception that spouses lose their eligibility and have their benefits stopped if their circumstances change. However, you can be assured that once we decide that your spouse is eligible to receive a benefit, then they will get that benefit for life and it will not be stopped under any normal circumstances (for example, in the event your spouse commences a new relationship).

Since 1 January 2008 widows whose pensions previously ceased upon remarriage may request that the pension be reinstated prospectively at the rate it would now be payable had it not ceased.

Children's benefits

A child is defined as either:

- your natural child, stepchild, adopted child, foster child, ward, or child within the meaning of the *Family Law Act 1975* who is under 18 years of age or is a full-time student aged between 18 and 25
- an ex-nuptial child or child within the meaning of the *Family Law Act 1975* of your spouse, who satisfies the age criteria above and who was wholly or substantially dependent upon you at the time of your death.

A child's benefit (regardless of the number of children), is payable as a base rate per annum, plus an amount equal to one-sixth of your spouse's entitlement. It is based on your spouse's original uncommuted pension, regardless of whether or not your spouse chooses to commute. The base amount increases on the first pension payday in January and July each year.

Orphans' benefits

An orphan is an eligible child where there is not an eligible spouse benefit payable under DFRDB.
An orphan's benefit is calculated as a base amount per annum, plus an amount equal to one-eighth of your spouse's entitlement prior to any commutation. The base amount increases on the first pension payday in January and July each year.

If the number of eligible orphans who are entitled to receive a pension exceeds the benefit on which it is based, then each orphan's pension is calculated by dividing the number of orphans into that rate.

Example F: Calculation of a child's benefit

Following on from **Example E**, as Jenny's child is aged under 16, DFRDB provides the following benefit:

Step 1 **$31,895.24 x 1/6 = $5,315.87 (per year before tax)**

An eligible child is entitled to receive one-sixth of the annual pension that your spouse can receive, prior to any commutation. Therefore, in this step, we multiply Jenny's precommutation pension (see Step 1 of Example E) by one-sixth.

Step 2 **$560.19 + $5,315.87 = $5,876.06 per year**

Under the Act, there is also a fixed pension component due to eligible children. In this step, we simply add the fixed amount applying for the period July to December 2009 ($560.19) to the figure that we arrived at in **Step 1**.

The pre-tax figure, $5,876.06, will increase each January and July with upward movements in indexation. The child will be eligible to receive a benefit until the age of 16, or the age of 25 if involved in full-time study.

Similar steps are followed when working out an orphan's benefit. The main exceptions are that an orphan's benefit is calculated using one-eighth of your spouse's benefit and a different fixed amount component applies (e.g. $8,977.30 for the period July to December 2009).

Based on the above example, in the period July to December 2009 the pension payable in respect of one orphan is $12,964.21.

Whilst there is no upper limit placed on pension payable in respect of eligible children, the pension payable in respect of orphans cannot exceed 76.5% of the former member's DFRDB salary at date of death.

Death after retirement

If you die after retirement, your spouse's benefit will be paid at the rate of 62.5% (five-eighths) of the benefit you were receiving at the time of your death, **disregarding any previous commutation reduction**. However, for the first seven paydays following your death, your spouse will be paid at the same rate you were receiving at the time of your death, before changing to the spouse's rate.

It is the age of your eligible spouse on or after 1 July 2014, not the age you would have been, that dictates which method of indexation is to be applied to the notional rate of retirement pay for eligible spouse's pensions from your date of death or 1 July 2014, whichever is later.

Advising your dependants

It is important that your dependants are aware that a benefit may be payable from DFRDB in the event of your death.

DFRDB death benefits quickguide 2

Death after retirement

Benefits available to your dependants should you die after retirement are generally based on the benefit you would have been receiving at the date of your death had you not commuted any part of your retirement pay.

Dependants

None

Orphan(s)

Spouse/children

Estate benefit

In rare cases where your pension had been paid for a short time only, a residual capital value may be payable to your estate.

Orphan benefit

Each eligible orphan will receive an indexed pension commencing at the rate of $8,977.30 pa (this amount is increased in line with upward movement in the CPI) plus 7.8125% of the rate of your retirement pay at the date of death had you not commuted. The total benefit for all orphans cannot exceed the uncommuted rate of your retirement pay.

Spouse benefit

Your eligible spouse will receive an indexed pension commencing at the rate of 62.5% of the retirement pay you would have been receiving at the date of death had you not commuted.

plus

Child

Each eligible child will receive an indexed pension commencing at the rate of $560.19 pa (this amount is increased in line with upward movement in the CPI) plus 10.4167% of your retirement pay at the date of death had you not commuted.

Productivity benefit

General

A productivity benefit has been accruing on behalf of all ADF members since 1 January 1988. This benefit is paid for completely by the Department of Defence and is separate from DFRDB benefits outlined in this booklet.

When is the benefit payable?

Under certain circumstances, the productivity benefit is payable immediately after you leave the ADF. However, in most cases it must be paid into a rollover fund of your choice until you retire from the workforce on or after reaching your preservation age (see **Table 1** on page 9 for preservation ages).

Immediate payment

If you leave DFRDB and you satisfy any of the following criteria, the productivity benefit is payable to you or your family immediately:

- if you retire from the workforce on or after preservation age
- if you reach age 60 and change employer
- in the event of your death.

Later payment from another rollover fund

If you do not meet the above criteria, you must nominate a rollover fund (for example, an approved deposit fund) into which your benefit will be deposited, until one of the above conditions is met. The rollover fund may allow early release of some part of the productivity benefit should you find yourself in a position of financial hardship. Early release is subject to you meeting prescribed conditions.

Preserved benefits

If you leave DFRDB without an entitlement to retirement or invalidity benefit, you may be entitled to elect for what is called 'preservation of rights'. On such election, continuity of your accumulated superannuation rights is maintained when you move from one employment to another.

The preservation provisions are designed to enable you to either:

- transfer your superannuation entitlements from DFRDB to another eligible superannuation scheme by means of a **transfer value**
- retain your entitlements in DFRDB, and on meeting certain conditions, receive a **deferred benefit** at a future date.

What is a transfer value?

A transfer value is a lump sum amount, comprising your total contributions plus an amount contributed by the Commonwealth, which is payable to another eligible superannuation scheme to receive additional benefits from that scheme.

A transfer value is only available if you become a member of an eligible superannuation scheme within 90 days of your separation from the ADF, and if that scheme is prepared to accept the transfer value. DFRDB can advise you of the schemes that are eligible superannuation schemes.

What is a deferred benefit?

If a transfer value does not apply, you may be eligible for a deferred benefit. A deferred benefit is similar to retirement benefits and is calculated at the rate of 1.75% of your salary for superannuation purposes at the date of your separation for each completed year of effective service in the ADF.

To be eligible for a deferred benefit, you must engage in public employment within 90 days of your separation from the ADF. Also, you must remain in public employment without a continuous break of more than 89 days until your combined ADF and public employment totals 20 years, or 15 years where you reach your retiring age for your rank at separation.

Public employment includes employment with the Commonwealth, State or Territory Governments and certain bodies established for a public purpose. In some circumstances where you have a period of previous eligible employment, or you are in receipt of a pension in respect of previous employment, you may not be required to engage in public employment. Please contact DFRDB for further information.

If you do not stay in public employment until your deferred benefit becomes payable, or if you have a break of more than 89 days, you will cease to be entitled to a deferred benefit and you will receive a refund of your contributions and, if applicable, a gratuity.

Re-entered recipient members

Re-entering the Permanent Forces or becoming a continuous full-time Reservist after 30 June 2016

If you are a former serving DFRDB member in receipt of retirement pay or an invalidity pension and you return to the Permanent Forces or commence continuous full-time service after 30 June 2016, you will not be able to resume membership of the DFRDB. Instead, you will be covered by the new ADF superannuation arrangement, which includes ADF Super (**csc.gov.au**) and ADF Cover (**csc.gov.au**).

Additionally, if you resumed membership of the DFRDB due to a period of continuous full-time service in the Reserves and you receive an extension to this service on or after 1 July 2016, you will be deemed to have retired for the purposes of the DFRDB at the end of the initial period of service and you will be covered by the new ADF superannuation arrangement for the extension period.

Can I join MilitarySuper?

DFRDB recipient members who return to the Permanent Forces or become continuous full-time Reservists after 1 July 2016 cannot join MilitarySuper.

What happens if I join ADF Super?

If you join ADF Super:

- you will continue to receive your DFRDB pension
- Defence will contribute 16.4% of your Superannuation Salary to ADF Super on your behalf during your engagement, and you will accrue an ADF Super benefit (see the ADF Super website for more information at **csc.gov.au**)
- you can make additional pre or post tax contributions in addition to the 16.4% contributions that Defence makes on your behalf
- you receive Death and Invalidity benefits at no cost through ADF Cover (see the ADF Cover website for more information at **csc.gov.au**).

Surcharge

Superannuation surcharge

Superannuation surcharge was calculated by the ATO and imposed on a member's surchargeable contributions where the member's adjusted taxable income (taxable income plus notional employer contributions) exceeded certain levels before 1 July 2005. Surcharge amounts notified by the ATO are recorded in a surcharge debt account. Although surcharge does not apply from 1 July 2005 onwards, amounts recorded in surcharge debt accounts must still be paid.

Payment of the surcharge debt

The amount in a surcharge debt account can be paid in part or full progressively during the period of membership, or left to accrue with interest at the 10-year Treasury bond rate. Any amount in a surcharge debt account remaining when a benefit becomes payable, whether in cash, or by transfer or rollover to another fund, will be deducted from DFRDB benefit payable.

There are some important matters to consider before deciding to pay the amount in a surcharge debt account before your DFRDB benefit becomes payable, especially if you have less than 20 years' effective service.

If you wish to make a payment, in part or in full before you leave the ADF, it should be sent directly to DFRDB with a **Surcharge remittance advice (SUR–DM1)** form, available at **csc.gov.au**. Alternatively, you can attach a note with your payment that clearly states your full name, address, service number, scheme membership (DFRDB), and instruct the payment to be credited to your surcharge account.

Interest on the surcharge debt

Interest, calculated at the 10-year Treasury bond rate is required to be imposed on any amount in a surcharge debt account remaining at 30 June in any year. If you wish to avoid the imposition of interest on the amount in the surcharge debt account, you would need to ensure that payment of the amount is received by DFRDB before the close of business on 30 June.

Payment from productivity benefit

Any surcharge debt remaining at the time a benefit becomes payable will normally be recovered from the productivity lump sum benefit. However, you can request that it be recovered from DFRDB benefit instead.

If the productivity benefit is insufficient to counteract the surcharge liability, the excess amount will be recovered by reducing retirement pay/pension.

Payment of surcharge debt from pension

Payment of the amount in the surcharge debt account from a DFRDB pension is achieved by converting the surcharge debt to an annual pension reduction amount and reducing the pension by that amount. This is a **permanent** pension reduction (that is, the pension is not increased if it continues beyond the period of the surcharge reduction factor).

The annual pension reduction amount is determined by dividing the amount in the surcharge debt account by a DFRDB pension surcharge reduction factor as shown in **Table 5** on the next page.

Table 5: Pension surcharge reduction factors

Age in completed years at start date of pension	Pension reduction factor	Age in completed years at start date of pension	Pension reduction factor	Age in completed years at start date of pension	Pension reduction factor
65	14.7	55	18.1	45	20.6
64	15.1	54	18.4	44	20.8
63	15.5	53	18.7	43	21.0
62	15.9	52	19.0	42	21.2
61	16.2	51	19.2	41	21.4
60	16.6	50	19.5	40	21.6
59	16.9	49	19.7	39	21.7
58	17.2	48	19.9	38	21.9
57	17.5	47	20.2	37	22.0
56	17.8	46	20.4	36	22.2

Example G: Payment of surcharge debt from DFRDB indexed pension

Surcharge debt amount	**$10,000**
Age in completed years at date of commencement of pension	**58**
Pension per year before reduction	**$40,000**
Calculation of pension reduction amount $\frac{\$10\,000}{17.2} = \$581.40$	**–$581.40**
Indexed pension payable after reduction	**$39,418.60**

Future pension adjustment

The reduced pension is subject to adjustment in the normal manner on the first pension payday in January and July each year.

Commutation

Where you elect to commute retirement pay/pension, the commutation factor is applied to the normal rate of retirement pay/pension (that is, before a reduction on account of a surcharge debt). If an election is made to commute and there is a debit balance in the surcharge debt account, the following provisions apply:

- you make an election to have the surcharge deduction amount applied to DFRDB benefit rather than the productivity benefit, the lump sum payable following commutation is reduced by the surcharge debt
- if no such election is made, the surcharge debt is recovered from the productivity lump sum benefit. However, if the productivity benefit is insufficient to pay the debt in full, the excess amount is recovered from the post-commutation rate of retirement pay/pension.

Payment from a pre-tax amount

As the benefit is reduced by the amount in the surcharge debt account before it becomes payable, the amount applied to pay the debt does not form part of taxable income and is not subject to the tax that would otherwise apply to the pension or lump sum. In other words, the payment is made from a pre-tax amount.

Benefit preserved in DFRDB

As there are no contributions being made to a benefit that is preserved in DFRDB (and because surcharge no longer applies from 1 July 2005), it is unlikely there will be any further surchargeable assessments on surchargeable contributions up to 30 June 2005 (unless the ATO issues late assessments or amended assessments). However, any amount in your surcharge debt account remaining at 30 June each year the benefit is preserved will be charged interest at the 10-year Treasury bond rate.

Surcharge debt assessment received after payment of benefit

Any surcharge assessment received after your ceasing membership and payment of the benefit is either sent on to the new provider by the ATO for payment where the full benefit is rolled over/transferred to another fund; or, the ATO will send the assessment to you where all superannuation entitlements are paid out because you are liable to pay the assessment.

Disagreement with assessment

A member who disagrees with the assessment, in so far as it is based on adjusted taxable income, may lodge a formal objection with the ATO.

If the disagreement relates to the calculation of the amount of surchargeable contributions reported for you, a request for reconsideration can be made to us.

Application to your own circumstances

You need to consider your own financial situation when deciding whether to pay any surcharge debt progressively as it arises, or leave the debt until the benefit becomes payable, and then, whether it may be preferable to have the debt deducted from your DFRDB benefit due, or paid from other sources.

As with most financial considerations, every case is different and it is necessary to analyse the alternatives in the light of your own particular circumstances and, if appropriate, seek financial advice. CSC has partnered with experienced financial planners from Industry Fund Services (ABN 54 007 016 195, AFSL 232514) to bring a personal financial advice service to you. It is 'fee for service' advice, which means you receive a fixed quote upfront. There are no obligations, commissions or hidden fees. To arrange an initial appointment please call **1300 277 777** during business hours.

We may vary surcharge debt amount

If you have an amount in your surcharge debt account at the time benefits become payable, we must determine the surcharge deduction amount from your benefit that is fair and reasonable.

This means that we may vary the amount required to be funded by you when benefits become payable. The legislation specifies that we must take certain matters into account in making such a determination. In particular, the legislation specifies that the surcharge debt amount cannot be more than 15% of the employer-financed component of the benefit accrued since 20 August 1996 up to 30 June 2005.

We have issued guidelines to the effect that the surcharge deduction amount will ordinarily be the same as the amount in the surcharge debt account unless:

- in special circumstances relating to the retiree, deduction of that amount would cause the retiree to suffer an unfair or unreasonable financial detriment
- the amount of the surcharge debt was based on an incorrect calculation of surchargeable contributions.

The amount you are required to fund can only be varied if you have a surcharge debt at the time benefits become payable. If you have paid any surcharge liability before benefits become payable, we cannot determine an alternative amount to pay (because there would be no liability at the time the benefit became payable).

Enquiries

The Australian Taxation Office (ATO) is the primary point of contact for enquiries on the superannuation surcharge and related matters. The ATO superannuation helpline is **13 10 20** for the cost of a local call.

If you have an enquiry about the administration of the surcharge, you can call DFRDB on **1300 001 677**. Alternatively, you can email your enquiries to DFRDB at **members@dfrdb.gov.au**

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Taxation

General

Fortnightly pensions from DFRDB are subject to normal Pay As You Go (PAYG) tax deductions, in much the same way as your salary is subject to tax assessment. Lump sums are also taxed.

We deduct tax on the following lump sums:

- gratuities
- commutations (lump sums)
- lump sum invalidity payments.

The Commissioner for Taxation has directed, using discretionary powers contained in the *Tax Act 2007*, that no tax be deducted from refunds of contributions which have not earned interest. This applies to all such refunds from DFRDB.

The taxation legislation also provides that no tax is deducted where the total lump sum is rolled over to an approved deposit fund or to another superannuation scheme, or is used to purchase a deferred annuity. However, 15% contributions tax will be deducted from the taxable component, untaxed element of the rollover amount by the institution receiving the rollover.

This booklet does not cover taxation in any detail as it is an area of such rapid and constant change. However, further information, including a series of factsheets, is available online at **csc.gov.au**

Lower taxation of benefit

When you leave the ADF remember to complete a **Tax File Number Declaration** form and send it to DFRDB. Otherwise, your retirement or invalidity benefit will be taxed at the top marginal rate.

If you need any information on the way your future benefits will be taxed, you should contact DFRDB on **1300 001 677**.

Twice yearly adjustment of pensions

If you are under 55

DFRDB pensions will be automatically adjusted twice yearly if there are upwards movements in the Consumer Price Index (CPI) for the six months ending 30 September and 31 March each year. Your pension will not decrease if there is a downwards movement in the CPI.

If you are aged 55 or older

Your pension will be adjusted in January and July each year by the greater of positive movements in the Consumer Price Index (CPI) and the Pensioner and Beneficiary Living Cost Index (LCI). The LCI is a measure of price changes used by the Australian Bureau of Statistics that better takes into account those goods and services used by retirees. Regard is also paid to movements in average wages.

For more information on how a pension increase is calculated please visit **csc.gov.au**

Commutation and pension adjustments

If you elect to commute from four times retirement benefit up to five times retirement benefit, the total amount of the remaining retirement benefit is indexed. However, if you do not elect to commute, or you elect to commute less than four times retirement benefit, indexation will only be applied to your notional retirement pay, which is the rate of retirement pay that would be payable if you had elected to commute four times retirement pay. This is illustrated in the notes following **Example B** on page 15.

Keeping you informed

As a pensioner, you will receive a letter after each January and July increase showing any adjustment to your rate of pension. Your income tax payment summary and other relevant information will be included with the July statement.

Your initial pension adjustment will be proportional, according to the number of months that you have been receiving the pension up to 30 June or 31 December. Subsequent twice yearly adjustments will receive the full amount.

Appeal provisions

We, or our delegates, often have to make decisions affecting members' benefits, the DFRDB Act contains an appeals mechanism.

There are three main stages at which you can appeal against any of our, or our delegates', decisions or level of service. The first is to us, requesting reconsideration of your decision. However, if you are still dissatisfied following reconsideration of your case, you can then appeal directly to the Administrative Appeals Tribunal (AAT).

Appeal procedures

If you want to make a complaint about the level of service you have received, you can call the complaints line on **1300 033 732** or send an email to **complaints@dfrdb.gov.au**. If you want to appeal against a decision, you must first write to us requesting that the decision be reconsidered.
This initial letter should outline the grounds for making your request and provide any information which would support your request, and should normally be made within 30 days of receiving notification of the original decision. Special circumstances are needed to accept a request after that time period.

On receiving your request, we will either confirm or vary its original decision and then notify you of the result and advise you of further appeal provisions.

However, if you are still dissatisfied following reconsideration of your case, then you have a second avenue of appeal—you can appeal directly to the Administrative Appeals Tribunal (AAT).

Administrative Appeals Tribunal (AAT)

Your second avenue of appeal is through the AAT, though you may also be able to use the Commonwealth Ombudsman and the normal legal system.

The AAT is an independent tribunal which is presided over by a Federal Court Judge.

The AAT only has jurisdiction over our decisions **after** you have had us reconsider a decision.

If you want to appeal to the AAT, you can either put your case in writing or lodge an application form. If you write to the AAT, you should state the reasons for your appeal and also include the information that you believe supports your case.

If you are successful before the AAT your legal costs are not paid or reimbursed by us. If you are unsuccessful, you will not have to pay our legal costs.

More information about the appeals procedure is available from the AAT or by going to their website at **aat.gov.au**

Federal Court or Federal Magistrates Court

You may also appeal to the Federal Court of Australia or Federal Magistrates Court, on any question of law from any decision arising from your AAT hearing.

Freedom of Information

The *Freedom of Information Act 1982* (the FOI Act) provides you with a general right of access to information held by DFRDB. However, the FOI Act provides some exemptions which are necessary to protect matters of essential public interest and the private affairs of individuals.

You may obtain documents held by DFRDB and which relate to your entitlement to DFRDB benefits by telephoning the FOI Officer on **1300 033 732**, by email at **foi@admin.csc.gov.au**, or sending your request to DFRDB, GPO Box 2252, Canberra ACT 2601.

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Applying for a benefit

General

When applying for a benefit it is important that you complete all the necessary benefit application forms correctly. Failure to do so will result in DFRDB returning the form to you, which will cause a corresponding delay in the time it takes to process your application.

In order to avoid this delay, you should read the explanatory notes on the forms before completing them. If you are not sure about something you can contact DFRDB for information.

To protect your benefit against fraud, money laundering and terrorism financing, under the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* you must prove your identity when applying for a benefit. To do this you will need to provide a number of identification documents which total at least 100 points.

On the benefit application form, you can elect to have these documents verified electronically or you can provide certified hard copy documents. More information is available on each application form.

Applying for retirement pay and commutation

When you decide to retire from the ADF, you will need to fill in a benefit application form which is available from the DFRDB website at **csc.gov.au**. To allow adequate processing time for your application, you should send the completed form to DFRDB in advance of your separation date (but not more than three months before). DFRDB will check that your application has been completed correctly and return it to you if more information is required. However, we cannot commence calculating your benefit application until the day after your separation. DFRDB is required to check that your separation date was not changed or extended and that your final salary did not change.

The form that you need to fill in is called **Application for DFRDB retirement pay, commutation and superannuation productivity (D20)** form. This form asks you for your personal details, including details of the financial institution you want your retirement benefit to be paid to.
You can also use this form if you decide to commute a portion of your retirement pay. For taxation reasons you should send in the form no more than six months after your separation date.

Applying for a refund of contributions

If you do not qualify for a retirement benefit or an invalidity benefit, you will receive a lump sum refund of all the contributions you have paid into DFRDB.

Applying for invalidity benefits

If you are anticipating invalidity retirement, you must complete an **Application for invalidity benefit and superannuation productivity (D40)** form. This form requests personal information needed for the processing and payment of the benefit. On the form, you are requested to provide information about your skills, qualifications and employment experience to assist in the consideration of employment types relevant to the invalidity provisions of DFRDB. The form provides explanatory notes and also contains useful information about invalidity benefits.
You should send the completed **D40** application form directly to DFRDB no earlier than three months before your expected date of invalidity retirement.

Action to process an invalidity benefit cannot be taken until the relevant medical documents are received by DFRDB.

Applying for lower taxation of benefits

If you wish to avoid having tax deducted from your benefit at the top marginal rate, you must also provide DFRDB with a completed **Tax File Number Declaration** form. This form is available from the ATO website at **ato.gov.au**

Applying for dependants' benefits

In the event of your death, your eligible dependants will need to complete an **Application for spouse, child/student or student pension (D80)** form. This package includes application forms for your children as well as for your spouse.

There are also some documents which will have to be sent to DFRDB so that the eligibility of your dependants can be confirmed. These documents are listed in the **D80** form, and they should be sent in with the completed form.

Generally, your spouse's eligibility can be confirmed if your marriage/registered relationship certificate is provided, and your children's eligibility can be confirmed if their birth certificates are provided. If additional documentation is required to determine your dependants' eligibility, DFRDB will request it

Need more information?

If you need more information on your DFRDB entitlements, you should contact DFRDB or visit the website at **csc.gov.au**. The factsheets available will provide specific information on topics such as taxation, retirement benefits, invalidity benefits, dependants' benefits and appeal provisions.

i-Estimator

As well as working through the examples in this booklet, you can use the DFRDB i-Estimator to quickly gain an estimate of your likely DFRDB benefit.

You can access the i-Estimator tool via your online account at **csc.gov.au**, i-Estimator allows you to work out prospective benefits on various types of exit. Because the calculations are based on several assumptions, they cannot be regarded as official estimates. If you are retiring from the ADF within 12 months, you should get an official benefit estimate from DFRDB.

To use the i-Estimator, you will need an Access Number from DFRDB. Please call **1300 001 677** to obtain an Access Number.

Note: You cannot use the i-Estimator when you have had a Family Law payment split, or if you are a recipient member who has resumed full-time ADF service.

Pre-retirement information

DFRDB can provide you with an estimate of your potential benefits.

Requests for benefit estimates can be made by phone or in writing up to five years in advance of your anticipated date of separation from the ADF. However, for separation dates more than twelve months in advance, initial estimates should be obtained using the i-Estimator, that can be accessed via your **Member Services Online**.

Remember to quote your service number when making enquiries to DFRDB.

Enquiries should be directed to:

DFRDB
GPO Box 2252
Canberra ACT 2601

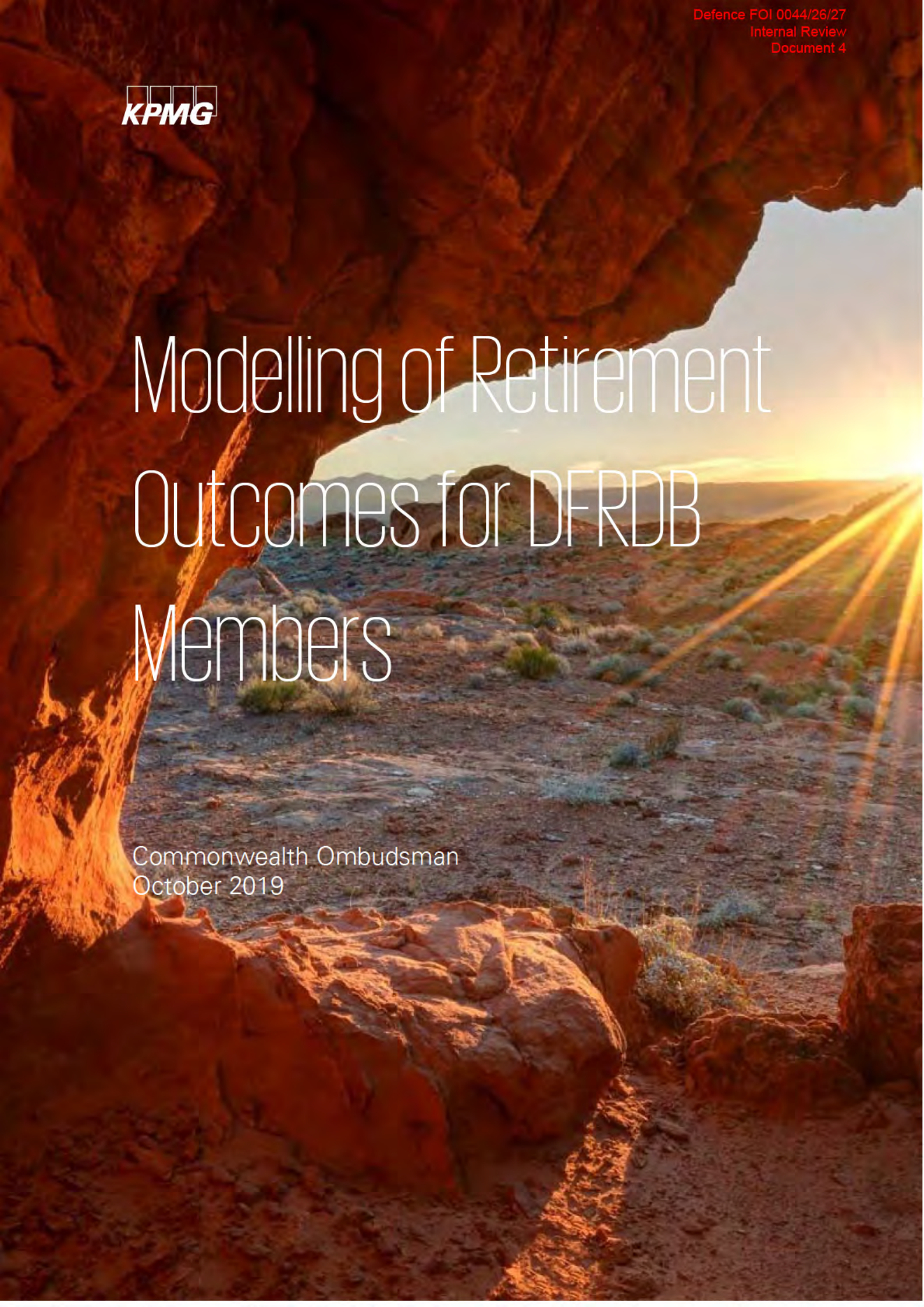
Members:	1300 001 677
Pensions:	1300 001 877
Facsimile:	(02) 6272 9616
Email:	members@dfrdb.gov.au pensions@dfrdb.gov.au

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KPMG

Modelling of Retirement Outcomes for DFRDB Members

Commonwealth Ombudsman
October 2019



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Disclaimer

Inherent Limitations

This report has been prepared as outlined in the Approach section. The services provided in connection with this engagement comprise an advisory engagement, which is not subject to assurance or other standards issued by the Australian Auditing and Assurance Standards Board and, consequently no opinions or conclusions intended to convey assurance have been expressed.

No warranty of completeness, accuracy or reliability is given in relation to the statements and representations made by, and the information and documentation provided by, the Commonwealth Ombudsman personnel consulted as part of the process.

KPMG have indicated within this report the sources of the information provided. We have not sought to independently verify those sources unless otherwise noted within the report.

KPMG is under no obligation in any circumstance to update this report, in either oral or written form, for events occurring after the report has been issued in final form.

The findings in this report have been formed on the above basis. We have relied on the data and information provided by the Commonwealth Ombudsman and have assumed that it is prima facie accurate and complete. While generally we have satisfied ourselves that the data and information provided is reasonable and consistent with other data and information provided, and/or with data and information otherwise known to us, we have not sought to verify independently nor establish the reliability, accuracy or completeness of the data and information provided or used for this review. A list of the data provided to us is listed in Appendix 1.

Third Party Reliance

This report is solely for the purpose set out in the Approach section and for the Commonwealth Ombudsman's information. Where the Ombudsman seeks to publish this report in support of the Ombudsman's report on its investigation of the administration of the DFRDB scheme, the entire report must be published.

This report has been prepared at the request of the Commonwealth Ombudsman in accordance with the terms of KPMG's Work Order dated 8 August 2019. Other than our responsibility to the Commonwealth Ombudsman, neither KPMG nor any member or employee of KPMG undertakes responsibility arising in any way from reliance placed by a third party on this report. Any reliance placed is that party's sole responsibility.

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1 Introduction

1.1 Introduction

The Commonwealth Ombudsman is undertaking an investigation into the administration of the Defence Force Retirement and Death Benefits (DFRDB) scheme. This investigation has a focus on the issue of commutation, specifically around the accuracy of information about commutation provided to scheme members by the Department of Defence and/or the Australian Defence Force and scheme administrators (including the Commonwealth Superannuation Corporation (CSC)).

As part of this investigation, the Commonwealth Ombudsman is seeking actuarial/financial modelling of the potential financial outcomes for a sample of members who retired from the Australian Defence Force (ADF) and commenced receipt of a pension from the DFRDB scheme between 1976 and 2015.

The Commonwealth Superannuation Corporation (CSC) has provided information for a sample of 12 retired members of the DFRDB scheme. The information has been de-identified for these sample members and includes the following data items which are relevant to the actuarial modelling:

- Date of discharge from the ADF;
- Age at retirement from the ADF;
- Uncommuted Retirement Pay (pension level) at retirement;
- Retirement Pay, after commutation, at retirement;
- Commutation amount at retirement (the lump sum commutation taken);
- Life expectancy factor at retirement (used to calculate the reduction in pension due to the commutation).

The data also included the individual's Retirement Pay at 1 July 2019 and total pension received from commencement to 1 July 2019.

The Commonwealth Ombudsman requires modelling to compare the potential outcomes under two scenarios relating to the individual's election around the commutation of their pension upon retirement from the ADF in accordance with the options available under the *Defence Force Retirement and Death Benefits Act 1973* (DFRDB Act):

- Scenario 1: 'Actual scenario' - Commutation of the maximum portion of the pension payable from the DFRDB, with a commensurate permanent reduction of their fortnightly/annual pension (in accordance with the DFRDB Act). This represents the actual decisions made by the sample individuals, i.e. all sample individuals made the election to commute the maximum amount of their pension. Based on amounts

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commuted and in accordance with the DFRDB Act, the full amount of the reduced pension is subject to indexation; and

- Scenario 2: 'No commutation' – A hypothetical scenario, under which the member did not commute, hence did not receive any lump sum at retirement and there was no reduction in pension, as paid in the past or in the future. In accordance with the DFRDB Act a portion of the pension paid and payable is indexed, with the remaining portion not being subject to indexation.

The Ombudsman's office specifically requested that the model compares the financial outcome from the two scenarios by accumulating the cash flows with the cash rate, and separately with the home loan rate and term deposit rate, to 1 July 2019 and into the future.

KPMG's role is to produce results using this methodology. We have projected the accumulated cash flows under each scenario to age 100 for each individual.

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2 Approach

KPMG has developed an actuarial model that projects the potential financial outcomes under the two given scenarios for the sample cases of individuals who have retired from the ADF and, at retirement, were eligible for a pension from the DFRDB scheme.

The financial outcome under each scenario is measured as the accumulated potential value had any lump sum commutation amount paid at retirement and all subsequent pension payments been accumulated with interest outside of the DFRDB scheme. As such the outcome ignores any impact of the individual's use of the lump sum commutation amount and pension payments, effectively assuming that this would have been the same under both scenarios.

As requested by the Ombudsman, the model has calculated the financial outcome on three bases for the interest earned on the accumulated value outside of the DFRDB scheme:

- The cash rate – as if the individual had held any lump sum commutation amount and all pension payments in a cash savings account, which received monthly interest based on a cash rate;
- The term deposit rate – as if the individual had invested any lump sum commutation amount and all pension payments in rolling one year term deposits; and
- The home loan rate – as if the individual had utilised any lump sum commutation amount and all pension payments to reduce a home loan debt, which was subject to interest at the home loan rate.

Section 2.2 describes the sources and assumptions used for these rates.

The accumulated values have been calculated and compared at all ages from retirement to age 100. All sample cases provided commuted the maximum pension at retirement, illustrated as the 'Actual scenario'. Where the calculated accumulated values are higher under the 'No commutation' scenario, the increase in the accumulated values represents the potential financial detriment to the individual resulting from having made the decision to commute the maximum pension.

2.1 Data

This model has utilised the data for the twelve de-identified individuals supplied by the CSC, encompassing a range of individual profiles, in particular by date and age at retirement. A copy of the data is provided in Appendix 1.

We note that the exact dates of birth for the individuals have not been supplied and agreed with the Ombudsman that we should assume a date of birth of 1 July in the year indicated by the supplied age at retirement.

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For one individual, the data in relation to the commutation amount paid at retirement, and the commuted and uncommuted Retirement Pay indicated that a 'debt' amount owed by the individual to the DFRDB scheme was deducted from the commutation amount paid. It was agreed with the Ombudsman that we should adjust the data for this case so that the commutation amount was not reduced by this debt amount.

2.2 Financial inputs and assumptions

A range of financial inputs and assumptions were required in constructing the model.

The cash rate, used to apply interest to the accumulated values outside of the DFRDB scheme where it is assumed that the individual held any lump sum commutation amount and all pension payments in a cash savings account with a bank, was sourced from:

- The RBA's published Cash Rate Target from 2 August 1990, being the first date at which this data is available, to 1 July 2019;
- The Interbank Overnight Cash Rate published by the RBA for the period from 7 April 1976 to 1 August 1990;
- Deposit interest rates for the period prior to 7 April 1976.

The term deposit rate, used where it is assumed that the individual invested any lump sum commutation amount and all pension payments in rolling one year term deposits, was sourced from:

- The series 'Retail deposit and investment rates; Banks' term deposits ($10,000); 1 year', published by the RBA for the period from 1 July 1982, being the first date at which this data is available, to 1 July 2019; and
- The One Year Term Deposit rates provided by the Ombudsman for the period from 1 July 1976 to 30 June 1982.

The home loan rate, used where it is assumed that the individual utilised any lump sum commutation amount and all pension payments to reduce a home loan debt, was sourced from the series 'Lending rates; Housing loans; Banks; Variable; Standard; Owner-occupier' published by the RBA for the period to 1 July 2019.

The model assumes that interest on accumulated values at the cash rate and home loan rate is compounded monthly; whereas interest earned on term deposits is compounded annually on 1 July each year. Where interest is accumulated using the term deposit rates, the model conservatively assumes that pension payments received during a year attract interest at that year's term deposit rate, pro-rated for the part-year, even though the pension payments are not invested for the full year.

The following assumptions were provided by the Ombudsman:

- For periods post 1 July 2019:
  - The cash rate will be 2.0% per annum;
  - The term deposit rate will be 2.0% per annum;

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- The home loan rate will be 4.0% per annum;
- Indexation of the portion of pensions payable from the DFDRB scheme which are subject to indexation, reflecting changes in the Consumer Price Index (CPI), Pensioner and Beneficiary Living Cost Index (LCI) and male AWOTE indexation (MTAWE) as described below, will be at 2.0% per annum for recipients aged under 55 years, and 3.0% per annum for recipients aged 55 years and above.

The Ombudsman's requirement is that no allowance for tax – on any commutation amount, pension payments or interest – would be made in the comparisons for this purpose.

2.3 Indexation of pensions paid from the DFRDB scheme

A key driver of the modelled outcomes is the indexation of the pensions paid from the DFRDB scheme. The model incorporates how pensions are indexed and how the indexation of pensions under the DFRDB Act has changed over time, as summarised below:

- Where the individual doesn't commute or commutes less than four times their annual retirement pay at retirement, a portion of the pension payable is subject to indexation, with the remaining portion of the pension not being indexed. The portion of the pension that is subject to indexation is the amount of retirement pay which would be payable if the member had decided to commute four times their annual retirement pay entitlement.
- In relation to the portion of the pension that is subject to indexation:
  - Prior to 1 July 1976, the DFRDB Act did not provide for the indexation of DFRDB pensions. Increases to DFRDB pensions were authorised through separate annual Acts between 1 October 1972 and mid-1976 with increases assessed as the lesser of 1.4 times the increase in CPI, or the respective change in male average weekly earnings.
  - Effective from 1 July 1976 the *Defence Force (Retirement and Death Benefits Amendments) Act 1977* introduced annual inflation, effective each 1 July, as measured by the positive movement in the 'All Groups Consumer Price Index (CPI) number for the weighted average of 6 State capital cities' published in respect of the March quarter, including looking back to March 1975 index value (in the event that the index had dropped since this date).
  - Effective from 1 July 1986, the *Defence Legislation Amendment Act 1987* amended the prior method of indexation to look back to the March 1986 index value onwards.
  - Between 10 October 1986 and 20 October 1989 the *Superannuation and Other Benefits Legislation Amendment Act 1986* reduced the pensions payable under the DFRDB scheme by 2%.

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- Effective from 1 January 2002, the *Superannuation Legislation Amendment (Indexation) Act 2001* amended the frequency of indexation to bi-annual increases, still based on positive movements in the prior quarter's CPI, applied each 1 January and 1 July, continuing to look back to March 1986.
- Effective from 1 July 2014, the *Defence Force Retirement Benefits Legislation Amendment (Fair Indexation) Act 2014* introduced an age-based method of indexation. For individuals under 55, the prior method of indexation linked to positive movements in CPI continued. For individuals over 55, this involved a 'triple indexation' approach based on the greater of:
  - Increases in CPI;
  - Increases in the All Groups Pensioner and Beneficiary Living Cost Index for the weighted average of the 8 capital cities (LCI); and
  - Increases in an 'indicative pension amount' which is linked to annualised male Average Weekly Earnings (MTAWE).

  Under the DFRDB Act, all rates of pension indexation are rounded to the nearest 0.1%.

Appendix 3 details the historic rates of interest and indexation that have been utilised in the model.

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3 Results

3.1 Comparison of Retirement Pay and total pension received to 1 July 2019

As part of validating the modelled indexation to the pensions paid, we compared the calculated level of Retirement Pay as at 1 July 2019 and total pension received to 1 July 2019 under the model with these data points.

The below table compares the calculated and actual Retirement Pay and total pay as at 1 July 2019 for each case:

As at 1 July 2019	Actual Retirement Pay	Calculated	Difference	Actual total pension received	Calculated	Difference
Case #1 Retired 1976	$ 27,786	$ 29,724	7.0%	$ 700,261	$ 733,840	4.8%
Case #2 Retired 1976	$ 30,868	$ 33,021	7.0%	$ 761,903	$ 815,244	7.0%
Case #3 Retired 1986	$ 22,573	$ 22,847	1.2%	$ 501,594	$ 507,478	1.2%
Case #4 Retired 1990	$ 31,578	$ 33,074	4.7%	$ 658,704	$ 690,143	4.8%
Case #5 Retired 1991	$ 23,696	$ 23,772	0.3%	$ 478,605	$ 476,867	-0.4%
Case #6 Retired 1993	$ 30,270	$ 30,382	0.4%	$ 574,057	$ 576,593	0.4%
Case #7 Retired 1996	$ 67,702	$ 69,349	2.4%	$ 1,199,722	$ 1,229,765	2.5%
Case #8 Retired 2000	$ 81,966	$ 83,787	2.2%	$ 1,256,616	$ 1,285,502	2.3%
Case #9 Retired 2003	$ 29,444	$ 29,386	-0.2%	$ 390,649	$ 392,253	0.4%
Case #10 Retired 2007	$ 33,240	$ 33,209	-0.1%	$ 363,316	$ 363,565	0.1%
Case #11 Retired 2013	$ 52,604	$ 53,021	0.8%	$ 281,302	$ 284,721	1.2%
Case #12 Retired 2015	$ 90,445	$ 90,505	0.1%	$ 380,700	$ 383,201	0.7%

It is noticeable that there is greater variation between the actual and calculated Retirement Pay and total pensions paid for the individuals who retired earliest (Case #1 and Case #2 having retired in 1976).

All of the differences are 5% or below, except for Case #1 and Case #2 who retired in 1976.

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3.1.1 Financial outcome comparisons **as at 1 July 2019 – cash rates**

The below table shows the accumulated values under each scenario **as at 1 July 2019** for each case and the differences in the accumulated values under the 'No commutation' scenario compared to the 'Actual' scenario. The accumulated lump sum and pension payments are assumed to receive interest at the cash rate.

The table also shows the average cash rate applicable for each case over the period since their retirement.

As at 1 July 2019	Actual	Hypothetical No commutation	Difference in value	Average interest rate since retirement
Case #1 Retired 1976	$ 2,812,921	$ 2,508,695	$ (304,226)	7.7%
Case #2 Retired 1976	$ 3,111,741	$ 2,755,407	$ (356,333)	7.7%
Case #3 Retired 1986	$ 1,294,795	$ 1,101,482	$ (193,313)	6.2%
Case #4 Retired 1990	$ 1,543,540	$ 1,361,991	$ (181,549)	5.2%
Case #5 Retired 1991	$ 1,014,255	$ 886,546	$ (127,709)	4.7%
Case #6 Retired 1993	$ 1,166,290	$ 1,010,342	$ (155,948)	4.5%
Case #7 Retired 1996	$ 2,416,422	$ 2,176,430	$ (239,992)	4.3%
Case #8 Retired 2000	$ 2,386,260	$ 2,131,785	$ (254,474)	4.1%
Case #9 Retired 2003	$ 698,543	$ 552,407	$ (146,136)	3.8%
Case #10 Retired 2007	$ 646,559	$ 492,920	$ (153,639)	3.3%
Case #11 Retired 2013	$ 648,077	$ 395,886	$ (252,192)	1.9%
Case #12 Retired 2015	$ 1,011,404	$ 540,035	$ (471,369)	1.7%

For all cases, the scenario where there was no commutation has resulted in a lower accumulated value at 1 July 2019.

Cases #1 and #2 have exceeded the notional life expectancy which was used to calculate the reduction in their pension payments at retirement. As such they have received lower pension payments for a longer period than the period underlying the lump sum commutation amount at retirement. However the relatively high interest rates earned

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on the lump sum commutation amount have more than compensated for the lower total pension payments.

For Cases #3 to #12, who are within their notional life expectancy at 1 July 2019, the fact that they have received lower pension payments for a lesser period than the period used to calculate the lump sum commutation amount, contributes to the Actual scenario generating higher accumulated savings.

3.1.2 Financial outcome comparisons **as at 1 July 2019 – term deposit rates**

The below table shows the same results where the accumulated lump sum and pension payments are assumed to be invested in rolling twelve month term deposits.

As at 1 July 2019	Actual	Hypothetical No commutation	Difference in value	Average interest rate since retirement
Case #1 Retired 1976	$ 2,636,232	$ 2,417,058	$ (219,174)	7.1%
Case #2 Retired 1976	$ 2,918,304	$ 2,656,490	$ (261,815)	7.1%
Case #3 Retired 1986	$ 1,345,343	$ 1,158,301	$ (187,041)	6.2%
Case #4 Retired 1990	$ 1,635,047	$ 1,442,404	$ (192,643)	5.4%
Case #5 Retired 1991	$ 1,073,105	$ 938,756	$ (134,349)	4.9%
Case #6 Retired 1993	$ 1,230,574	$ 1,072,022	$ (158,552)	4.7%
Case #7 Retired 1996	$ 2,562,265	$ 2,316,519	$ (245,746)	4.5%
Case #8 Retired 2000	$ 2,544,721	$ 2,278,523	$ (266,198)	4.4%
Case #9 Retired 2003	$ 747,794	$ 590,591	$ (157,203)	4.3%
Case #10 Retired 2007	$ 696,875	$ 523,164	$ (173,710)	4.2%
Case #11 Retired 2013	$ 671,744	$ 404,693	$ (267,051)	2.7%
Case #12 Retired 2015	$ 1,039,199	$ 549,204	$ (489,995)	2.4%

Where savings are accumulated in rolling term deposits the scenario where there was No commutation has also resulted in a lower accumulated value at 1 July 2019 compared to the Actual scenario.

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For Case #1 and Case #2, who retired in 1976, and Case #3 who retired in 1986, the historic data for term deposit rates indicates that, for periods, these were lower than cash rates. This results in a lower differential in accumulated values between the Actual and No commutation scenarios than where cash rates are used.

For Case #4 to Case #12, the higher historic term deposit rates compared to cash rates result in higher differences in accumulated values than where cash rates are used.

3.1.3 Financial outcome comparisons **as at 1 July 2019 – home loan rates**

The below table shows the same results where the accumulated lump sum and pension payments are assumed to attract the home loan rates.

As at 1 July 2019	Actual	Hypothetical No commutation	Difference in value	Average interest rate since retirement
Case #1 Retired 1976	$ 5,555,157	$ 4,868,088	$ (687,070)	9.7%
Case #2 Retired 1976	$ 6,142,437	$ 5,343,124	$ (799,313)	9.7%
Case #3 Retired 1986	$ 2,451,874	$ 1,940,562	$ (511,313)	9.1%
Case #4 Retired 1990	$ 2,755,087	$ 2,243,832	$ (511,255)	8.2%
Case #5 Retired 1991	$ 1,754,970	$ 1,408,875	$ (346,095)	7.8%
Case #6 Retired 1993	$ 1,914,555	$ 1,542,927	$ (371,627)	7.5%
Case #7 Retired 1996	$ 3,795,352	$ 3,209,660	$ (585,692)	7.2%
Case #8 Retired 2000	$ 3,539,898	$ 2,970,689	$ (569,209)	7.1%
Case #9 Retired 2003	$ 986,035	$ 733,058	$ (252,976)	7.0%
Case #10 Retired 2007	$ 870,187	$ 621,083	$ (249,104)	6.8%
Case #11 Retired 2013	$ 771,959	$ 441,688	$ (330,271)	6.0%
Case #12 Retired 2015	$ 1,160,071	$ 588,201	$ (571,870)	5.6%

As expected, the differences in accumulated values under the scenarios are greater than if cash rates and term deposit rates are used, reflecting the higher interest rates.

The conclusions are similar to under Section 3.1.1 where cash rates were used to accumulate the cash flows.

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3.2 Projected financial outcomes

Appendix 2 shows the projected financial outcomes, in terms of projected accumulated values and differentials in accumulated values at the three interest rates, for all cases, from retirement to age 100 – as graphs for all cases, and additionally as tables for Case #8.

The tables below summarise each individual's current age, the age when the accumulated value under the 'No commutation' scenario is expected to exceed the value under the Actual scenario and the individual's notional life expectancy at retirement.

Where no age is shown in the column where the 'No commutation' scenario is expected to match the Actual scenario, this is not projected to occur before age 100.

3.2.1 Projected ages when accumulated values are higher under the hypothetical 'No commutation' scenario – **cash rates**

	Current age at 1 July 2019	Age when Hypothetical 'no commutation' value is higher	Notional life expectancy
Case #1 Retired 1976	87		72
Case #2 Retired 1976	81		72
Case #3 Retired 1986	69		72
Case #4 Retired 1990	77		78
Case #5 Retired 1991	63		72
Case #6 Retired 1993	65		77
Case #7 Retired 1996	72	99	73
Case #8 Retired 2000	71	88	74
Case #9 Retired 2003	54		77
Case #10 Retired 2007	53	89	72
Case #11 Retired 2013	65	82	80
Case #12 Retired 2015	60	77	74

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3.2.2 Projected ages when accumulated values are higher under the hypothetical 'No commutation' scenario – **term deposit rates**

	Current age at 1 July 2019	Age when Hypothetical 'no commutation' value is higher	Notional life expectancy
Case #1 Retired 1976	87		72
Case #2 Retired 1976	81		72
Case #3 Retired 1986	69		72
Case #4 Retired 1990	77		78
Case #5 Retired 1991	63		72
Case #6 Retired 1993	65		77
Case #7 Retired 1996	72		73
Case #8 Retired 2000	71	89	74
Case #9 Retired 2003	54		77
Case #10 Retired 2007	53	94	72
Case #11 Retired 2013	65	83	80
Case #12 Retired 2015	60	77	74

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3.2.3 Projected ages when accumulated values are higher under the hypothetical 'No commutation' scenario – **home loan rates**

	Current age at 1 July 2019	Age when Hypothetical 'no commutation' value is higher	Notional life expectancy
Case #1 Retired 1976	87		72
Case #2 Retired 1976	81		72
Case #3 Retired 1986	69		72
Case #4 Retired 1990	77		78
Case #5 Retired 1991	63		72
Case #6 Retired 1993	65		77
Case #7 Retired 1996	72		73
Case #8 Retired 2000	71		74
Case #9 Retired 2003	54		77
Case #10 Retired 2007	53		72
Case #11 Retired 2013	65	97	80
Case #12 Retired 2015	60	87	74

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4 Conclusion

The comparison between the Actual scenario and the hypothetical scenario where No commutation was elected by the individual is influenced by the year when the individual retired and the interest rates applicable over the period since retirement.

If the financial outcome is measured as the accumulated value of lump sum commutation amounts and pension payments, given interest rates and pension indexation, where the **interest rate is the cash rate**:

- As at 1 July 2019 all cases have a higher financial outcome under the 'Actual' scenario than under the 'No commutation' scenario [Section 3.1.1];
- If future pension payments are taken into account [Section 3.2.1]:
    - Cases #1 to Case #6 and Case #9 continue to have a higher financial outcome under the 'Actual' scenario up to age 100;
    - Case #7, Case #8, Case #10, Case #11 and Case #12 are projected to have a higher financial outcome under the 'No commutation' scenario at some age before age 100. We can see this in the graphs in Appendix 2 when the projections cross over.

Where the accumulated lump sum and pension payments are assumed to earn **interest reflecting rolling one year term deposits**:

- As at 1 July 2019 all cases continue to have a higher financial outcome under the 'Actual' scenario than under the 'No commutation' scenario [Section 3.2.1]:
    - For Cases #1 to Case #3, the differential between the 'Actual' scenario and 'No commutation' scenario is less than under cash rates;
    - For Cases #4 to Case #12, the differential is higher than under cash rates due to the more recent higher term deposit rates;
- If future pension payments are taken into account [Section 3.2.2]:
    - Cases #1 to Case #7 and Case #9 continue to have a higher financial outcome under the 'Actual' scenario up to age 100;
    - Case #8, Case #10, Case #11 and Case #12 are projected to have a higher financial outcome under the 'No commutation' scenario at some age before age 100.

Where the accumulated lump sum and pension payments are assumed to earn **interest at the home loan rate**:

- As at 1 July 2019 all cases have a higher financial outcome under the 'Actual' scenario than under the 'No commutation' scenario, with a higher differential than under cash and term deposit rates [Section 3.1.3];

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- If future pension payments are taken into account, only Case #11 and Case #12 are projected to be in a position where the accumulated values are higher under the 'No commutation' scenario at an age before age 100 [Section 3.2.3].

We note that, by requirement of the Ombudsman, the modelled outcomes do not allow for any tax paid – on the commuted lump sum, pension payments or income earned on accumulated amounts. Allowing for tax would impact the results to the extent that there are different tax treatments and tax rates applicable to lump sums, pensions and income, noting that tax treatments and rates, as well as marginal income tax rates, have varied over time.

Also by requirement of the Ombudsman, the modelled outcome ignores any impact of the individual's use of the lump sum commutation amount and pension payments, effectively assuming that this would have been the same under the three scenarios. By measuring outcome in terms of accumulated values only the model is not attributing any value to the economic enjoyment of having access to money earlier.

Finally, the modelling also does not provide a single result, in terms of the relative value of the three scenarios for each case. It also assumes that all individuals have survived from their date of retirement to 1 July 2019. A reasonable, alternative approach to determine a single value and to take into account the fact that some individuals will not have survived would be to apply mortality rates to the modelled outcomes, i.e. weighting the outcome at each age with the probability of surviving to and then dying at that age, based on appropriate mortality tables.

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Appendix 1 - Data

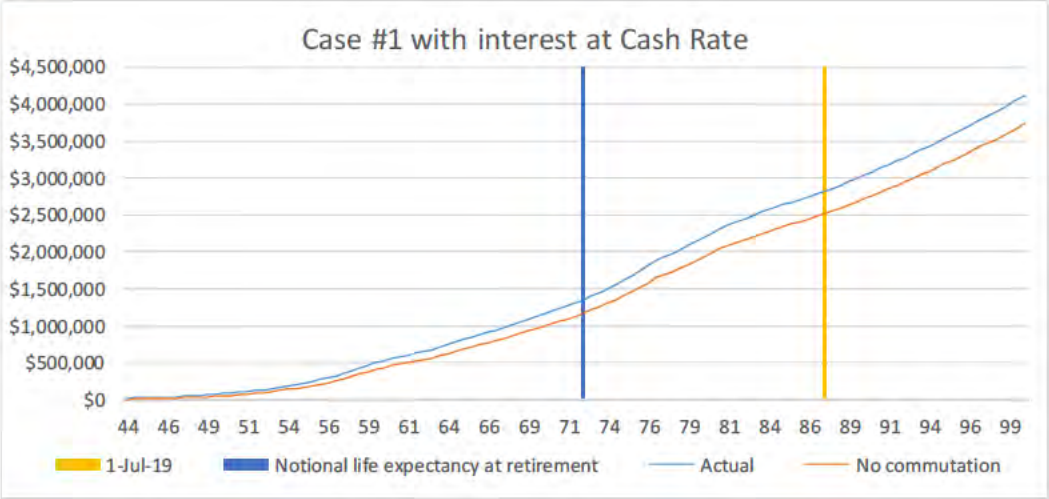
Case	Year of discharge	Salary used in calculations (Final salary)	Length of Effective Service	Percentage of Retirement Pay applicable to years of service	Actual Retirement Pay at retirement (Uncommuted)	Commutation multiplier	Commutation amount	Age at retirement	Life expectancy factor	Retirement Pay after commutation at retirement	Retirement pay at 1 July 2019	Total pension received from commencement to 1 July 2019	How much the member contributed (Actual dollars)
Case #1	1976	$12,536.00	21	36.50%	$4,575.64	4	$18,302.56	44	28.25	$3,927.76	$27,785.88	$700,260.58	$4,850.40
Case #2	1976	$12,536.00	23	39.50%	$4,951.72	4	$19,806.88	38	33.67	$4,363.46	$30,868.05	$761,903.10	$4,318.29
Case #3	1986	$26,558.00	20	35%	$9,295.30	4.2	$39,040.26	37	34.59	$8,166.64	$22,572.90	$501,594.40	$12,264.02
Case #4	1990	$49,364.00	20	35%	$17,277.40	4.35	$75,156.69	48	29.69	$14,746.02	$31,577.97	$658,703.97	$27,669.81
Case #5	1991	$37,818.00	21	36.50%	$13,803.57	4.45	$61,425.89	36	35.51	$12,073.75	$23,696.06	$478,604.59	$21,017.69
Case #6	1993	$56,066.00	22	38%	$18,109.32	4.55	$82,397.40	40	36.99	$15,881.76	$30,270.23	$574,056.84	$30,940.57
Case #7	1996	$84,518.00	33	57.75%	$47,344.87	4.65	$220,153.65	49	23.96	$38,156.49	$67,701.50	$1,199,722.01	$52,913.87
Case #8	2000	$96,972.00	36	6525%	$63,274.23	4.85	$306,880.02	52	21.51	$49,007.38	$81,966.22	$1,256,616.01	$73,475.55
Case #9	2003	$61,339.00	22	38%	$23,308.82	5	$116,544.10	39	37.92	$20,235.40	$29,444.02	$390,648.89	$39,800.93
Case #10	2007	$73,394.00	24	41%	$30,091.54	5	$150,457.70	41	30.93	$25,227.08	$33,240.28	$363,315.67	$51,128.79
Case #11	2013	$93,023.00	37	67.75%	$63,023.08	5	*$315,115.40**	60	19.51	$46,871.60	$52,603.54	$281,301.56	$92,626.68
Case #12	2015	$149,339.00	40	76.50%	$114,244.33	5	$571,221.65	56	18.43	$83,250.21	$90,444.91	$380,700.24	$120,580.08

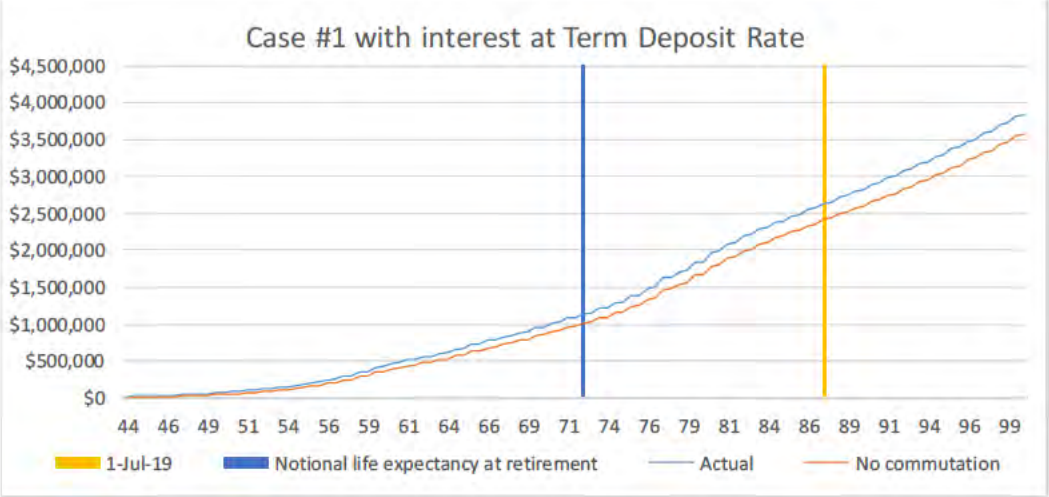
* For Case #11 the data in relation to the Commutation amount paid at retirement, the commuted and uncommuted Retirement Pay indicated that a 'debt' amount owed by the individual to the DFRDB scheme was deducted from the Commutation amount paid. It was agreed with the Ombudsman that we should adjust the data for this case so that the Commutation amount was not reduced by this debt amount. The figure used for Commutation amount is after this adjustment.

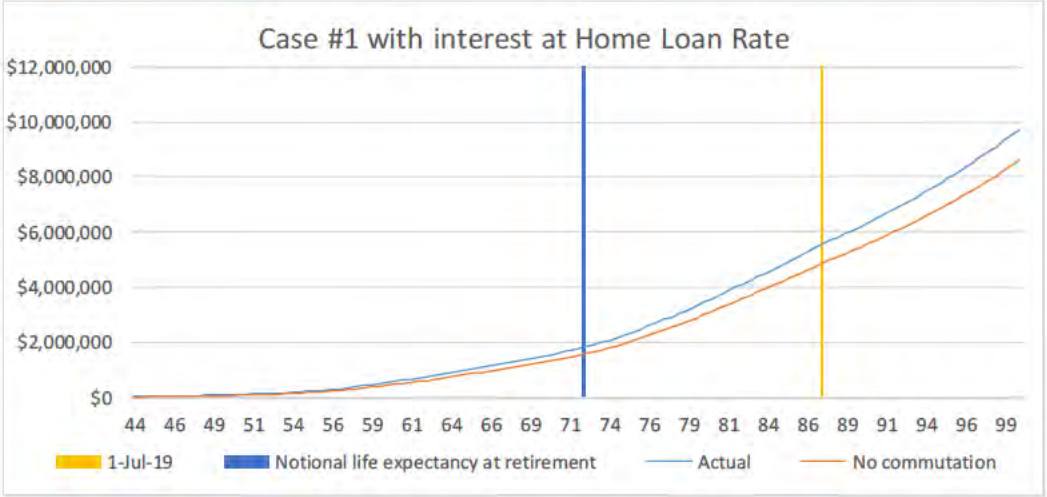
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Appendix 2 - Individual case outcomes

Case #1

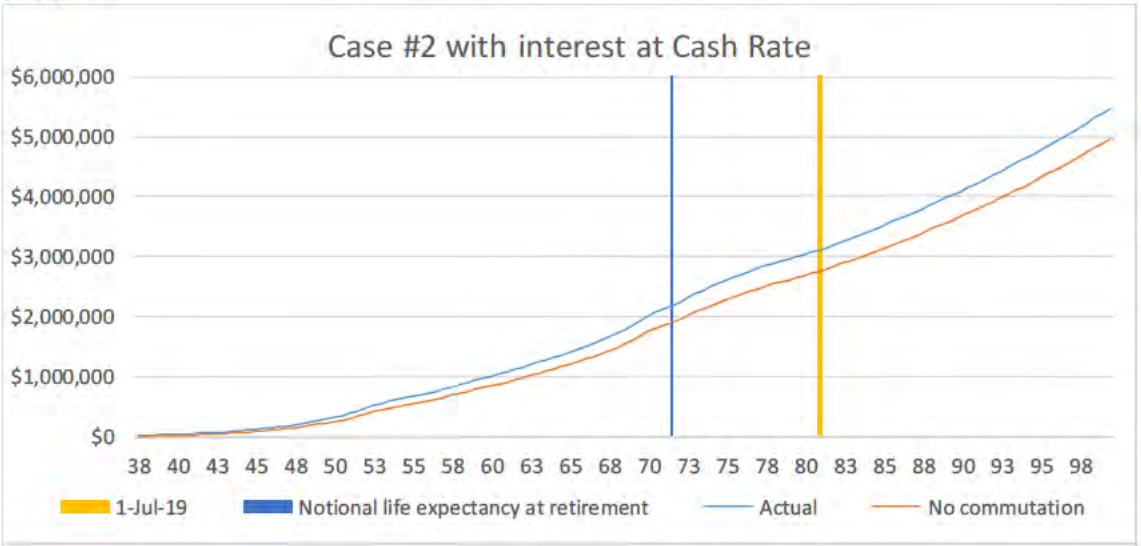


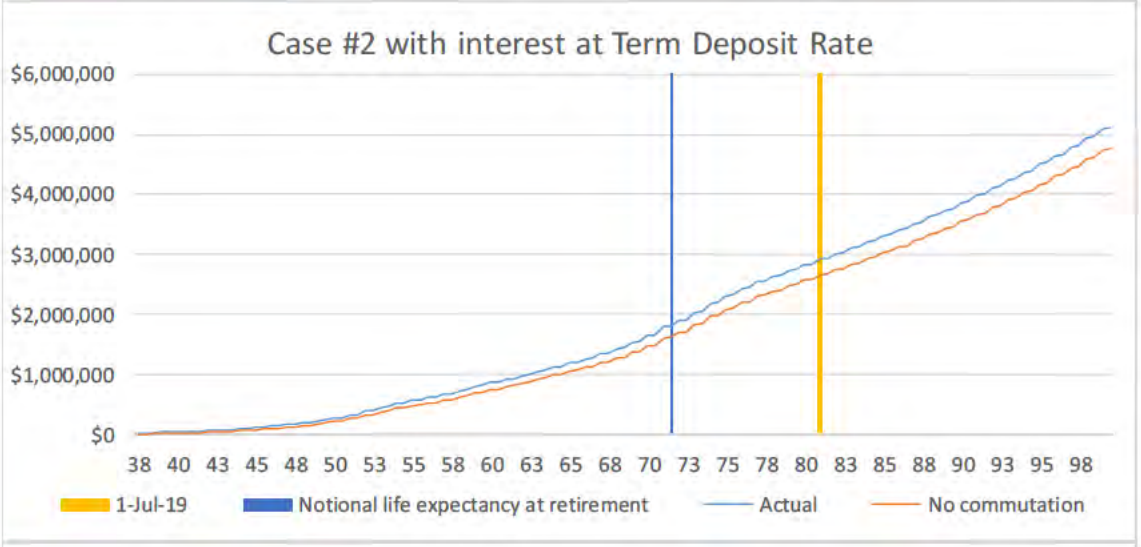


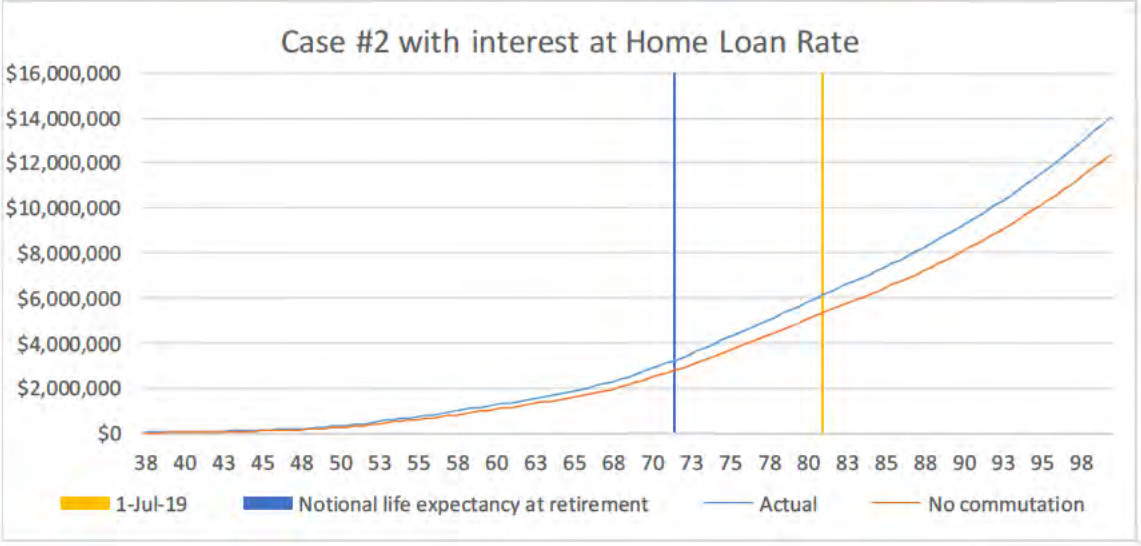


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Case #2

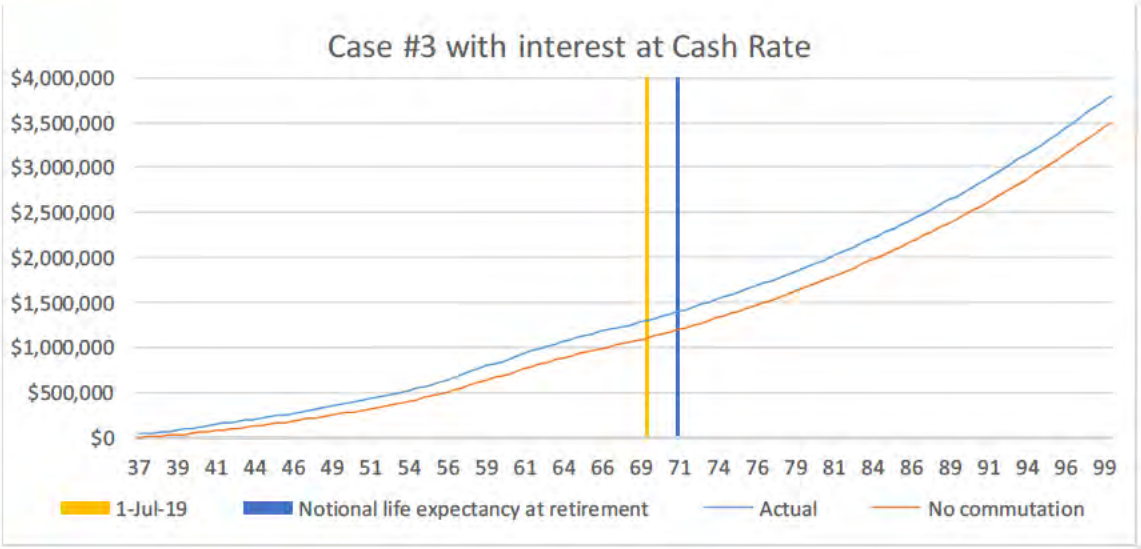


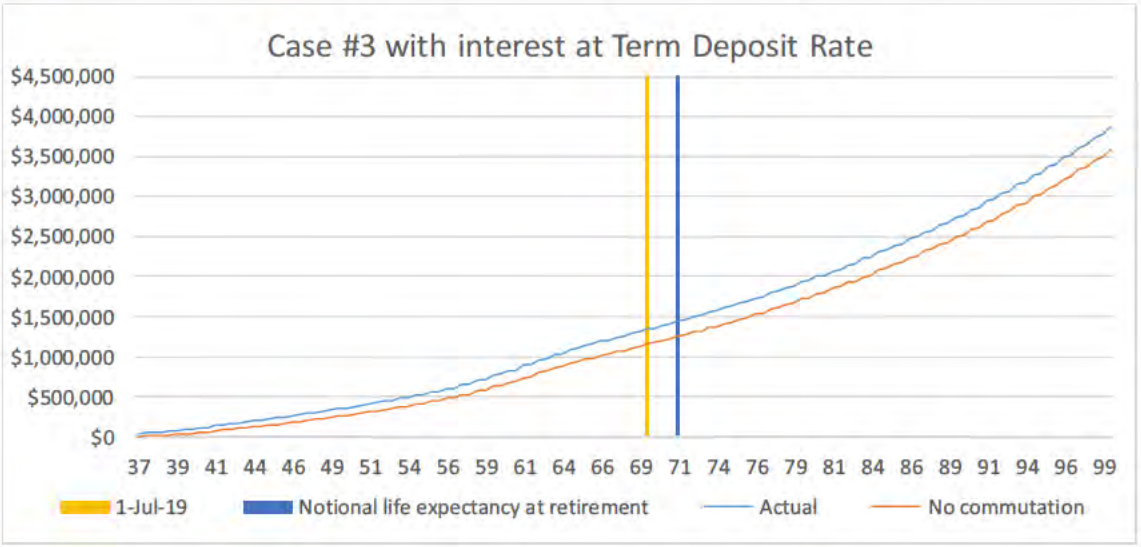


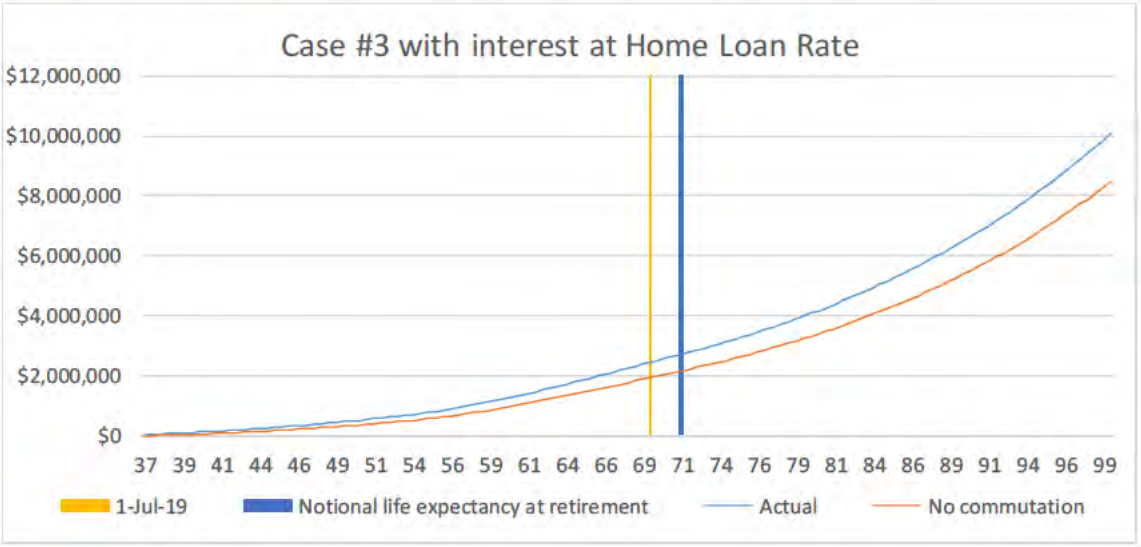


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Case #3



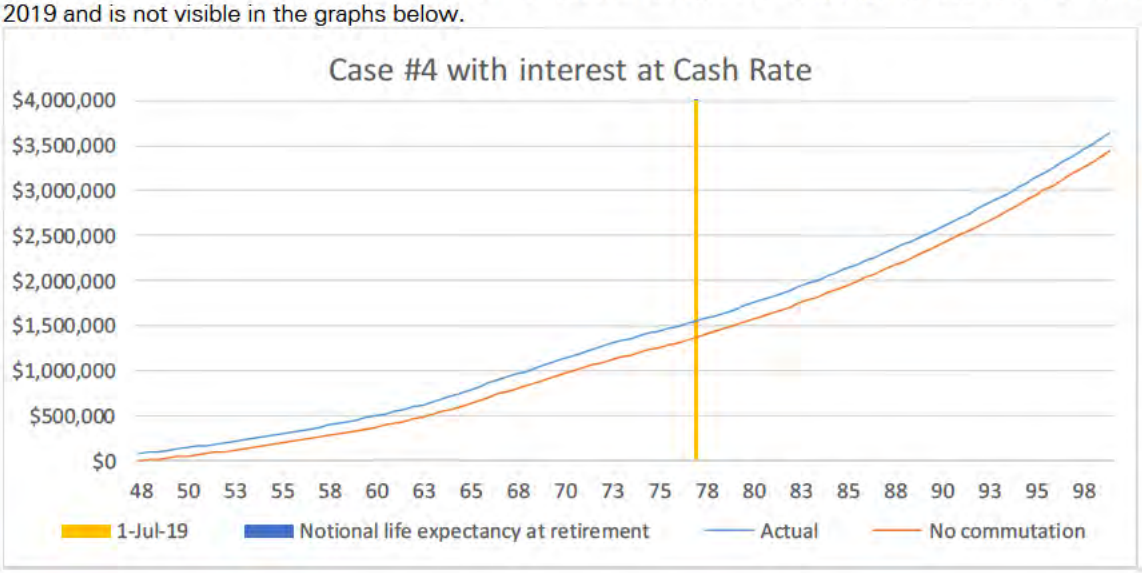


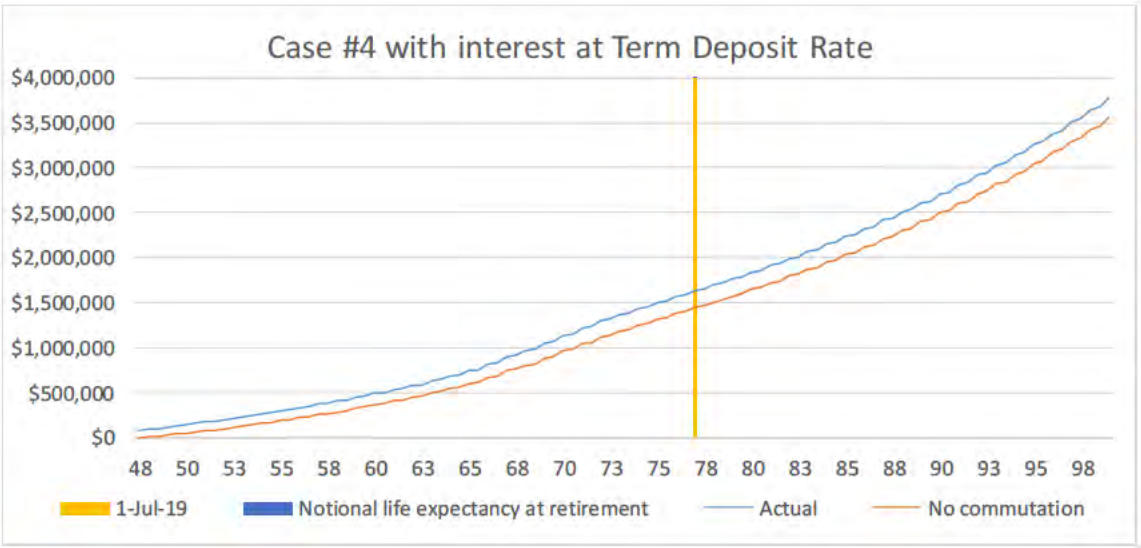


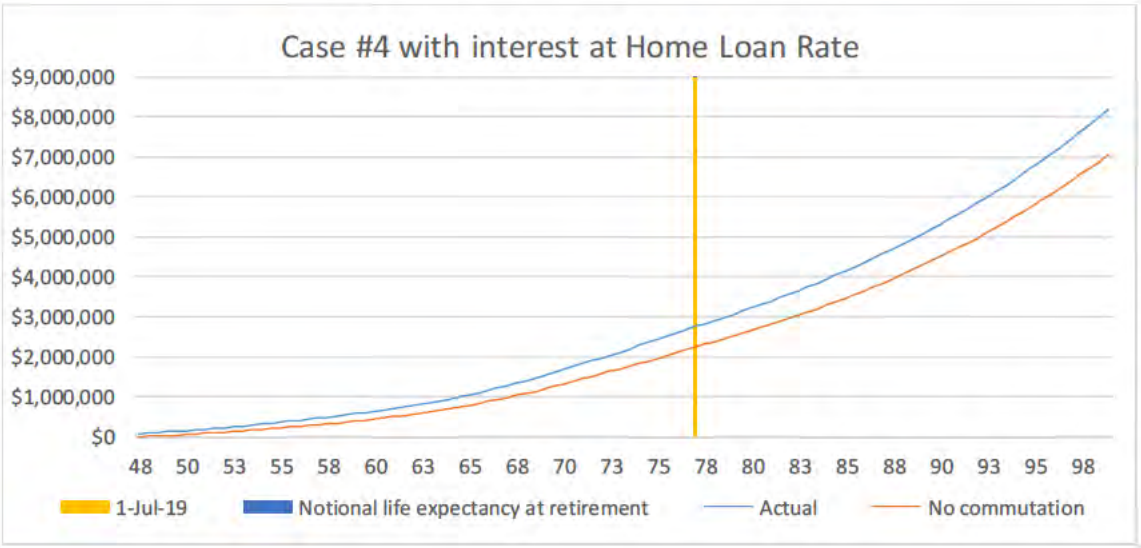
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Case #4

Note: The notional life expectancy at retirement for Case #4 falls on 23 June 2019, one week prior to 1 July 2019 and is not visible in the graphs below.

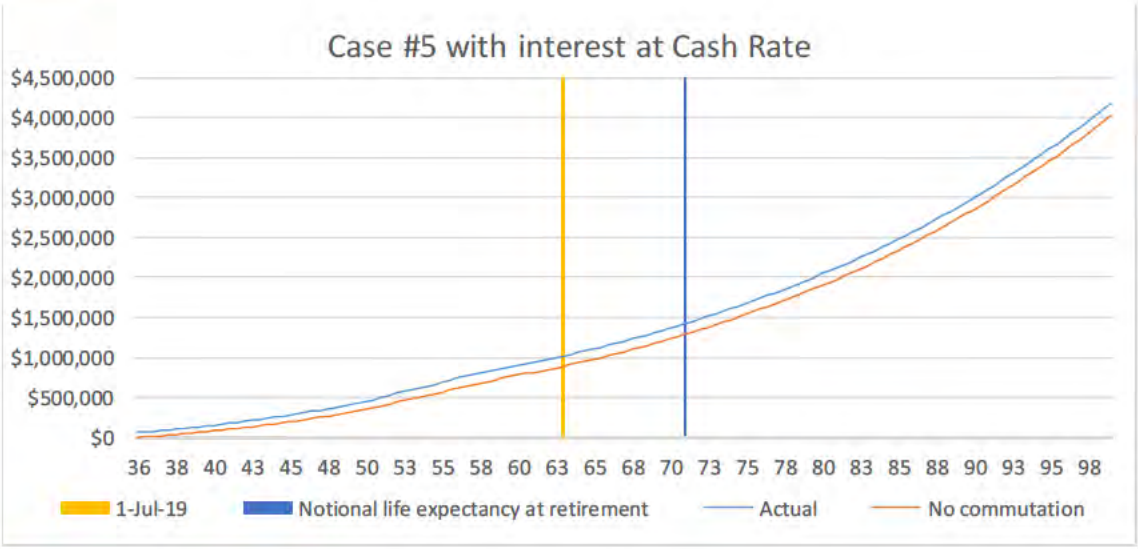


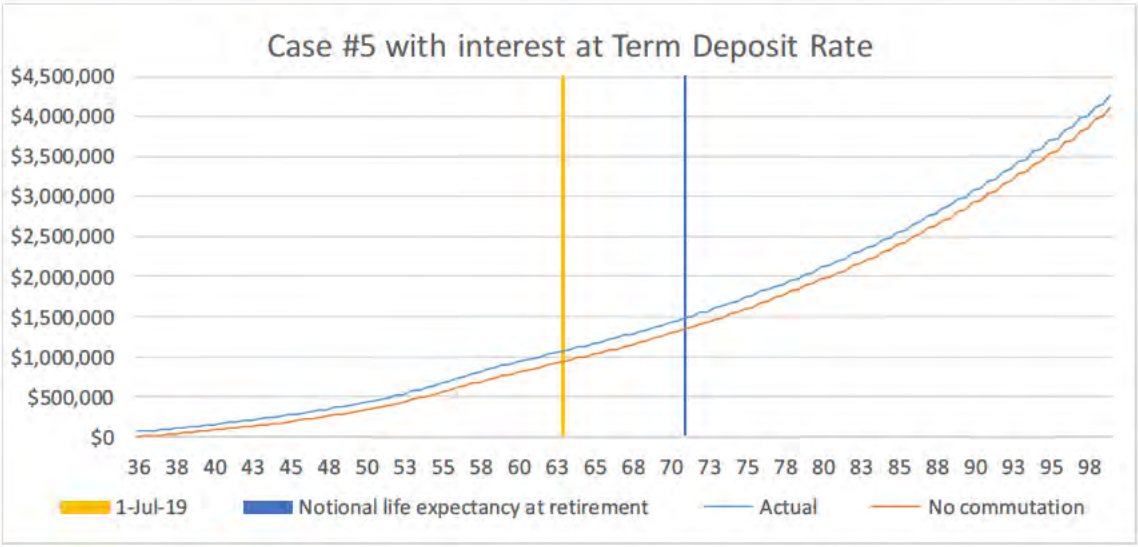


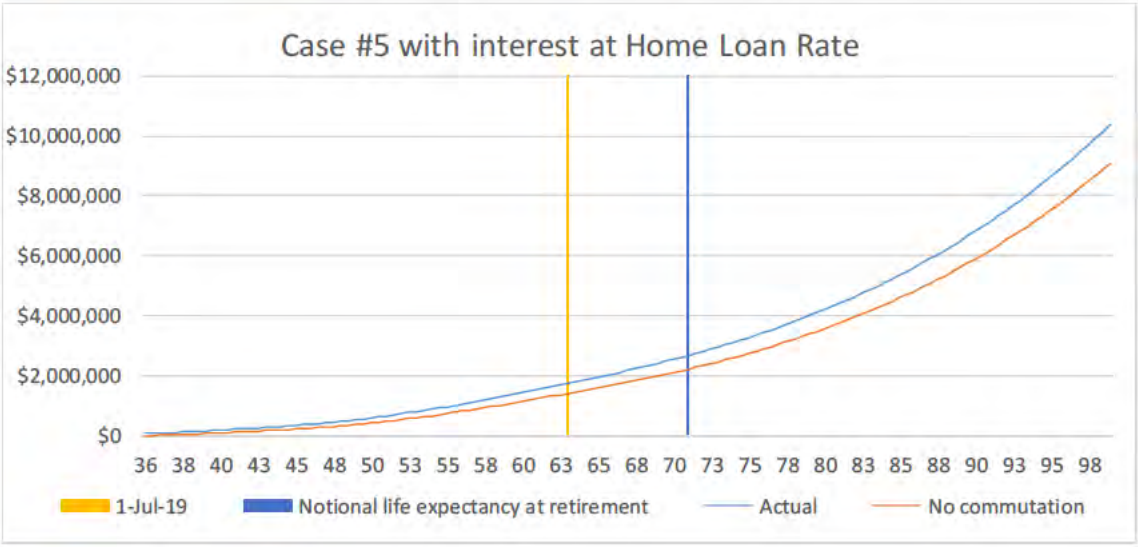


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Case #5

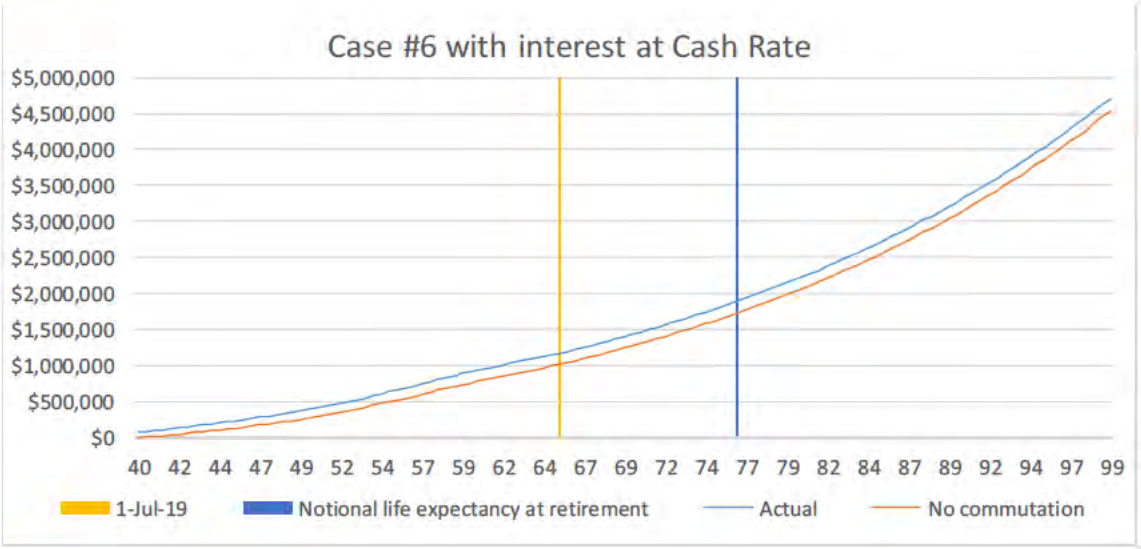


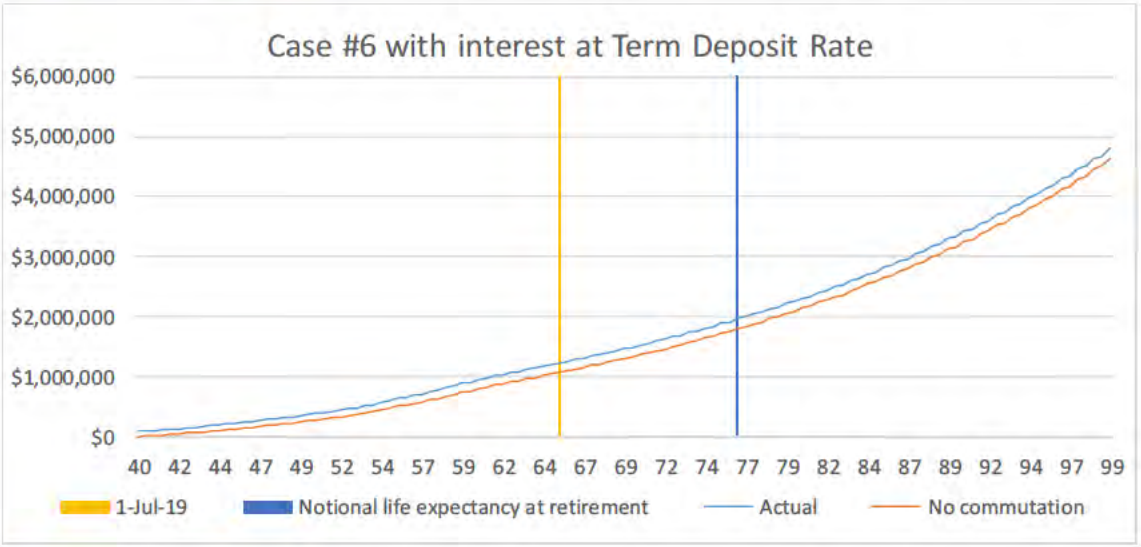


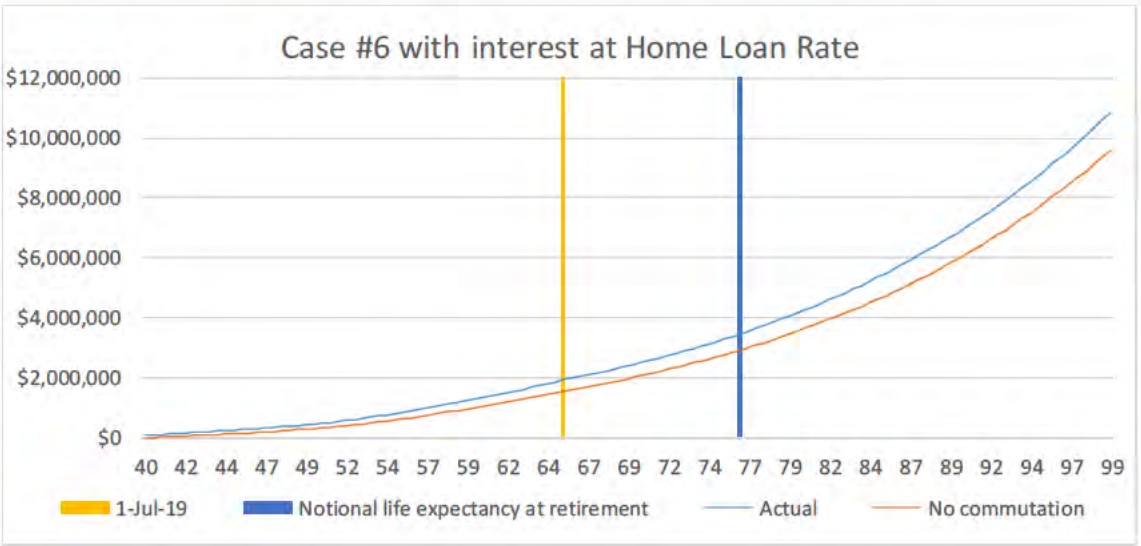


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Case #6

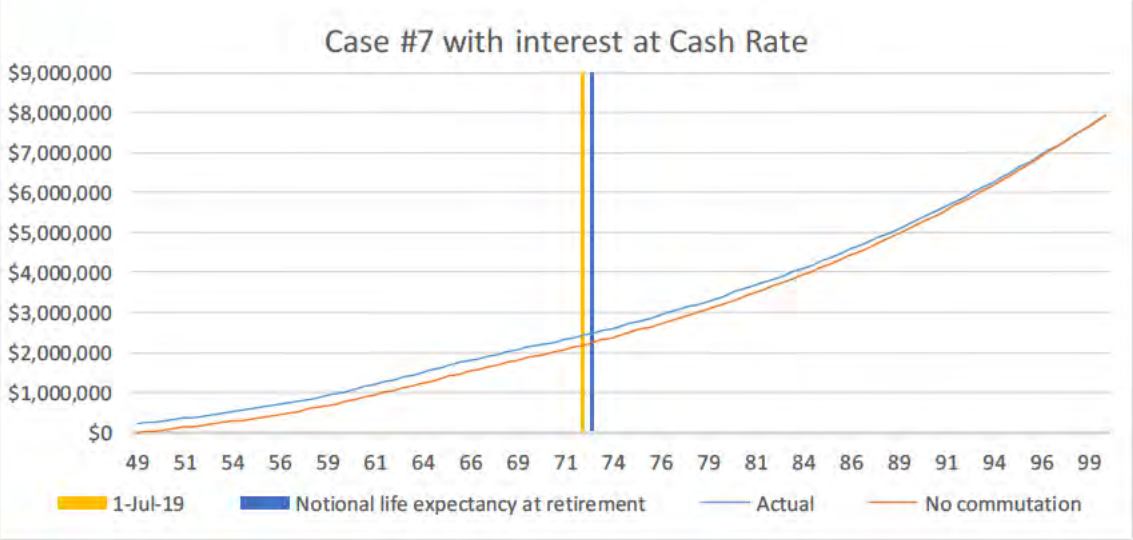


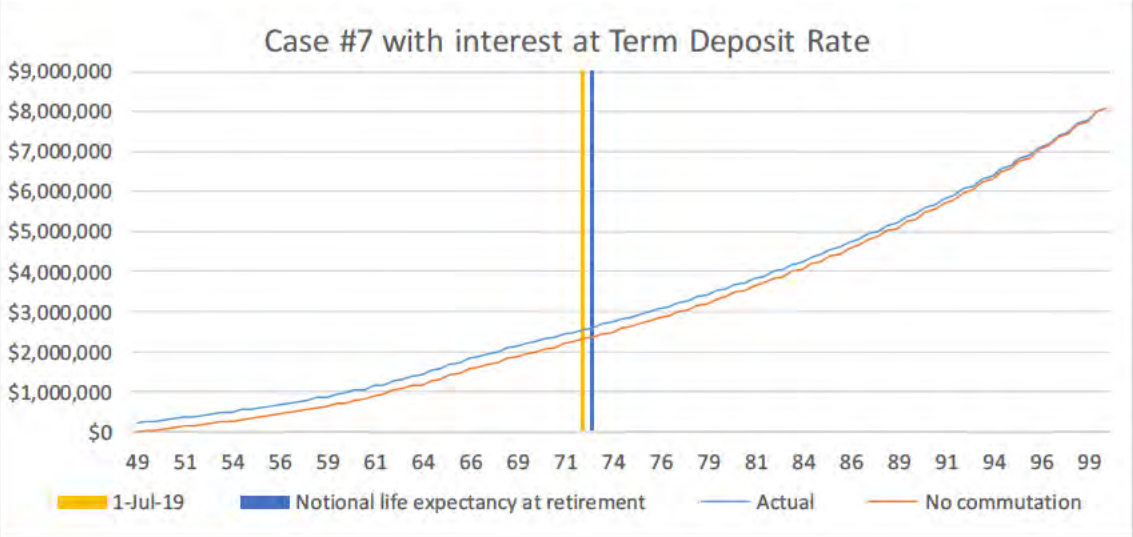


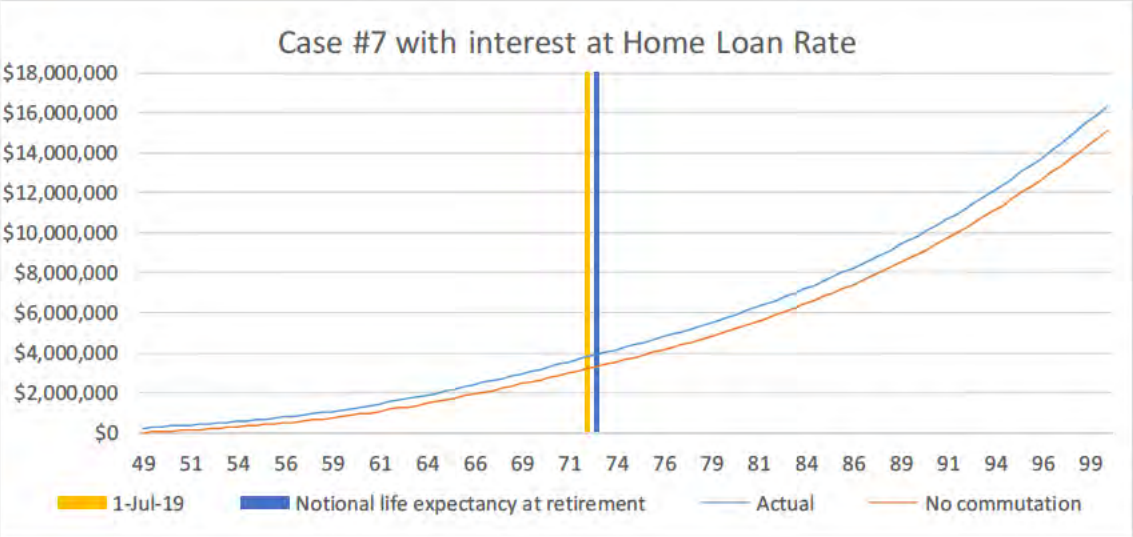


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Case #7

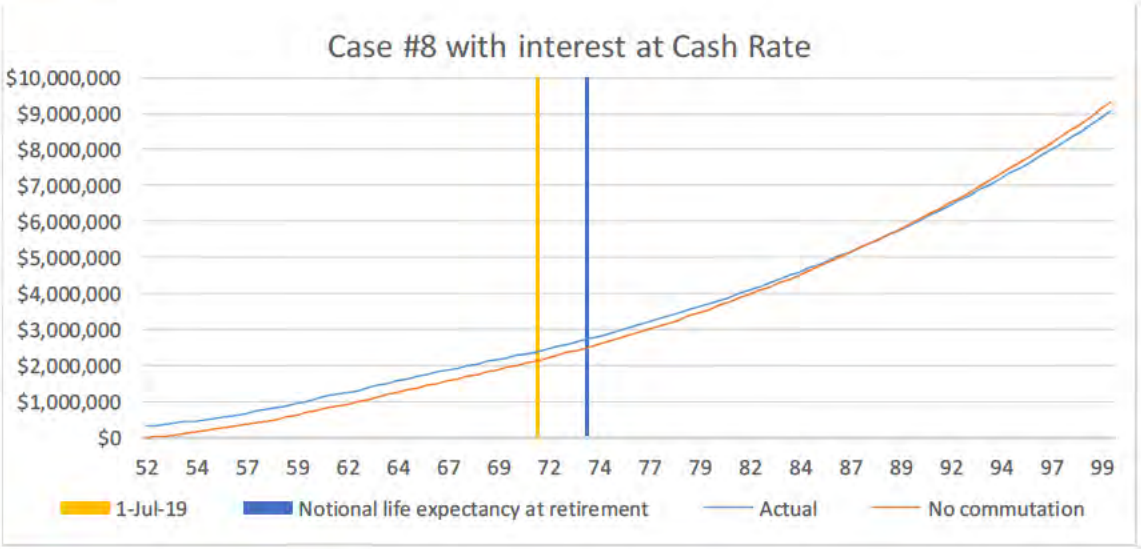


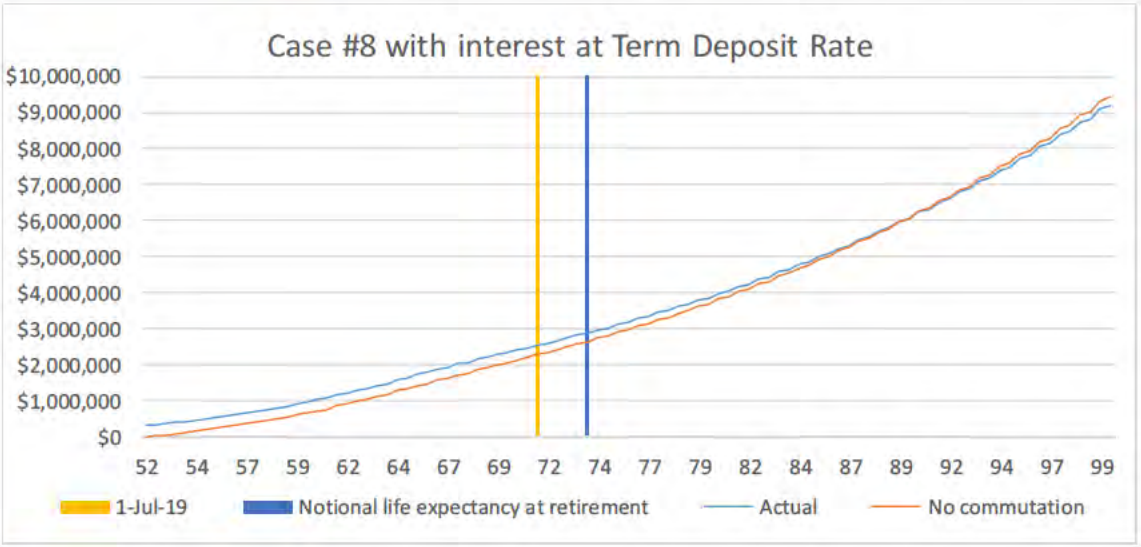


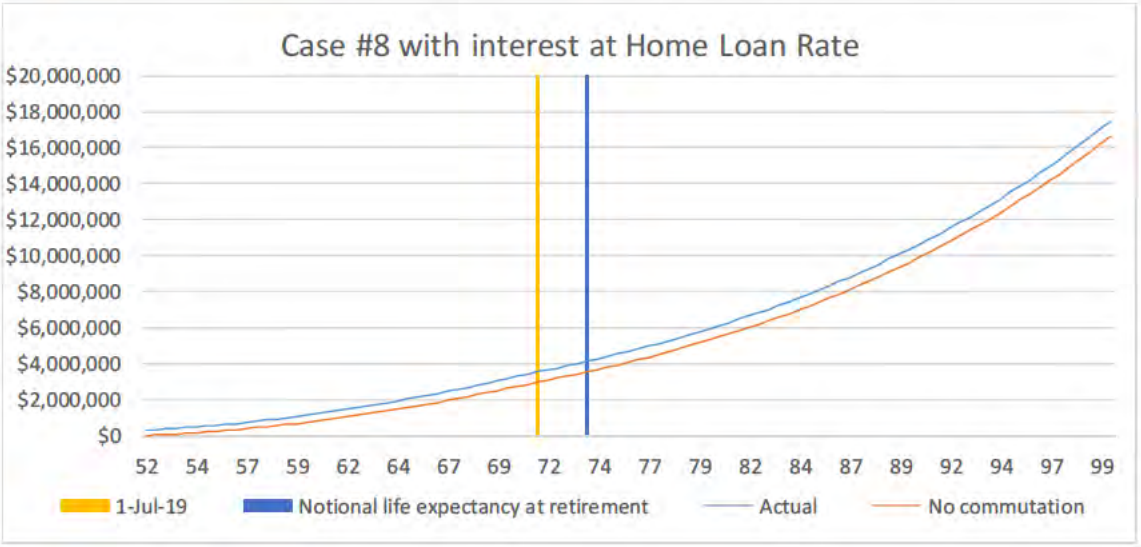


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Case #8

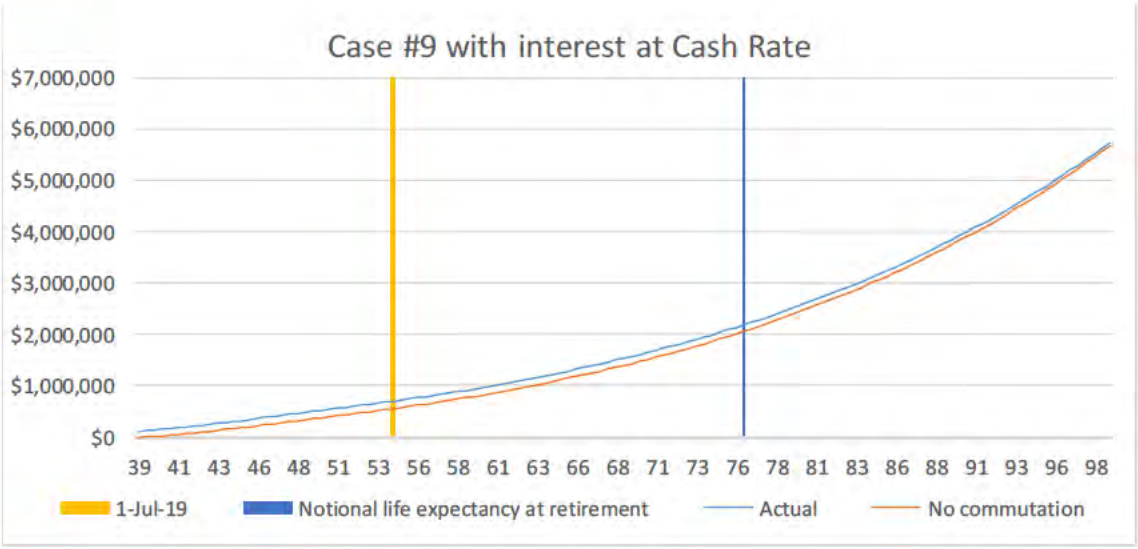


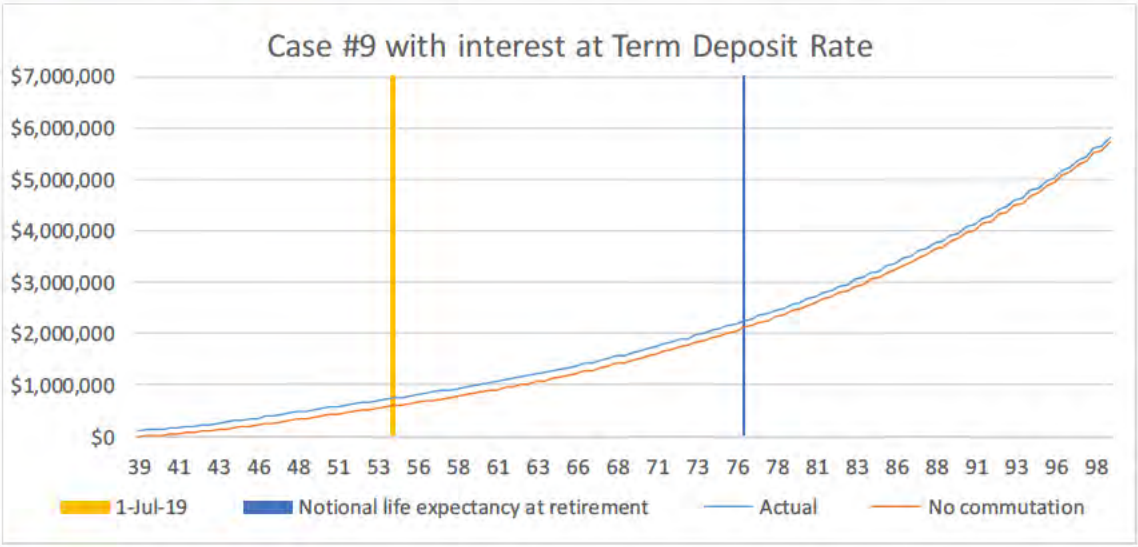


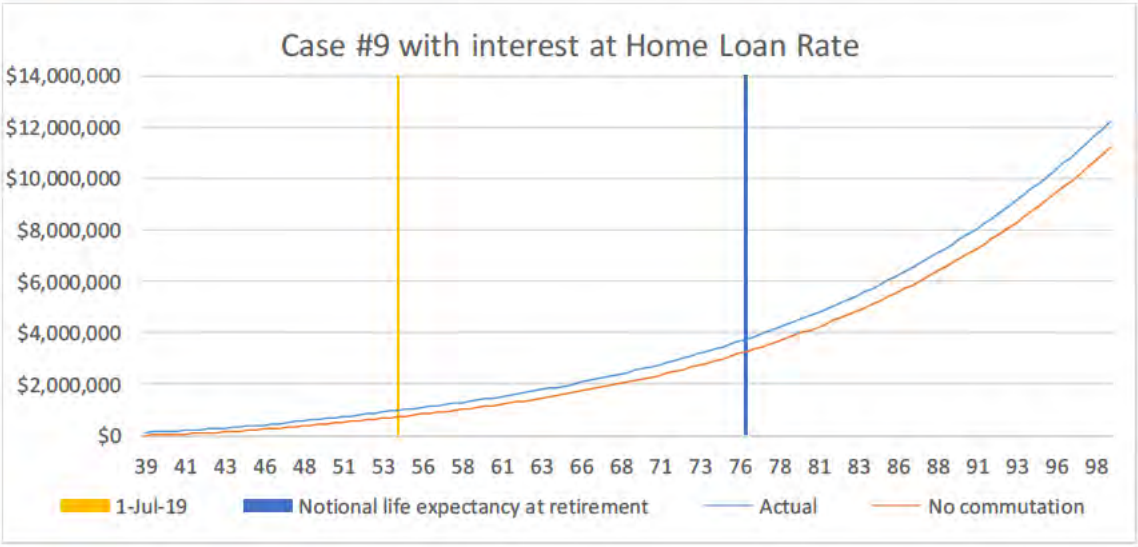


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Case #9

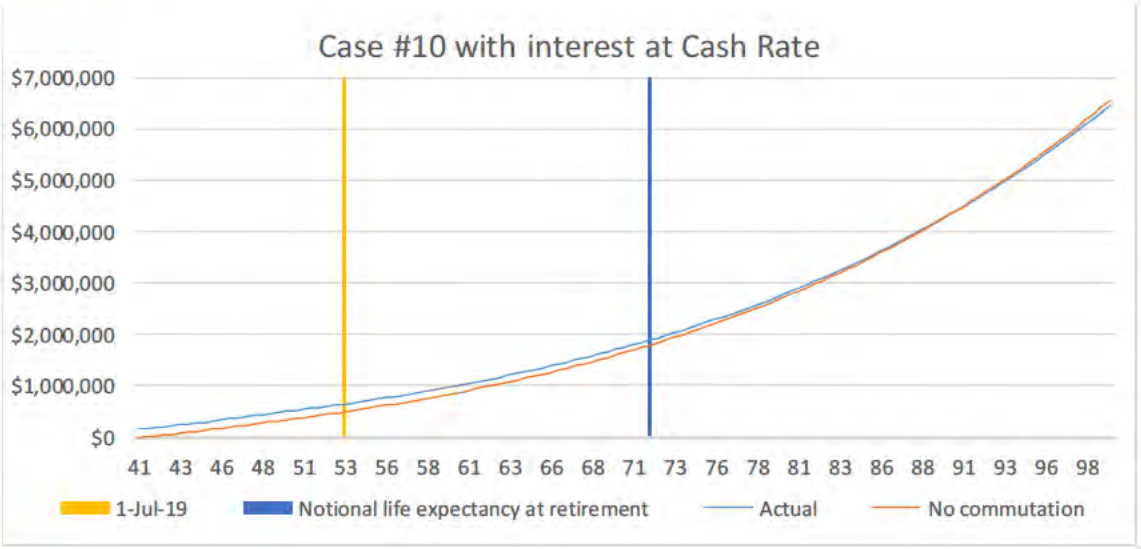


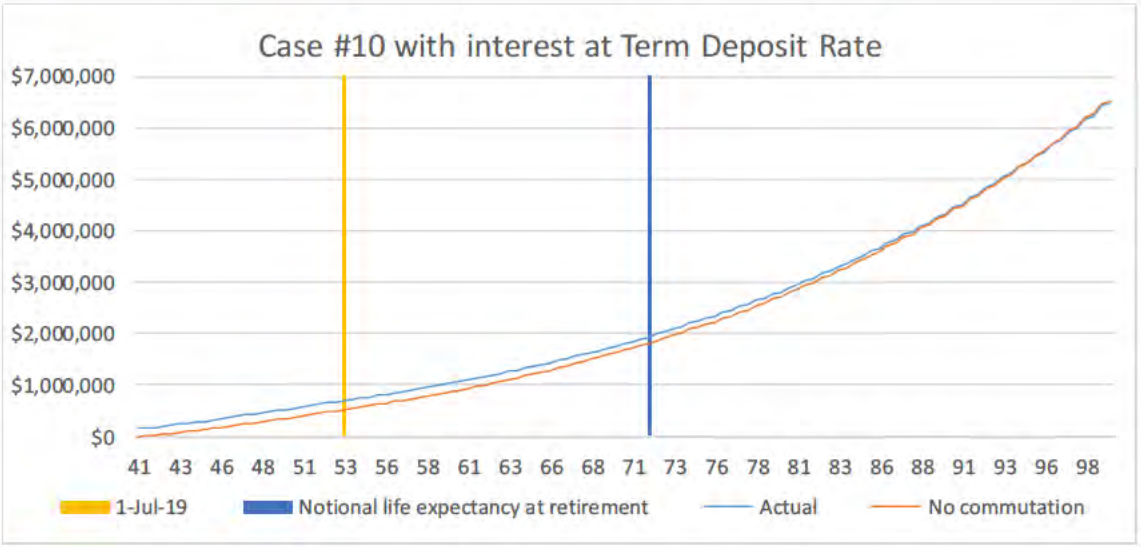


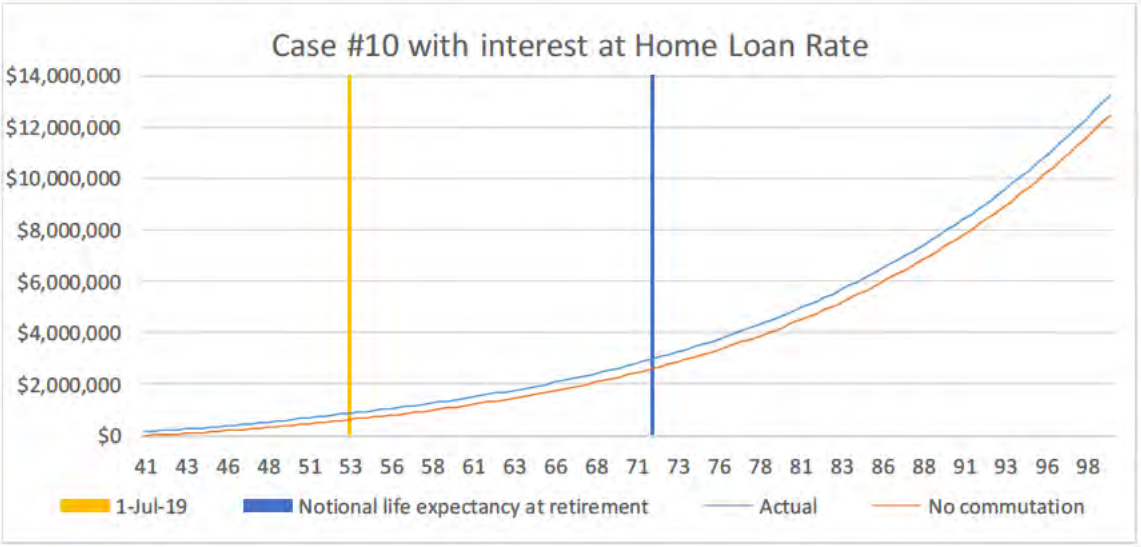


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Case #10

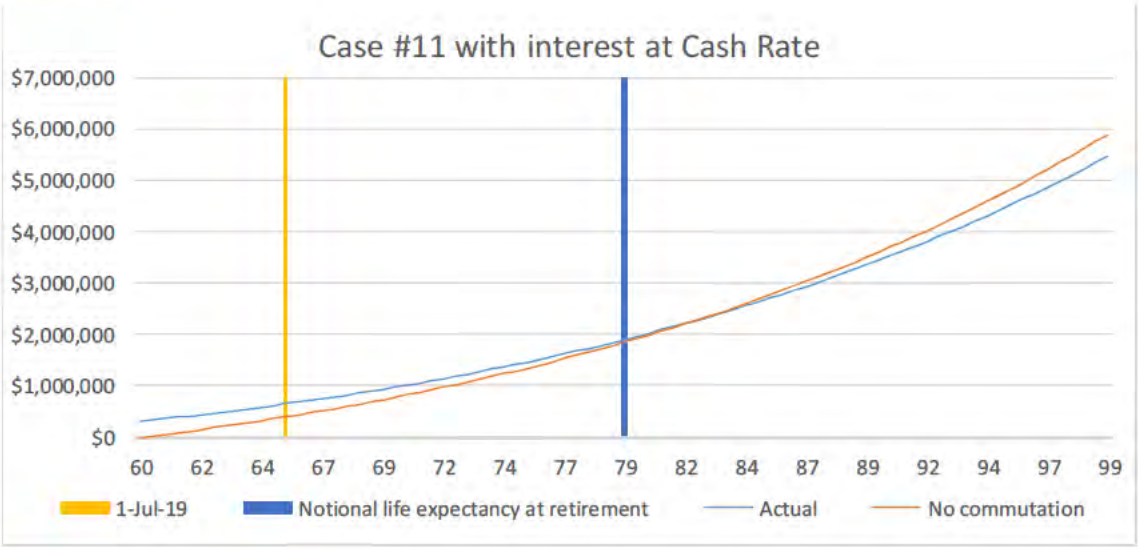


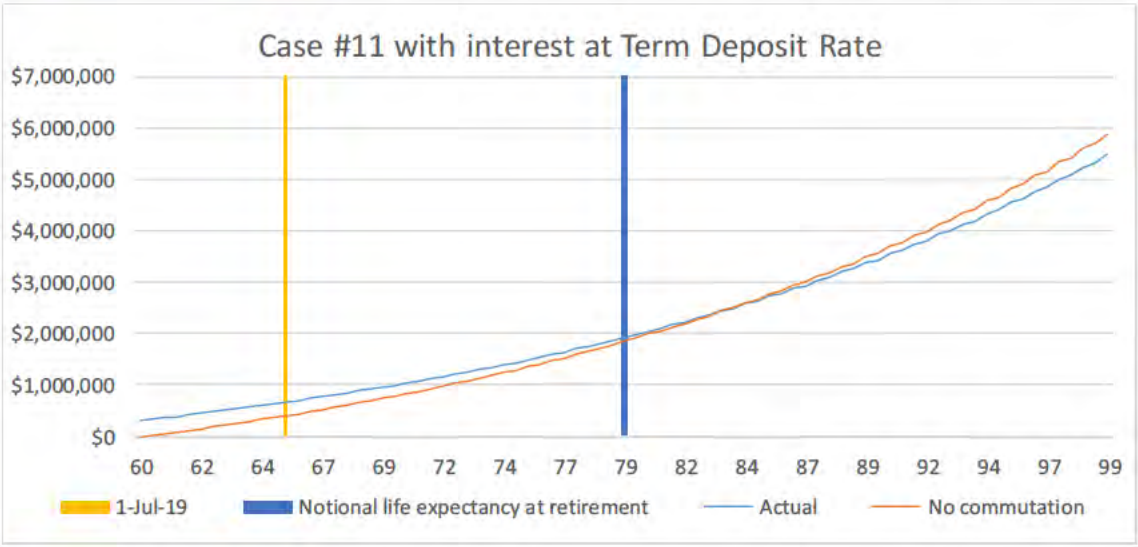


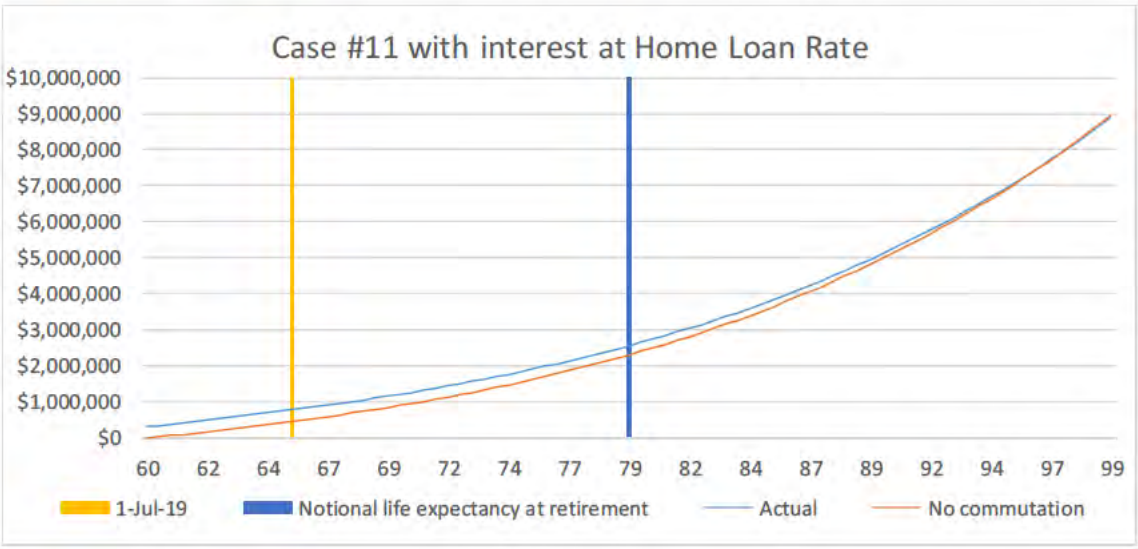


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Case #11

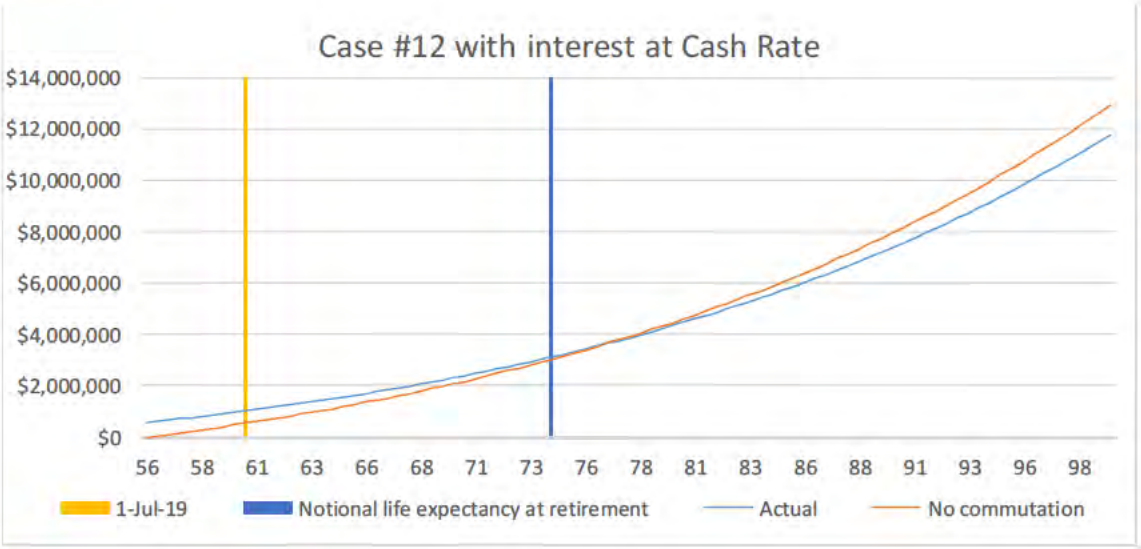


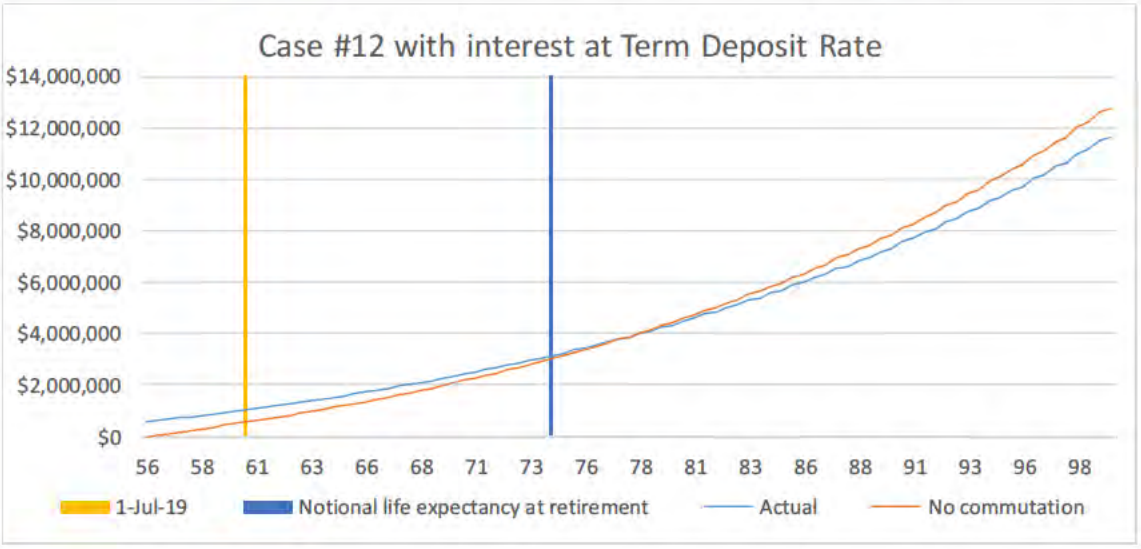


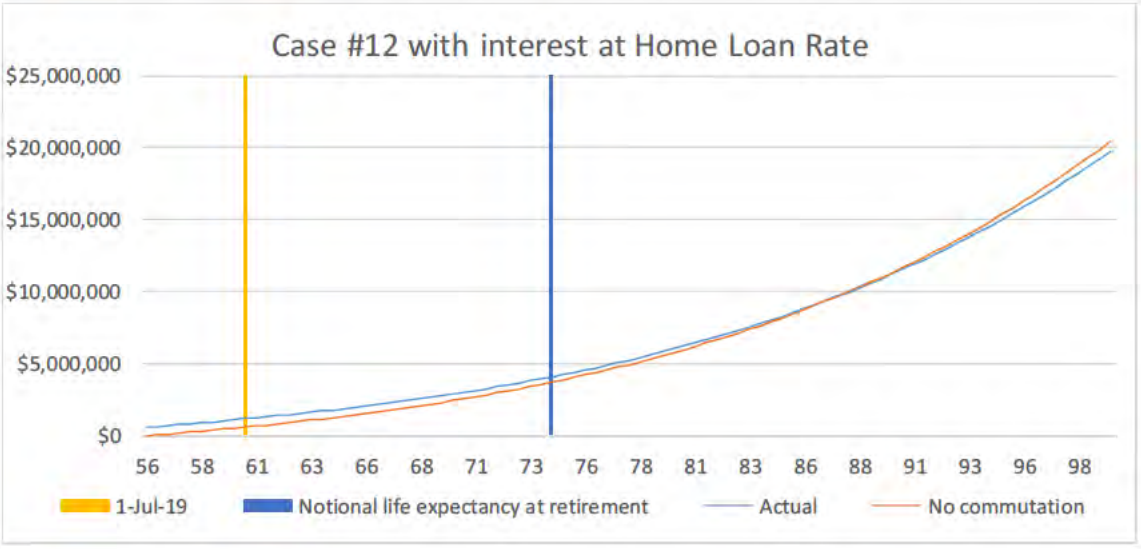


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Case #12







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Case #8

At the request of the Ombudsman, we have included the detailed modelling outcomes for Case #8 to age 100 in this report.

Case #8 – Cash rate

Date	Age	Actual scenario	Hypothetical No commutation scenario	Difference
8/05/2000	51.85	$306,880	$0	-$306,880
1/07/2000	52.00	$316,943	$9,397	-$307,546
1/07/2001	53.00	$387,467	$76,459	-$311,008
1/07/2002	54.00	$460,046	$149,625	-$310,421
1/07/2003	55.00	$538,904	$228,426	-$310,478
1/07/2004	56.00	$625,279	$313,858	-$311,421
1/07/2005	57.00	$718,771	$405,636	-$313,134
1/07/2006	58.00	$820,712	$505,146	-$315,565
1/07/2007	59.00	$935,715	$615,810	-$319,905
1/07/2008	60.00	$1,066,749	$740,012	-$326,738
1/07/2009	61.00	$1,186,032	$858,842	-$327,191
1/07/2010	62.00	$1,298,476	$974,691	-$323,785
1/07/2011	63.00	$1,430,523	$1,107,129	-$323,393
1/07/2012	64.00	$1,566,605	$1,244,795	-$321,811
1/07/2013	65.00	$1,689,970	$1,373,726	-$316,244
1/07/2014	66.00	$1,808,434	$1,499,917	-$308,517
1/07/2015	67.00	$1,928,887	$1,628,900	-$299,987
1/07/2016	68.00	$2,045,423	$1,755,471	-$289,952
1/07/2017	69.00	$2,155,995	$1,877,542	-$278,452
1/07/2018	70.00	$2,269,503	$2,002,886	-$266,617
1/07/2019	71.00	$2,386,260	$2,131,785	-$254,474
1/07/2020	72.00	$2,519,957	$2,276,604	-$243,353
1/07/2021	73.00	$2,658,557	$2,426,650	-$231,907
1/07/2022	74.00	$2,802,604	$2,582,509	-$220,095
1/07/2023	75.00	$2,952,287	$2,744,382	-$207,905
1/07/2024	76.00	$3,108,239	$2,912,949	-$195,290
1/07/2025	77.00	$3,269,807	$3,087,499	-$182,308
1/07/2026	78.00	$3,437,621	$3,268,709	-$168,912
1/07/2027	79.00	$3,611,896	$3,456,807	-$155,089
1/07/2028	80.00	$3,793,363	$3,652,578	-$140,785
1/07/2029	81.00	$3,981,258	$3,855,192	-$126,065
1/07/2030	82.00	$4,176,306	$4,065,429	-$110,877
1/07/2031	83.00	$4,378,754	$4,283,549	-$95,206
1/07/2032	84.00	$4,589,445	$4,510,454	-$78,991
1/07/2033	85.00	$4,807,486	$4,745,179	-$62,307
1/07/2034	86.00	$5,033,714	$4,988,622	-$45,092
1/07/2035	87.00	$5,268,410	$5,241,079	-$27,331
1/07/2036	88.00	$5,512,543	$5,503,588	-$8,955
1/07/2037	89.00	$5,765,074	$5,775,026	$9,952
1/07/2038	90.00	$6,026,967	$6,056,426	$29,458
1/07/2039	91.00	$6,298,541	$6,348,124	$49,583
1/07/2040	92.00	$6,580,912	$6,651,314	$70,402
1/07/2041	93.00	$6,872,871	$6,964,693	$91,822
1/07/2042	94.00	$7,175,527	$7,289,447	$113,919
1/07/2043	95.00	$7,489,243	$7,625,958	$136,715
1/07/2044	96.00	$7,815,301	$7,975,598	$160,297
1/07/2045	97.00	$8,152,298	$8,336,855	$184,558
1/07/2046	98.00	$8,501,509	$8,711,093	$209,584
1/07/2047	99.00	$8,863,345	$9,098,746	$235,400
1/07/2048	100.00	$9,239,279	$9,501,383	$262,105

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Case #8 – Term deposit rate

Date	Age	Actual scenario	Hypothetical No commutation scenario	Difference
8/05/2000	51.85	$306,880	$0	-$306,880
1/07/2000	52.00	$315,916	$9,382	-$306,534
1/07/2001	53.00	$386,371	$76,513	-$309,858
1/07/2002	54.00	$458,193	$149,526	-$308,668
1/07/2003	55.00	$534,885	$227,547	-$307,338
1/07/2004	56.00	$612,284	$308,827	-$303,457
1/07/2005	57.00	$701,194	$398,260	-$302,935
1/07/2006	58.00	$794,553	$492,841	-$301,713
1/07/2007	59.00	$900,893	$598,213	-$302,681
1/07/2008	60.00	$1,019,358	$714,249	-$305,110
1/07/2009	61.00	$1,165,341	$852,762	-$312,579
1/07/2010	62.00	$1,275,830	$967,474	-$308,356
1/07/2011	63.00	$1,423,653	$1,112,558	-$311,095
1/07/2012	64.00	$1,583,191	$1,269,310	-$313,881
1/07/2013	65.00	$1,730,520	$1,418,043	-$312,477
1/07/2014	66.00	$1,874,018	$1,565,231	-$308,788
1/07/2015	67.00	$2,013,752	$1,710,710	-$303,042
1/07/2016	68.00	$2,143,135	$1,848,466	-$294,668
1/07/2017	69.00	$2,274,396	$1,988,634	-$285,761
1/07/2018	70.00	$2,408,300	$2,132,029	-$276,271
1/07/2019	71.00	$2,544,721	$2,278,523	-$266,198
1/07/2020	72.00	$2,681,147	$2,425,881	-$255,266
1/07/2021	73.00	$2,822,500	$2,578,486	-$244,014
1/07/2022	74.00	$2,969,329	$2,736,928	-$232,402
1/07/2023	75.00	$3,121,824	$2,901,406	-$220,418
1/07/2024	76.00	$3,280,622	$3,072,605	-$208,017
1/07/2025	77.00	$3,445,058	$3,249,804	-$195,254
1/07/2026	78.00	$3,615,767	$3,433,683	-$182,084
1/07/2027	79.00	$3,792,964	$3,624,471	-$168,494
1/07/2028	80.00	$3,977,386	$3,822,955	-$154,431
1/07/2029	81.00	$4,168,254	$4,028,295	-$139,959
1/07/2030	82.00	$4,366,300	$4,241,274	-$125,026
1/07/2031	83.00	$4,571,771	$4,462,153	-$109,618
1/07/2032	84.00	$4,785,513	$4,691,837	-$93,676
1/07/2033	85.00	$5,006,621	$4,929,350	-$77,271
1/07/2034	86.00	$5,235,937	$5,175,592	-$60,345
1/07/2035	87.00	$5,473,740	$5,430,859	-$42,881
1/07/2036	88.00	$5,721,006	$5,696,193	-$24,813
1/07/2037	89.00	$5,976,681	$5,970,458	-$6,222
1/07/2038	90.00	$6,241,734	$6,254,692	$12,958
1/07/2039	91.00	$6,516,483	$6,549,229	$32,746
1/07/2040	92.00	$6,802,047	$6,855,265	$53,217
1/07/2041	93.00	$7,097,206	$7,171,485	$74,280
1/07/2042	94.00	$7,403,072	$7,499,080	$96,009
1/07/2043	95.00	$7,720,005	$7,838,430	$118,424
1/07/2044	96.00	$8,049,292	$8,190,905	$141,613
1/07/2045	97.00	$8,389,517	$8,554,987	$165,470
1/07/2046	98.00	$8,741,959	$8,932,039	$190,080
1/07/2047	99.00	$9,107,026	$9,322,492	$215,466
1/07/2048	100.00	$9,486,191	$9,727,918	$241,726

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Case #8 – Home loan rate

Date	Age	Actual scenario	Hypothetical No commutation scenario	Difference
8/05/2000	51.85	$306,880	$0	-$306,880
1/07/2000	52.00	$324,914	$9,516	-$315,398
1/07/2001	53.00	$404,143	$77,642	-$326,502
1/07/2002	54.00	$486,305	$153,121	-$333,184
1/07/2003	55.00	$576,392	$235,741	-$340,650
1/07/2004	56.00	$676,037	$326,653	-$349,384
1/07/2005	57.00	$785,775	$426,080	-$359,695
1/07/2006	58.00	$907,219	$535,676	-$371,543
1/07/2007	59.00	$1,045,048	$658,920	-$386,128
1/07/2008	60.00	$1,202,342	$798,210	-$404,132
1/07/2009	61.00	$1,373,815	$950,827	-$422,988
1/07/2010	62.00	$1,531,143	$1,096,830	-$434,313
1/07/2011	63.00	$1,723,397	$1,270,866	-$452,531
1/07/2012	64.00	$1,932,368	$1,460,573	-$471,795
1/07/2013	65.00	$2,140,047	$1,651,932	-$488,115
1/07/2014	66.00	$2,350,029	$1,847,598	-$502,431
1/07/2015	67.00	$2,572,029	$2,055,169	-$516,860
1/07/2016	68.00	$2,798,316	$2,268,313	-$530,003
1/07/2017	69.00	$3,032,378	$2,489,607	-$542,772
1/07/2018	70.00	$3,277,378	$2,721,883	-$555,495
1/07/2019	71.00	$3,539,898	$2,970,689	-$569,209
1/07/2020	72.00	$3,770,711	$3,194,695	-$576,016
1/07/2021	73.00	$4,012,879	$3,429,931	-$582,948
1/07/2022	74.00	$4,267,585	$3,677,558	-$590,027
1/07/2023	75.00	$4,535,419	$3,938,167	-$597,252
1/07/2024	76.00	$4,817,790	$4,213,144	-$604,647
1/07/2025	77.00	$5,113,802	$4,501,629	-$612,173
1/07/2026	78.00	$5,424,882	$4,805,031	-$619,851
1/07/2027	79.00	$5,751,734	$5,124,050	-$627,684
1/07/2028	80.00	$6,096,060	$5,460,366	-$635,694
1/07/2029	81.00	$6,456,746	$5,812,907	-$643,839
1/07/2030	82.00	$6,835,515	$6,183,372	-$652,143
1/07/2031	83.00	$7,233,206	$6,572,599	-$660,606
1/07/2032	84.00	$7,651,866	$6,982,612	-$669,254
1/07/2033	85.00	$8,090,124	$7,412,085	-$678,039
1/07/2034	86.00	$8,550,053	$7,863,065	-$686,988
1/07/2035	87.00	$9,032,650	$8,336,551	-$696,099
1/07/2036	88.00	$9,540,379	$8,834,980	-$705,399
1/07/2037	89.00	$10,071,554	$9,356,715	-$714,839
1/07/2038	90.00	$10,628,667	$9,904,224	-$724,443
1/07/2039	91.00	$11,212,904	$10,478,693	-$734,211
1/07/2040	92.00	$11,827,223	$11,083,052	-$744,171
1/07/2041	93.00	$12,469,560	$11,715,293	-$754,267
1/07/2042	94.00	$13,142,907	$12,378,379	-$764,527
1/07/2043	95.00	$13,848,671	$13,073,721	-$774,950
1/07/2044	96.00	$14,590,400	$13,804,837	-$785,562
1/07/2045	97.00	$15,365,577	$14,569,270	-$796,306
1/07/2046	98.00	$16,177,785	$15,370,576	-$807,209
1/07/2047	99.00	$17,028,698	$16,210,431	-$818,267
1/07/2048	100.00	$17,922,562	$17,093,051	-$829,510

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Appendix 3 - Financial modelling rates

Below is a table summarising the interest and indexation rates that have been used in the retirement income model effective as at 1 July each year. The Term Deposit rates for periods prior to 1 July 1982 were provided by the Ombudsman.

The actual rates used in the model reflect changes in the cash and home loan rates between 1 July of each year and changes in CPI and LCI indexation on a biannual basis from 1 January 2002.

	Cash (%)	Home Loan (%)	Term Deposit (%)	CPI (%)	LCI (%)
1/07/1975	10.8	10.1	*8.2*		
1/07/1976	8.8	9.9	*8.0*	13.1	
1/07/1977	9.9	9.9	*7.8*	13.3	
1/07/1978	10.3	9.4	*7.3*	8.7	
1/07/1979	12.0	9.1	*7.5*	8.0	
1/07/1980	20.0	10.3	*9.0*	10.4	
1/07/1981	17.5	11.5	*11.9*	9.4	
1/07/1982	19.6	13.5	13.5	10.8	
1/07/1983	14.5	12.5	11.9	11.4	
1/07/1984	13.8	11.5	11.5	5.8	
1/07/1985	16.1	12.5	12.2	4.4	
1/07/1986	15.9	15.5	13.7	9.2	
1/07/1987	12.8	15.5	13.4	9.4	
1/07/1988	12.9	14.5	12.2	6.8	
1/07/1989	17.5	17.0	15.6	6.8	
1/07/1990	15.0	16.4	14.5	8.7	
1/07/1991	10.5	13.0	10.0	4.8	
1/07/1992	6.5	10.3	6.2	1.7	
1/07/1993	5.3	9.5	5.2	1.2	
1/07/1994	4.8	8.8	5.6	1.5	
1/07/1995	7.5	10.5	7.1	3.7	
1/07/1996	7.5	9.9	7.1	3.8	
1/07/1997	5.5	7.0	4.9	1.4	
1/07/1998	5.0	6.7	4.5	0.0	
1/07/1999	4.8	6.6	3.9	1.0	
1/07/2000	6.0	7.8	5.9	2.8	
1/07/2001	5.0	6.8	4.4	6.0	
1/07/2002	4.8	6.6	4.4	1.9	
1/07/2003	4.8	6.6	3.6	1.9	
1/07/2004	5.3	7.1	4.8	1.4	
1/07/2005	5.5	7.3	4.6	1.5	

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	Cash (%)	Home Loan (%)	Term Deposit (%)	CPI (%)	LCI (%)
1/07/2006	5.8	7.6	5.4	1.3	
1/07/2007	6.3	8.1	5.9	0.0	
1/07/2008	7.3	9.6	7.6	2.3	
1/07/2009	3.0	5.8	3.6	0.0	
1/07/2010	4.5	7.4	6.0	1.5	
1/07/2011	4.8	7.8	6.0	1.9	
1/07/2012	3.5	6.8	4.6	0.1	
1/07/2013	2.8	6.2	3.9	0.6	
1/07/2014	2.5	5.9	3.3	1.3	1.5
1/07/2015	2.0	5.5	2.5	0.4	0.3
1/07/2016	1.8	5.4	2.4	0.2	0.4
1/07/2017	1.5	5.2	2.3	1.0	1.3
1/07/2018	1.5	5.2	2.2	1.1	1.5
1/07/2019				0.5	1.0

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DFRDB Legislation summary **Attachment G**

Both the Defence Force Retirement Benefits (DFRB) Scheme and the Defence Force Retirement Death Benefits (DFRDB) Scheme are separate and distinct schemes, each governed under different legalisation. When DFRDB was commenced in October 1972, existing contributor's to the previous DFRB scheme, compulsory transferred to DFRDB.

The relevant sections of the DFRDB Act and a summary of these are below.

Section 23 – Entitlement to retirement pay outlines when a contributing member becomes eligible to retirement pay at the rate applicable, where specific conditions are met. These conditions are:

- When the member retires and is not entitled to invalidity benefit*
- The member's years of effective service is not less than 20 or not less than 15 where the member has reached retirement age for the rank held by the member immediately prior to retirement.
- Two factors that determine the members rate of retirement pay (benefit) are based on the maximum rate of pay (including service and environmental allowances) immediately prior to retirement and the number of effective years of service. This is set per annum on a percentage.

*When a member is medically retired from the ADF they may become entitled to an invalidity retirement pay, depending on the number of years they have served. A medically retired member is classified under Section 30 of the Act. Some classifications of invalidity pay result in a commutation option and some do not.

Section 39 - Spouse's pension on death of recipient member outlines that when a member receiving a retirement or invalidity payment dies, their surviving spouse is entitled to a pension equal to five-eighths (62.5%) of the uncommuted value of retirement pay.

Section 98B - Increase in certain pensions outlines the rates used to increase DFRDB pensions twice yearly. The increase will vary depending on the recipient's age. The increase for recipients under 55 is in line with the CPI and for recipients over 55 it is in line with Pension and Beneficiary Living Cost of Living (PBLCI).

Section 24 - Commutation of retirement pay outlines that a member may elect to commute a portion of their retirement pay (exchange a portion of their future retirement benefit for a lump sum) resulting in a permanent reduction to their ongoing pension. This election is made at the time of discharge or up to 12 months after discharge. The maximum amount for commutation is five times the amount of retirement pay.

Sections 98B and 24 (above) and the effect of commutation on pensions increases
Where a member commutes between four and five times the amount of retirement, the total amount of the remaining retirement pay is indexed.

Where a member does not elect to commute, or commutes less than four times the amount of retirement pay, indexation is only applied to the notional retirement benefit being the amount payable if the member elected to commute four times the amount of retirement pay.

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Defence Force Retirement and Death Benefits Act 1973

No. 81, 1973

Compilation No. 46

Compilation date:	28 September 2022
Includes amendments up to:	Act No. 112, 2020
Registered:	4 October 2022

Prepared by the Office of Parliamentary Counsel, Canberra

About this compilation

This compilation

This is a compilation of the *Defence Force Retirement and Death Benefits Act 1973* that shows the text of the law as amended and in force on 28 September 2022 (the ***compilation date***).

The notes at the end of this compilation (the ***endnotes***) include information about amending laws and the amendment history of provisions of the compiled law.

Uncommenced amendments

The effect of uncommenced amendments is not shown in the text of the compiled law. Any uncommenced amendments affecting the law are accessible on the Legislation Register (www.legislation.gov.au). The details of amendments made up to, but not commenced at, the compilation date are underlined in the endnotes. For more information on any uncommenced amendments, see the series page on the Legislation Register for the compiled law.

Application, saving and transitional provisions for provisions and amendments

If the operation of a provision or amendment of the compiled law is affected by an application, saving or transitional provision that is not included in this compilation, details are included in the endnotes.

Editorial changes

For more information about any editorial changes made in this compilation, see the endnotes.

Modifications

If the compiled law is modified by another law, the compiled law operates as modified but the modification does not amend the text of the law. Accordingly, this compilation does not show the text of the compiled law as modified. For more information on any modifications, see the series page on the Legislation Register for the compiled law.

Self-repealing provisions

If a provision of the compiled law has been repealed in accordance with a provision of the law, details are included in the endnotes.

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An Act to make provision for and in relation to a Scheme for Retirement and Death Benefits for Members of the Defence Force

Part I—Preliminary

1 Short title

This Act may be cited as the *Defence Force Retirement and Death Benefits Act 1973*.

2 Commencement

(1) Subject to subsection (2), this Act shall come into operation on the day on which it receives the Royal Assent.

(2) Sections 3 to 6 (inclusive), and Parts III to IX (inclusive), shall be deemed to have come into operation on 1 October 1972 and, subject to this Act, contributions under section 17 are payable to the Commonwealth, and benefits under this Act are payable by the Commonwealth, on and after that date accordingly.

3 Interpretation

(1) In this Act, unless the contrary intention appears:

additional contribution means an additional contribution payable under section 21, 64, 87, 89 or 93.

annual rate of pay, in relation to a member of the Defence Force on a particular day, means the amount, that, under the regulations, is the annual pay applicable to the member on that day.

Authority means the Defence Force Retirement and Death Benefits Authority established by section 8, as in force before its repeal by item 44 of Schedule 1 to the *Superannuation Legislation*

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(Consequential Amendments and Transitional Provisions) Act 2011.

benefit means pension benefit, and includes the following:

(a) a lump sum payment under subsection 32(2) or section 48;

(b) a refund of contributions under section 56;

(c) a release authority lump sum paid in relation to a release authority issued to a person under Subdivision 135-A in Schedule 1 to the *Taxation Administration Act 1953*.

child, in relation to a deceased member of the scheme, includes:

(a) a person who:

(i) is an ex-nuptial child of the member; or

(ii) is, immediately before the member's death, a stepchild, an adopted child, a foster child or a ward, of the member; or

(iii) was, immediately before the member's death, someone who would have been the stepchild of the member except that the member was not legally married to a spouse who survives the member; or

(iv) is a child of the member within the meaning of the *Family Law Act 1975*; and

(b) a person who:

(i) is a child or ex-nuptial child of a spouse who survives the member; and

(ii) was wholly or substantially dependent upon the member at the time of the member's death; and

(c) a person who:

(i) is, within the meaning of the *Family Law Act 1975*, a child of a spouse who survives the member; and

(ii) was wholly or substantially dependent upon the member at the time of the member's death.

child's pension means pension payable under Division 2 of Part VI.

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Commissioner for Superannuation has the same meaning as Commissioner has in the Superannuation Act.

continuous full-time Reservist has the meaning given by the *Australian Defence Force Superannuation Act 2015*.

contributing member means a member of the Defence Force who is making, or is required to make, or, but for section 18 or 18A, would be required to make, contributions under section 17.

contributions means contributions payable under section 17, and includes any additional contributions or previous contributions.

CSC (short for Commonwealth Superannuation Corporation) has the same meaning as in the *Governance of Australian Government Superannuation Schemes Act 2011*.

date of commencement of the scheme means 1 October 1972.

decision has the same meaning as in the *Administrative Appeals Tribunal Act 1975*.

decision of CSC means a decision of CSC or a delegate of CSC under:

(a) this Act; or

(b) the *Defence Forces Retirement Benefits Act 1948*; or

(c) any other Act that relates to retirement benefits for members of the Defence Force and modifies or affects the provisions of the *Defence Forces Retirement Benefits Act 1948*.

Defence Force Case Assessment Panel means the Panel established under section 100.

Defence Forces Retirement Benefits Board or ***Board*** means the Defence Forces Retirement Benefits Board as in existence before being abolished by section 91 of the *Defence Legislation Amendment Act 1984*.

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Defence (Parliamentary Candidates) Act means the *Defence (Parliamentary Candidates) Act 1969* or the *Defence (Parliamentary Candidates) Act 1969-1973*.

eligible child means a person who:

(a) is the child of a deceased member of the scheme who died while he was a contributing member or of a deceased recipient member; and

(b) is a person who has not attained the age of 18 years or:

(i) has attained the age of 18 years but has not attained the age of 25 years;

(ii) is receiving full-time education at a school, college or university; and

(iii) is not ordinarily in employment or engaged in work on his own account.

eligible member of the Defence Force means:

(a) a member of the Defence Force who:

(i) is serving on continuous full-time service under an appointment or engagement, or under a re-appointment or re-engagement that occurred before 1 July 2016, for a period of not less than one year; or

(ii) is serving on continuous full-time service, being service that is continuous with previous continuous full-time service that was, or included, service under an appointment or engagement, or under a re-appointment or re-engagement that occurred before 1 July 2016, for a period of not less than one year; or

(b) a member of the Defence Force:

(i) to whom paragraph (a) does not apply;

(ii) who is serving on continuous full time service; and

(iii) who, immediately before commencing to serve, was a recipient member, was a member of the scheme to whom deferred benefits were applicable under section 78, was a person who was in receipt of, or but for a suspension of his pension under section 53A or 53B of the previous Act, would have been in receipt of,

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a pension under the previous benefits scheme (being a pension to which he became entitled on retirement from the Defence Force) or was a person to whom deferred benefits were applicable under section 82ZB of the previous Act;

but does not include:

(c) a person who, under section 5A, is excluded from this definition;

(d) a person to whom section 90 applies and who does not make an election under that section; or

(e) a person who has ceased, or is taken to have ceased, under section 134 or 138 to be an eligible member of the Defence Force.

Note: For a continuous full-time Reservist whose engagement spans 30 June 2016, see section 5B.

eligible orphan means an eligible child who is an orphan, and includes an eligible child who is not an orphan but who is in the custody, care and control of, and is wholly or substantially dependent on, a person other than a person to whom widow's pension or spouse pension is, or was at any time, payable.

existing contributor means a person who:

(a) immediately before 1 October 1972 was making, or was required to make, or, but for subsection 4AA(2), paragraph 23(5)(b) or (c), or subsection 36(1), of the previous Act, would have been required to make, contributions to the Defence Forces Retirement Benefits Fund under the previous legislation; and

(b) on that date, without having ceased to be on continuous full-time service, became an eligible member of the Defence Force for the purposes of this Act.

Finance Minister means the Minister administering the *Public Governance, Performance and Accountability Act 2013*.

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fortnightly rate of pay, in relation to a member of the Defence Force on a particular day, means an amount calculated in accordance with the formula:

$$\frac{14 \times A}{365}$$

where ***A*** is the annual rate of pay applicable to him on that day.

invalidity benefit means invalidity benefit under section 26.

invalidity pay means invalidity benefit consisting of invalidity pay.

marital or couple relationship has the meaning given by section 6A.

member of the Defence Force does not include a person who is a ***member*** as defined by subsection 3(1) of the *Defence Force (Papua New Guinea) Retirement Benefits Act 1973*.

member of the scheme means a person who is, or at any time on or after the date of commencement of the scheme, has been, an eligible member of the Defence Force.

MSB scheme means the superannuation scheme established under the *Military Superannuation and Benefits Act 1991*.

officer means a member of the Defence Force who is an officer for the purposes of the *Defence Act 1903-1970*.

partner: a person is the ***partner*** of another person if the two persons have a relationship as a couple (whether the persons are the same sex or different sexes).

pension benefit means retirement pay, invalidity pay, widow's pension, spouse pension or child's pension.

period of effective service, in relation to a member of the scheme, means:

(a) any period commencing on or after the date of commencement of the scheme during which he is an eligible

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member of the Defence Force, less any period included in such a period that:

(i) is a period of non-effective service in relation to him; or

(ii) is a period that, under section 5B or 57, is to be disregarded as a period of effective service in relation to him; and

(b) any period that is deemed to be a period of effective service in relation to him under section 21, 64 or 91.

period of non-effective service, in relation to a member of the scheme, means a period that, under section 6, is deemed to be a period of non-effective service in relation to him.

Permanent Forces means the Permanent Navy, the Regular Army and the Permanent Air Force.

previous Act means the *Defence Forces Retirement Benefits Act 1948* or that Act as amended and in force from time to time before 1 October 1972.

previous benefits scheme means the retirement benefits scheme provided for in the previous legislation.

previous contributions, in relation to a person, means contributions made by him under the previous legislation, less any such contributions refunded to him under the previous legislation or (except for the purposes of Part X) under section 86 of this Act.

previous legislation means the previous Act, and includes any other Act relating to retirement benefits for members of the Defence Force that came into operation before 1 October 1972 and modifies or affects the provisions of the previous Act.

productivity superannuation benefit, in relation to a member of the scheme, means productivity superannuation benefit payable in respect of the member under the determination made by the Minister under section 52 of the *Defence Act 1903*.

rank, in relation to a member of the Defence Force, means:

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(a) his substantive rank or, if he is appointed provisionally or on probation, the rank to which he is so appointed; or
(b) if he is provisionally promoted to another rank—that other rank.

recipient member:
(a) means a member of the scheme who is entitled to retirement pay or invalidity pay; and
(b) includes a member of the scheme who, apart from the suspension of his or her invalidity pay under subsection 35(3), would be entitled to invalidity pay.

release authority lump sum has the meaning given by section 49K.

Reserve means:
(a) in relation to a member of the Navy—the Naval Reserve; and
(b) in relation to a member of the Army—the Army Reserve; and
(c) in relation to a member of the Air Force—the Air Force Reserve.

retirement means retirement as a member of the Defence Force, and includes discharge from the Defence Force, and ***retire*** has a corresponding meaning.

retirement pay means retirement pay payable under section 23.

Rules for the administration of the Superannuation (1990) Scheme means the rules for the administration of that scheme set out in the Schedule to the deed by which that scheme was established.

service means service as a member of the Defence Force.

service offence has the same meaning as in the *Defence Force Discipline Act 1982*.

spouse has a meaning affected by section 6B.

spouse pension means pension payable under Division 1 of Part VI.

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Superannuation Act means the *Superannuation Act 1976*.

Superannuation (1990) Scheme means the Superannuation Scheme established by deed under the *Superannuation Act 1990*.

surcharge debt account, in relation to a member of the scheme, means the surcharge debt account kept for the member by CSC under section 16 of the *Superannuation Contributions Tax (Assessment and Collection) Act 1997*.

surcharge deduction amount, in relation to a member of the scheme to or in respect of whom benefits become payable under this Act, means the surcharge deduction amount that is specified in the determination made by CSC, under section 6C, in relation to the member.

total period of effective service, in relation to a member of the scheme, means:

(a) in the case of a member in relation to whom there is only one period of effective service—that period; or

(b) in the case of a member in relation to whom there are 2 or more periods of effective service—a period equal to the total of those periods.

(2) A reference in this Act to benefit under subsection 32(2) shall be read as including a reference to a refund of contributions under that subsection.

(3) A reference in this Act to a provision of the Superannuation Act shall, except where the context otherwise requires, be read as including a reference to that provision as modified by regulations made under that Act.

(5) Where, at any time after 1 October 1972, an existing contributor:

(a) ceases to be an eligible member of the Defence Force; and

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(b) after so ceasing to be such a member again becomes an eligible member of the Defence Force;

that person shall, for the purposes of sections 25, 33, 86, 87, 87A, 92 and 95, be taken not to be an existing contributor in respect of any period after he or she so ceases to be such a member.

4 Retiring age for rank held

For the purposes of this Act, the retiring age for the rank held by a member of the Defence Force at any time is:

(a) in the case of a member who is a member of the Permanent Forces—the age for compulsory retirement of the member ascertained in accordance with, or in accordance with regulations under, the *Naval Defence Act 1910-1971*, the *Defence Act 1903-1970* or the *Air Force Act 1923-1965*; or

(b) in the case of a member who is not a member of the Permanent Forces—the age for compulsory retirement, as ascertained in accordance with paragraph (a), of a member of the same rank and branch who is a member of the Permanent Forces.

5 Continuity of service

(1) For the purposes of the definition of ***eligible member of the Defence Force*** in subsection 3(1), a member of the Defence Force serving on continuous full-time service shall not be deemed to have ceased to be on continuous full-time service during any period that is deemed by section 6 to be a period of non-effective service in relation to the member.

(2) Where a contributing member ceases to be on continuous full-time service but continues to be a member of the Defence Force he shall, for the purposes of this Act, be deemed to have retired on the day on which he ceases to be on continuous full-time service.

(3) Where a contributing member retires and, without a break in the continuity of his service, again becomes an eligible member of the Defence Force serving on continuous full-time service, he shall, for

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the purposes of this Act, be deemed not to have ceased to be an eligible member of the Defence Force by reason of that retirement.

(4) Subsection (3) does not apply in relation to a person who is taken to have retired under section 5B.

5A Persons excluded from definition of *eligible member of the Defence Force*

(1) Subject to subsection (2), a person who:

(a) becomes, on or after 1 October 1991, a member of the Defence Force; or

(b) being a member of a Reserve, commences on or after that day to render continuous full-time service for a period of not less than 12 months;

is excluded from the definition of ***eligible member of the Defence Force*** in subsection 3(1).

(2) Subsection (1) does not apply to:

(a) a person who:

(i) ceased to be an eligible member of the Defence Force because he or she was transferred to a Reserve, was discharged from the Defence Force, or had his or her continuous full-time service terminated, under the Defence (Parliamentary Candidates) Act; and

(ii) under Part III of that Act is transferred back to, reinstated in, or accepted for further continuous full-time service in, the force of which he or she was a member immediately before ceasing to be an eligible member of the Defence Force; or

(c) a person to whom section 63 applies.

5B Continuous full-time Reservists whose engagements span 30 June 2016

(1) This section applies if:

(a) a person is an eligible member of the Defence Force; and

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(b) the person commences as a continuous full-time Reservist as a result of an engagement that is made before 1 July 2016; and

(c) the period of the engagement is extended on or after that day.

(2) For the purposes of this Act, the person is taken:

(a) to have retired, but not at his or her own request, on the day before the day (the ***extension day***) the period of the engagement is extended; and

(b) to have commenced as a continuous full-time Reservist on the extension day.

Note: The effect of this section is that this Act applies in relation to service before the extension day, while the *Australian Defence Force Superannuation Act 2015* applies in relation to service on and after the extension day.

(3) For the purposes of this Act, disregard as a period of effective service the service rendered on or after the extension day of any member who is taken to have retired under this section.

6 Non-effective service

(1) Where a member of the scheme has, for any period commencing on or after the date of commencement of the scheme and ending before 3 July 1985, being a period that exceeds 21 consecutive days, been:

(a) on leave of absence without pay;

(b) absent without leave;

(c) awaiting or undergoing trial on a charge in respect of which he is later convicted; or

(d) undergoing field punishment, detention or imprisonment;

that period shall be deemed to be a period of non-effective service in relation to him.

(2) Where a member of the scheme has, for any period commencing before the date of commencement of the scheme but ending on or after that date, being a period that exceeds 21 consecutive days, been absent without leave, so much of that period as commenced

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on the date of commencement of the scheme shall be deemed to be a period of non-effective service in relation to him.

(3) Where a member of the scheme was on leave of absence without pay for a period:

(a) that commenced:

(i) on or after 3 July 1985; or

(ii) on or after the date of commencement of the scheme and ended on or after 3 July 1985; and

(b) that exceeded 21 consecutive days;

the period shall be deemed to be a period of non-effective service in relation to the member.

(4) Where:

(a) the salary and allowances of a member of the scheme in respect of a period were, on or after 3 July 1985, forfeited, in whole or in part, under regulations made under the *Defence Act 1903*;

(b) the period exceeded 21 consecutive days; and

(c) an amount equal to the amount of the salary and allowances forfeited was not subsequently paid, and is not payable, under those regulations to the member;

the period shall be deemed to be a period of non-effective service in relation to the member.

(5) Where:

(a) a member of the scheme was in custody under the *Defence Force Discipline Act 1982* awaiting or undergoing trial for a service offence;

(b) the period for which the member was in custody awaiting or undergoing trial:

(i) commenced:

(A) on or after 3 July 1985; or

(B) on or after the date of commencement of the scheme and ended on or after 3 July 1985; and

(ii) exceeded 21 consecutive days;

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(c) the member was subsequently convicted of the offence or another service offence at the trial; and

(d) either of the following subparagraphs apply:

(i) the conviction was not quashed or set aside;

(ii) the conviction was quashed or set aside and:

(A) a conviction for another service offence was substituted; or

(B) the member was ordered to be tried again for the offence of which the member was convicted, or for another service offence, and was convicted of a service offence at the subsequent trial;

the period shall be deemed to be a period of non-effective service in relation to the member.

(6) Where:

(a) 2 or more consecutive periods of 24 hours or more would, but for paragraph (3)(b), paragraph (4)(b) or subparagraph (5)(b)(ii) or 2 or all of those provisions, be deemed to be periods of non-effective service in relation to a member of the scheme; and

(b) the periods exceed, in the aggregate, 21 days;

the periods shall be deemed to be periods of non-effective service in relation to the member.

(7) Where:

(a) a period of 24 hours or more would, but for paragraph (3)(b), paragraph (4)(b) or subparagraph (5)(b)(ii), be deemed to be a period of non-effective service in relation to a member of the scheme; and

(b) the period is consecutive with a period that, under subsection (3), (4) or (5), is deemed to be a period of non-effective service in relation to the member;

the period shall be deemed to be a period of non-effective service in relation to the member.

(8) Where:

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(a) a period of 24 hours or more would, but for paragraph (3)(b), paragraph (4)(b) or subparagraph (5)(b)(ii), be deemed to be a period of non-effective service in relation to a member of the scheme; and

(b) the period is consecutive with a period that, under subsection (7) or this subsection, is deemed to be a period of non-effective service in relation to the member;

the period shall be deemed to be a period of non-effective service in relation to the member.

6A Marital or couple relationship

(1) For the purposes of this Act, a person had a ***marital or couple relationship*** with another person at a particular time if the person ordinarily lived with that other person as that other person's husband, wife, spouse or partner on a permanent and bona fide domestic basis at that time.

(2) For the purpose of subsection (1), a person is to be regarded as ordinarily living with another person as that other person's husband, wife, spouse or partner on a permanent and bona fide domestic basis at a particular time only if:

(a) the person had been living with that other person as that other person's husband, wife, spouse or partner for a continuous period of at least 3 years up to that time; or

(b) the person had been living with that other person as that other person's husband, wife, spouse or partner for a continuous period of less than 3 years up to that time and CSC, having regard to any relevant evidence, is of the opinion that the person ordinarily lived with that other person as that other person's husband, wife, spouse or partner on a permanent and bona fide domestic basis at that time;

whether or not the person was legally married to that other person.

(3) For the purposes of this Act, a marital or couple relationship is taken to have begun at the beginning of the continuous period mentioned in paragraph (2)(a) or (b).

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(4) For the purpose of subsection (2), relevant evidence includes, but is not limited to, evidence establishing any of the following:

(a) the person was wholly or substantially dependent on that other person at the time;

(b) the persons were legally married to each other at the time;

(ba) the persons' relationship was registered under a law of a State or Territory prescribed for the purposes of section 2E of the *Acts Interpretation Act 1901*, as a kind of relationship prescribed for the purposes of that section;

(c) the persons had a child who was:

(i) born of the relationship between the persons; or

(ii) adopted by the persons during the period of the relationship; or

(iii) a child of both of the persons for the purposes of the *Family Law Act 1975*;

(d) the persons jointly owned a home which was their usual residence.

(5) For the purposes of this section, a person is taken to be living with another person if CSC is satisfied that the person would have been living with that other person except for a period of:

(a) temporary absence; or

(b) absence because of special circumstances (for example, absence because of the person's illness or infirmity or a posting of the person).

6B Spouse who survives a deceased person

(1) In this section:

deceased person means a person who was, at the time of his or her death, a contributing member, a recipient member or a person in respect of whom deferred benefits were applicable.

(2) For the purposes of this Act, a person is a spouse who survives a deceased person if the person had a marital or couple relationship

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with the deceased person at the time of the death of the deceased person.

(3) In spite of subsection (2), a person is taken to be a spouse who survives a deceased person if:

(a) the person had previously had a marital or couple relationship with the deceased person; and

(b) the person did not, at the time of the death, have a marital or couple relationship with the deceased person but was legally married to the deceased person; and

(d) in CSC's opinion, the person was wholly or substantially dependent upon the deceased person at the time of the death.

6BA Benefits for certain spouses in post-retirement marital or couple relationships

(1) This section applies if:

(a) a spouse survives a deceased person (within the meaning of section 6B); and

(b) the spouse's marital or couple relationship with the deceased person:

(i) began after the recipient member became a recipient member; and

(ii) began after the recipient member reached 60; and

(iii) continued for a period (the ***period of the relationship***) of less than 3 years up to the time of the deceased member's death.

(2) The rate of the spouse pension to which the spouse is entitled is worked out using the following formula:

$$\frac{\text{Number of days in the period of the relationship}}{3 \times 365} \times \text{Rate of spouse pension to which spouse would otherwise be entitled}$$

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(3) If the rate worked out under subsection (2) is less than or equal to the rate prescribed by the regulations for the purposes of this section, the spouse is instead entitled to a lump sum payment worked out in accordance with the regulations.

6C Surcharge deduction amount

(1) If:

(a) benefits become payable to or in respect of a member of the scheme; and

(b) the member's surcharge debt account is in debit when those benefits become so payable;

CSC must determine in writing the surcharge deduction amount that, in its opinion, it would be fair and reasonable to take into account in working out the amount of those benefits.

(2) In making the determination, CSC must have regard to the following:

(a) the amount by which the member's surcharge debt account is in debit when those benefits become payable;

(b) the value of the employer-financed component of those benefits;

(c) the value of the benefits that, for the purpose of working out (under the *Superannuation Contributions Tax (Assessment and Collection) Act 1997*) the notional surchargeable contributions factors applicable to the member, were assumed to be likely to be payable to the member on his or her retirement;

(d) whether the member has or had qualified for his or her maximum benefit entitlement under this Act;

(e) any other matter that CSC considers relevant.

(3) The amount determined by CSC may not be more than the total of the following amounts:

(a) 15% of the employer-financed component of any part of the benefits payable to the member that accrued between 20 August 1996 and 1 July 2003;

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(b) 14.5% of the employer-financed component of any part of the benefits payable to the member that accrued in the 2003-2004 financial year;

(c) 12.5% of the employer-financed component of any part of the benefits payable to the member that accrued in the 2004-2005 financial year.

(4) Reductions under Division 3 of Part VIA are to be disregarded in applying subsection (3) of this section.

6D Application of the *Criminal Code*

Chapter 2 of the *Criminal Code* applies to all offences against this Act.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

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Part III—Contributions

17 Contributions by members of scheme

(1) Subject to sections 18 and 18A, an eligible member of the Defence Force shall pay to the Commonwealth fortnightly contributions in accordance with this Act.

(1A) Subsection (1) does not apply to an eligible member of the Defence Force who:

(a) was a recipient member immediately before he became an eligible member; and

(b) is serving under an appointment or enlistment for a period of less than one year that commenced after the commencement of this subsection.

(2) Subject to subsection (3), the first fortnightly contribution is payable by an eligible member of the Defence Force:

(a) in the case of a person who is such a member on the date of commencement of the scheme—on the first pay-day next following that date; or

(b) in any other case—on the day on which the person becomes an eligible member of the Defence Force or, if that day is not a pay-day, on the first pay-day next following that day.

(3) Where an eligible member of the Defence Force dies before the day on which, but for his death, his first fortnightly contribution would have been payable, that contribution shall be deemed to have become payable by him on the day on which he became an eligible member of the Defence Force.

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18 Contributions not to be paid during periods of non-effective service

An eligible member of the Defence Force is not required to pay any fortnightly contribution that, but for this section, would become payable on a day included in a period that is a period of non-effective service in relation to him.

18A Contributions not to be paid after 40 years of effective service

An eligible member of the Defence Force whose total period of effective service is 40 years or more is not required or permitted to pay any fortnightly contributions.

19 Amount of fortnightly contributions

(1) The amount of each fortnightly contribution to be paid by a contributing member is an amount equal to 5.5% of the fortnightly rate of pay applicable to the member on the day on which the contribution is payable.

(2) Where the amount of a fortnightly contribution payable by a contributing member includes a fraction of a cent:

(a) if the fraction is less than one-half of a cent—the contribution shall be deemed to be reduced by the amount of the fraction; or

(b) if the fraction is one-half of a cent or more—the contribution shall be deemed to be increased by treating the fraction as one cent.

(3) If a member's hours of duty or periods of duty are determined under a flexible service determination (within the meaning of the *Defence Act 1903*), the fortnightly rate of pay applicable to the member is the rate of pay that would have been applicable if the member's hours of duty or periods of duty were not determined under the flexible service determination.

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20 Amount of contributions on reduction in pay

(1) Where the annual rate of pay applicable to a contributing member changes, otherwise than by reason of the member ceasing to hold an acting or temporary rank, or of the amendment of the Defence Force Retirement and Death Benefits (Annual Rates of Pay) Regulations made by section 9 of the *Defence Force Retirement and Death Benefits Amendment Act 1981* and, as a result of the change, the amount of each fortnightly contribution to be paid by him would, if he did not make an election under this subsection, become less, he may, by notice in writing given to CSC within a period of 90 days after the change, or within such further period as CSC, in special circumstances, allows, elect to have that change in his annual rate of pay disregarded, and, if he so elects, the change shall be disregarded for the purposes of this Act.

(2) Where a contributing member who is entitled to make an election under subsection (1) does not make that election, he is entitled to a refund, payable by the Commonwealth, of so much of the contributions paid by him under section 17 as is equal to the difference between the amount of the contributions payable by him under that section before the change referred to in subsection (1) and the amount of the contributions that would have been so payable by him if the amount of each fortnightly contribution so payable by him had not exceeded the amount that is the amount of each fortnightly contribution payable by him after the change, and the amount of any contributions in respect of which he becomes so entitled to a refund shall, for the purposes of this Act, be deemed not to have been paid by him.

21 Purchase of previous non-contributory service

(1) Subject to this section, where, after 30 September 1972, an eligible member of the Defence Force has, before becoming an eligible member of the Defence Force:

(a) served as a member of the Defence Force on continuous full-time service for a period of not less than one year, being

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a period during which he was not an eligible member of the Defence Force; or

(b) served as a member of the Defence Force on continuous full-time service for a period of less than one year, being a period during which he was not an eligible member of the Defence Force but which is continuous with a subsequent period during which he is such a member;

he may, by notice in writing given to CSC within a period of 90 days after the date on which he became an eligible member of the Defence Force, or within such further period as CSC, in special circumstances allows, elect to have the period during which he served as a member of the Defence Force but during which he was not an eligible member of the Defence Force, or such part of that period as he specifies in the election, taken into account as a period of effective service in relation to him under this Act.

(2) An eligible member of the Defence Force is not entitled to make an election under subsection (1) in respect of any period which, if he had been a contributing member during the period, would have been a period of non-effective service in relation to him.

(3) Where, under subsection (1), an eligible member of the Defence Force has elected to have a period of service taken into account as a period of effective service in relation to him under this Act, that period shall be deemed to be a period of effective service in relation to him for the purposes of this Act and he shall pay an additional contribution to the Commonwealth under this section, which shall be:

(a) if that period is continuous with a period of subsequent service during which he was an eligible member of the Defence Force—an amount equal to the sum of the contributions that he would have been liable to pay during that period if he had been a contributing member during that period; and

(b) in any other case—an amount equal to 5.5% of the amount of pay that would have been payable to him in respect of the period to which the election relates if, at all times during that period, his rate of pay had been the annual rate of pay

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applicable to him under this Act at the time he became an eligible member of the Defence Force.

(4) An election under subsection (1) is of no effect unless, at the time when the election is made, or, within such period after that time as CSC, in special circumstances, allows, there is refunded to the Commonwealth, or arrangements satisfactory to CSC are made for there to be refunded to the Commonwealth, any payment of a prescribed kind (being a payment of, or in the nature of, a gratuity or bounty or deferred pay) paid to the person under the previous legislation, or under legislation relating to conditions of service of members of the Defence Force, in respect of the period to which the election relates.

(5) Where a person who makes an election under this section had credited to him, in respect of the period to which the election relates, under the previous legislation or under legislation relating to the conditions of service of members of the Defence Force, any deferred pay or interest thereon, that credit shall, by force of this section, be deemed to have been cancelled.

22 Deductions of contributions from pay

Contributions payable under this Part by a member of the scheme may be deducted from his pay.

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Part IV—Retirement benefits

23 Entitlement to retirement pay

(1) A contributing member is entitled, on the member's retirement, to retirement pay at the rate applicable to the member under this section if:

(a) the member retires and is not entitled to invalidity benefit; and

(b) on the member's retirement:

(i) the member's total period of effective service is not less than 20 years; or

(ii) the member's total period of effective service is not less than 15 years and the member has attained the retiring age for the rank held by the member immediately before the member's retirement.

(2) Subject to subsections (3) and (6) and to sections 25 and 75, the rate at which retirement pay is payable to a recipient member is an amount per annum that is equal to such percentage of the annual rate of pay applicable to him immediately before his retirement as, having regard to the number of complete years included in his total period of effective service, is ascertained under Schedule 1.

(3) Where:

(a) the total period of effective service of a member of the scheme who is an officer is not less than 20 years; and

(b) he is retired at his own request, or on disciplinary grounds, before attaining the age that, having regard to his rank immediately before his retirement, is his notional retiring age as ascertained under Schedule 2;

the rate at which retirement pay is payable to him is the amount per annum that, but for this subsection, would be payable under subsection (2) reduced by 3% of that amount for each year included in the period equal to the difference between the age of

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the officer on his birthday last preceding his retirement and his notional retiring age as ascertained under Schedule 2.

(4) For the purposes of subsection (3), an officer shall be deemed to have been retired at his own request or to have been retired on disciplinary grounds if the Chief of the Defence Force or a person authorized in writing by the Chief of the Defence Force states in writing that he was so retired.

(6) If the member of the scheme makes an election under subsection 124(1), the rate at which retirement pay is payable to the member is the rate worked out by using the formula:

$$\text{Basic rate} - \frac{\text{Surcharge deduction amount}}{\text{Conversion factor}}$$

where:

basic rate means the annual rate at which retirement pay would be payable to the member under this section if the member did not make the election.

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

surcharge deduction amount means the member's surcharge deduction amount.

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.

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(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.

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(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);

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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

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(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.

25 Rate of retirement pay applicable to certain existing contributors

(1) In this section:

new pension percentage of pay, in relation to a person to whom this section applies, means the annual rate of his retirement pay (expressed as a percentage of the rate that was his annual rate of pay for the purposes of this Act immediately before his retirement)

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that is, or, but for an election under this section, would be, payable to him under this Act on his retirement.

previous pension percentage of pay, in relation to a person to whom this section applies, means the annual rate of pension (expressed as a percentage of the rate that was his annual rate of pay, for the purposes of the previous Act, on 30 September 1972) that would have been payable to him under the previous legislation if he had retired on 30 September 1972, otherwise than on the ground of invalidity or of physical or mental incapacity to perform his duties, and:

(a) being an existing contributor referred to in subparagraph (2)(d)(i):

(i) in the case of a person who was, on 30 September 1972, an officer of the Permanent Forces—he had, on that date, attained the retiring age for the rank held by him on that date; or

(ii) in the case of a person who was, on that date, a non-Permanent Forces officer as defined in section 54A of the previous Act—he had, on that date:

(A) retired with the rank held by him on that date; and

(B) reached the age that was his age on the date of his retirement;

and had, on 30 September 1972, completed a number of years of service for pension equal to the number of years of service for pension completed by him on his retirement; or

(b) being a person referred to in subparagraph (2)(d)(ii)—he had, on 30 September 1972, reached the age that was his age on the date of his retirement.

retiring age for the rank held has the same meaning as it would have in the definition of ***retiring age for the rank held*** in subsection 4(1) of the previous Act if the reference in that definition to the date of a member's retirement were a reference to 30 September 1972.

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service for pension means service for pension as defined by subsection 4(1) of the previous Act.

(2) This section applies to a person who:

(a) is an existing contributor;

(b) retires and, on his retirement, is entitled to retirement pay;

(c) was, on 30 September 1972 and, immediately before his retirement, an officer; and

(d) is a person:

(i) who, on his retirement, had attained the retiring age for the rank held by him on 30 September 1972 and had completed not less than 15 years' service for pension; or

(ii) who, on his retirement, had not attained the retiring age for the rank held by him on 30 September 1972 but in respect of whom CSC is satisfied that, but for the enactment of this Act and the *Defence Forces Retirement Benefits Act 1973*, paragraph 39(2)(b) or (c) of the previous Act would, on his retirement, have applied.

(2AA) For the purposes of subparagraph (2)(d)(ii):

(a) a reference in subparagraph 39(2)(b)(ii) or (2)(c)(ii) of the previous Act to the rank held by an officer shall be read as a reference to the rank held by the officer on 30 September 1972;

(b) the reference in subparagraph 39(2)(c)(i) of the previous Act to the rank of an officer at the date of his retirement shall be read as a reference to the rank of the officer on 30 September 1972; and

(c) a reference in subparagraph 39(2)(b)(ii) or (2)(c)(ii) of the previous Act to the retiring age for the rank held shall be read as a reference to the retiring age for the rank held within the meaning of this section.

(2A) Where a person to whom this section applies has made an election under section 44 of the *Defence Forces Retirement Benefits Act 1959*, section 28 of the *Defence Forces Retirement Benefits Act*

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1962 or section 38, 61A or 61B of the *Defence Forces Retirement Benefits Act 1963*, this section has effect as if the previous pension percentage of pay in relation to that person were a percentage that would have been the previous pension percentage of pay in relation to him if he had not made that election and had paid all the contributions which he would, but for that election, have been required to pay under the previous legislation.

(3) Where the previous pension percentage of pay applicable to a person to whom this section applies is greater than the new pension percentage of pay applicable to him, he may, by notice in writing given to CSC within a period of 90 days after the date of his retirement, or within such further period as CSC, in special circumstances, allows, elect that the rate at which retirement pay shall be payable to him shall be an amount per annum that is such percentage of his annual rate of pay for the purposes of this Act immediately before his retirement as is the same as the previous pension percentage of pay applicable to him, and, subject to subsection (4), the election has effect accordingly.

(4) Where CSC so determines, an election under subsection (3) is of no effect unless the person making the election pays to the Commonwealth a contribution under this section of such amount as CSC determines as being appropriate in the circumstances or arrangements satisfactory to CSC are made for the payment of that contribution to the Commonwealth.

(5) In the application of this section to a person who was, on 30 September 1972, a non-Permanent Forces officer as defined by section 54A of the previous Act, the retiring age for the rank held shall be the age that would be deemed, for the purposes referred to in subsection 54A(2) of that Act, to be the retiring age for the rank held by the person on his retirement if he had retired on 30 September 1972.

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Part V—Invalidity benefits

26 Invalidity benefit

Subject to sections 27, 28 and 29, where a contributing member is retired on the ground of invalidity or of physical or mental incapacity to perform his duties, he is entitled, on his retirement, to invalidity benefit in accordance with this Part.

27 Incapacity due to wilful action

Where:

(a) a contributing member is retired on the ground of invalidity or of physical or mental incapacity to perform his duties; and

(b) the invalidity or incapacity is, in the opinion of CSC, due to wilful action on his part for the purpose of obtaining invalidity benefit;

he is not entitled to invalidity benefit.

28 Pre-existing invalidity or incapacity

(1) Subject to section 95, where:

(a) a contributing member (not being a contributing member who has become an eligible member of the Defence Force by virtue of an election under section 90) is, within a period of one year after becoming a contributing member, retired on the ground of invalidity or of physical or mental incapacity to perform his duties; and

(b) CSC is satisfied that:

(i) the invalidity or incapacity was caused, or was substantially contributed to, by a physical or mental condition that existed at the time when he became a contributing member; and

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(ii) the condition was not aggravated, or was not materially aggravated, by his service after becoming a contributing member;

he is not entitled to invalidity benefit.

(2) Where:

(a) a member of the scheme who has retired again becomes an eligible member of the Defence Force otherwise than without a break in the continuity of his service;

(b) he is not a person who, on again becoming an eligible member of the Defence Force, was entitled to, and made, an election under section 51; and

(c) after again becoming an eligible member of the Defence Force, he is retired on the ground of invalidity or of physical or mental incapacity to perform his duties;

he shall, for the purposes of subsection (1), be treated as if he had first become a contributing member at the time when he again became an eligible member of the Defence Force.

29 Invalidity or incapacity arising during absence without leave exceeding 60 days

Where:

(a) a contributing member has been retired on the ground of invalidity or of physical or mental incapacity to perform his duties;

(b) CSC is satisfied that the invalidity or incapacity was caused, or was substantially contributed to, by an occurrence that happened at a time when he was absent without leave and had been so absent for a period exceeding 60 consecutive days;

(c) in a case where the period when the contributing member was absent without leave commenced on or after 3 July 1985 or commenced before that day and ended on or after that day—both of the following subparagraphs apply:

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(i) the salary and allowances of the member in respect of the period were forfeited under regulations made under the *Defence Act 1903*;

(ii) an amount equal to the amount of the salary and allowances forfeited was not subsequently paid, and is not payable, under those regulations to the member;

he is not entitled to invalidity benefit.

30 Classification in respect of incapacity

(1) Where a member of the scheme, not being a member of the scheme to whom section 36 applies, is, or is about to become, entitled to invalidity benefit, CSC shall determine his percentage of incapacity in relation to civil employment and shall classify him according to the percentage of incapacity as follows:

Percentage of incapacity	Class
60% or more	A
30% or more but less than 60%	B
Less than 30%	C

(1A) Where:

(a) a member of the scheme (other than a member to whom section 36 applies) who is entitled to invalidity benefit dies; and

(b) at the time of his or her death, CSC has not made a determination in respect of the member under subsection (1);

CSC must:

(c) determine what was, immediately before the member's death, his or her percentage of incapacity in relation to civil employment; and

(d) classify the member under subsection (1) according to that percentage of incapacity, as if the member had not died.

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(1B) Where a deceased member of the scheme is classified under this section, the classification is taken to have had effect at all times on and after his or her retirement.

(2) In determining, for the purposes of subsection (1), the percentage of incapacity in relation to civil employment of a member of the scheme, CSC shall have regard to the following matters only:

(a) the vocational, trade and professional skills, qualifications and experience of the member;

(b) the kinds of civil employment which a person with the skills, qualifications and experience referred to in paragraph (a) might reasonably undertake;

(c) the degree to which the physical or mental impairment of the member that caused the invalidity or physical or mental incapacity because of which he or she was retired has or had diminished the capacity of the member to undertake the kinds of civil employment referred to in paragraph (b);

(d) such other matters (if any) as are prescribed for the purposes of this subsection.

(3) Where the invalidity pay of a person is cancelled under section 62, any classification of the person under subsection (1) ceases to have effect.

31 Class A and Class B invalidity pay

(1) A member of the scheme who is entitled to invalidity benefit and is classified as Class A or Class B under section 30 (whether on his retirement or by reason of his having been reclassified under subsection 34(1)) is entitled to invalidity pay at the rate applicable to him in accordance with this section.

(2) Subject to subsections (3) and (4), the rate at which invalidity pay is payable to a member of the scheme under this section is such amount per annum as is equal to, in the case of a recipient member classified as Class A under section 30, 76.5%, and, in the case of a recipient member classified as Class B, 38.25%, of the annual rate of pay applicable to him immediately before his retirement.

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(3) Subject to section 33, where but for this subsection, the rate of invalidity pay payable to a member of the scheme under subsection (2) at any time would be less than the rate at which retirement pay would have been payable to him at that time if, at the time when he was retired on the ground of invalidity or of physical or mental incapacity to perform his duties, he had retired on other grounds, the rate of invalidity pay payable to him at that first-mentioned time is the rate at which retirement pay would have been so payable at that time.

(4) If the member of the scheme makes an election under subsection 124(1), the rate at which invalidity pay is payable to the member is the rate worked out by using the formula:

$$\text{Basic rate} - \frac{\text{Surcharge deduction amount}}{\text{Conversion factor}}$$

where:

basic rate means the annual rate at which invalidity pay would be payable to the member under this section if the member did not make the election.

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

surcharge deduction amount means the member's surcharge deduction amount.

32 Class C invalidity benefit

(1) Subject to section 33, where a member of the scheme who is entitled to invalidity benefit and is classified as Class C under section 30 (whether on his retirement or by reason of his having been reclassified under subsection 34(1)) would, if at the time when he was retired on the ground of invalidity or of physical or mental incapacity to perform his duties, he had retired on other grounds, have been entitled to retirement pay, the member is entitled:

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(a) if the member does not make an election under subsection 124(1)—to invalidity pay at the rate at which retirement pay would have been payable to the member if the member had not made an election under subsection 124(1) in respect of the retirement pay; or

(b) if the member makes an election under subsection 124(1)—to invalidity pay at the rate at which retirement pay would have been payable to the member if the member had made an election under subsection 124(1) in respect of the retirement pay.

(2) Where subsection (1) does not apply to a member of the scheme who is entitled to invalidity benefit and is classified as Class C under section 30 (whether on his retirement or by reason of his having been reclassified under subsection 34(1)), the member is entitled to a lump sum payment of an amount worked out under subsection (3).

(3) The amount of the lump sum payment referred to in subsection (2) is:

(a) if paragraph (b) does not apply—a lump sum payment equal to 1.5 times the amount of the member's contributions; or

(b) if the member makes an election under subsection 124(1)—a lump sum payment equal to the difference between:

(i) the lump sum payment referred to in paragraph (a); and

(ii) the member's surcharge deduction amount.

32A Commutation of Class C invalidity pay

(1) This section applies to a member of the scheme who:

(a) is, or is to be, retired after the commencement of this section; and

(b) on retirement, is, or is likely to be, classified as Class C under section 30 and entitled to invalidity pay.

(1A) Subsection (1) does not apply to a member of the scheme who, after the commencement of this subsection, became a person to whom section 62 applied.

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(2) A member of the scheme to whom this section applies may, by notice in writing given to CSC, elect to commute a portion of his or her invalidity pay in accordance with this section.

(2A) A notice under subsection (2) shall be given not earlier than 3 months before becoming entitled to invalidity pay and not later than one year after becoming so entitled or such further period as CSC, in special circumstances, allows.

(3) An election under subsection (2) by a member of the scheme to whom this section applies shall specify the amount that is to be payable to him by virtue of the commutation.

(4) The amount specified in an election under subsection (2) by a member of the scheme to whom this section applies shall not be an amount that, together with:

(a) any amount or amounts specified in any previous election or elections by the member, under this section or section 24 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 member 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 member to the Defence Forces Retirement Benefits Fund established under the previous Act in respect of that commutation;

exceeds the amount per annum of the invalidity pay to which the member of the scheme 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.

(4A) For the purposes of subsection (4), the maximum commutation factor is the number calculated in accordance with the formula:

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

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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 member of the scheme is less than 20—that number of periods; or

(b) in any other case—20.

(5) Where a member of the scheme to whom this section applies makes an election under this section, then, subject to subsections (7) and (8):

(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 invalidity 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.

(5A) If a member of the scheme:

(a) makes an election under this section before becoming entitled to invalidity pay; and

(b) is subsequently classified otherwise than as Class C under section 30;

the election has no effect.

(6) 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 member of the scheme retires, whichever is the later.

(7) If:

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

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(b) the member's surcharge debt account is in debit when invalidity 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 invalidity 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 (5)(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 (5)(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.

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(8) 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 invalidity 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 invalidity 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 (5)(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.

33 Rate of invalidity pay applicable to certain existing contributors

(1) In this section:

new pension percentage of pay:

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(a) in relation to a person to whom this section applies who, on his retirement, is classified as Class B or Class C under section 30—means the annual rate of his invalidity pay (expressed as a percentage of the rate that was his annual rate of pay, for the purposes of this Act, immediately before his retirement) that is, or, but for an election under this section, would be, payable to him under this Act on his retirement; or

(b) in relation to a person to whom this section applies who, on his retirement, is classified as Class A under section 30 but is subsequently reclassified as Class B—means the rate that would have been the annual rate of his invalidity pay (expressed as a percentage of the rate that was his annual rate of pay, for the purposes of this Act, immediately before his retirement) that would have been payable to him under this Act on his retirement if he had been classified as Class B on his retirement.

previous pension percentage of pay, in relation to a person to whom this section applies, means the annual rate of pension (expressed as a percentage of the rate that was his annual rate of pay, for the purpose of the previous Act, on 30 September 1972) that would have been payable to him under the previous legislation if he had retired on 30 September 1972, otherwise than on the ground of invalidity or of physical or mental incapacity to perform his duties, and:

(a) in the case of a person who was, on 30 September 1972, an officer of the Permanent Forces—he had, on that date, attained the retiring age for the rank held by him on that date; or

(b) in the case of a person who was, on that date, a non-Permanent Forces officer as defined in section 54A of the previous Act—he had, on that date:

(i) retired with the rank held by him on that date; and

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(ii) reached the age that was his age on the date of his retirement;

and had, on 30 September 1972, completed a number of years of service for pension equal to the number of years of service for pension completed by him on his retirement.

retiring age for the rank held has the same meaning as it would have in the definition of *retiring age for the rank held* in subsection 4(1) of the previous Act if the reference in that definition to the date of a member's retirement were a reference to 30 September 1972.

service for pension means service for pension as defined by subsection 4(1) of the previous Act.

(2) This section applies to a person who:

(a) is an existing contributor;

(b) is retired and:

(i) on his retirement, is classified as Class B or Class C under section 30 and is entitled to invalidity pay; or

(ii) on his retirement, is classified as Class A but is subsequently reclassified as Class B;

(c) was, on 30 September 1972, and, immediately before his retirement, an officer; and

(d) on his retirement, had attained the retiring age for the rank held by him on 30 September 1972 and had completed not less than 15 years' service for pension.

(2A) Where a person to whom this section applies has made an election under section 44 of the *Defence Forces Retirement Benefits Act 1959*, section 28 of the *Defence Forces Retirement Benefits Act 1962* or section 38, 61A or 61B of the *Defence Forces Retirement Benefits Act 1963*, this section has effect as if the previous pension percentage of pay in relation to the person were a percentage that would have been the previous pension percentage of pay in relation to him if he had not made the election and had paid all the contributions which he would, but for that election, have been required to pay under the previous legislation.

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(3) Where the previous pension percentage of pay applicable to a person to whom this section applies, being a person who on his retirement, is classified as Class B or Class C under section 30, is greater than the new pension percentage of pay applicable to him, he may, by notice in writing given to CSC within a period of 90 days after the date of his retirement, or within such further period as CSC, in special circumstances, allows, elect that the rate at which invalidity pay shall be payable to him shall be an amount per annum that is such percentage of his annual rate of pay for the purposes of this Act immediately before his retirement as is the same as the previous pension percentage of pay applicable to him, and, subject to subsection (5), the election has effect accordingly.

(4) Where the previous pension percentage of pay applicable to a person to whom this section applies, being a person who, on his retirement is classified as Class A under section 30 but is subsequently reclassified as Class B, is greater than the new pension percentage of pay applicable to him, he may, by notice in writing given to CSC within a period of 90 days after the date from which the re-classification has effect, or within such further period as CSC, in special circumstances, allows, elect that the rate at which invalidity pay shall be payable to him shall be an amount per annum that is such percentage of his annual rate of pay for the purposes of this Act immediately before his retirement as is the same as the previous pension percentage of pay applicable to him, and, subject to subsection (5), the election has effect accordingly.

(5) Where CSC so determines, an election under subsection (3) or (4) is of no effect unless the person making the election pays to the Commonwealth a contribution under this section of such amount as CSC determines as being appropriate in the circumstances or arrangements satisfactory to CSC are made for the payment of that contribution to the Commonwealth.

(6) In the application of this section to a person who was, on 30 September 1972, a non-Permanent Forces officer as defined by section 54A of the previous Act, the retiring age for the rank held shall be the age that would be deemed, for the purposes referred to in subsection 54A(2) of that Act, to be the retiring age for the rank

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held by the person on his retirement if he had retired on 30 September 1972.

34 Reclassification in respect of incapacity

(1) CSC may, from time to time, if it is satisfied that the percentage of incapacity in relation to civil employment of a recipient member in receipt of invalidity pay is such that the classification of the member should be altered, reclassify him in the appropriate classification set out in section 30 according to the percentage of his incapacity in relation to civil employment.

(1AA) If, at a time when CSC is reviewing, but has not yet determined, for the purposes of subsection (1), the percentage of incapacity in relation to civil employment of a recipient member, the recipient member dies:

(a) CSC must determine what was, immediately before the member's death, his or her percentage of incapacity in relation to civil employment; and

(b) where CSC is satisfied, having regard to that percentage of incapacity, that, if the member had not died, the member would be reclassified and given a classification higher than that of the member at the time of his or her death, CSC must reclassify the member under subsection (1) according to that percentage of incapacity, as if the member had not died.

(1A) In determining:

(aa) what is the percentage of incapacity in relation to civil employment of a recipient member; or

(aab) what was, immediately before his or her death, the percentage of incapacity in relation to civil employment of a recipient member who has died;

CSC shall have regard to the following matters only:

(a) the vocational, trade and professional skills, qualifications and experience of the recipient member;

(b) the kinds of civil employment which a person with skills, qualifications and experience referred to in paragraph (a) might reasonably undertake;

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(c) the degree to which any physical or mental impairment of the recipient member, being a prescribed physical or mental impairment, has or had diminished the capacity of the recipient member to undertake the kinds of civil employment referred to in paragraph (b);

(d) such other matters (if any) as are prescribed for the purposes of this subsection.

(1B) In subsection (1A), ***prescribed physical or mental impairment***, in relation to a recipient member or a deceased member who was immediately before his or her death a recipient member, means:

(a) a physical or mental impairment of the member that was the cause, or one of the causes, of the invalidity or physical or mental incapacity by reason of which the member was retired, whether or not that impairment changed, for better or worse, since that retirement; or

(b) any other physical or mental impairment of the member causally connected with a physical or mental impairment referred to in paragraph (a).

(2) Where a recipient member is reclassified under this section, CSC shall specify the date from which the reclassification has effect, and, on and after that date, the recipient member shall, for the purposes of this Part, be deemed to be classified under section 30 accordingly.

(2A) Where a deceased member is reclassified under this section:

(a) CSC must specify the day from which the reclassification has effect; and

(b) the member is taken, for the purposes of this Part, to have been classified under section 30 accordingly on and after that day.

(3) Where CSC reclassifies a recipient member (other than a member to whom section 37 applies) under this section, the date specified by CSC as the date from which the reclassification has effect shall not be a date earlier than the date on which CSC reclassifies the member unless:

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(a) the member is reclassified as Class A or, having been classified as Class C, is reclassified as Class B; and

(b) CSC is satisfied that special circumstances exist that justify an earlier date being so specified.

(4) If, upon the reclassification of a recipient member as Class C, he would, but for this subsection, be entitled to benefit in accordance with subsection 32(2), he is entitled to that benefit only to the extent that the amount of that benefit exceeds the sum of the payments of invalidity pay received by him.

(5) In this section, ***recipient member*** means a member of the scheme who is entitled to invalidity pay and includes a member of the scheme who:

(a) is classified as Class C by reason of having been reclassified (whether before or after the commencement of this subsection) under subsection (1); and

(b) is not, after being so reclassified, entitled to invalidity pay;

but does not include a member of the scheme who is retired after the commencement of this subsection and, on his retirement, is classified as Class C under section 30.

35 Power of CSC to require persons to be medically examined etc.

(1) CSC may, by notice in writing given to a recipient member in receipt of invalidity pay require him:

(a) to submit himself for medical examination by a legally qualified medical practitioner at a time and place specified in the notice; or

(b) to furnish in writing to CSC, within such period as is specified in the notice, such information as is required by the notice with respect to any employment (whether as an employee or on his own account) in which he has been engaged during such period as is specified in the notice.

(2) A notice under subsection (1) shall set out the effect of subsection (3).

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(3) Where a recipient member fails to comply with a notice given under subsection (1) and CSC is not satisfied that there was a reasonable excuse for the failure, CSC may, by notice in writing given to the member, suspend the member's invalidity pay with effect from such day as CSC determines, being a day not earlier than:

(a) in a case where the first-mentioned notice required the member to submit to a medical examination on a day specified in the notice—the day next following that day; or

(b) in a case where the first-mentioned notice required the member to furnish information within a period specified in the notice—the day next following the end of that period.

(4) A notice to a person under subsection (3) shall set out the effect of subsections (5B), (5D) and (5E).

(5) Invalidity pay is not payable in respect of a period during which a suspension under subsection (3) is in force.

(5A) Where:

(a) the invalidity pay of a recipient member is suspended under subsection (3); and

(b) CSC, having regard to such matters as it considers relevant, is of the opinion that the suspension should be revoked;

CSC may, by notice in writing given to the member or to the member and a person acting on the member's behalf, as the case may be, revoke the suspension with effect from such day as CSC determines, being a day not later than the day on which the notice is given.

(5B) Without limiting subsection (5A), where the invalidity pay of a recipient member is suspended under subsection (3), the member, or another person acting on the member's behalf, may, by notice in writing given to CSC, request CSC to revoke the suspension, and where such a request is made, CSC shall, by notice in writing given to the member or to the member and the other person, as the case may be:

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(a) if the invalidity pay has been suspended by virtue of the relevant member's having failed to comply with a notice requiring the member to submit to a medical examination—require the member to submit to a medical examination by a medical practitioner at a time and place specified in the second-mentioned notice; or

(b) if the invalidity pay has been suspended by virtue of the member's having failed to comply with a notice requiring the member to give information to CSC (in this paragraph called ***the original notice***)—require the member to give in writing to CSC, within such period as is specified in the second-mentioned notice, such information as was required by the original notice to be given.

(5C) A notice given by CSC under subsection (5B) shall set out the effects of subsections (5D) and (5E).

(5D) Where:

(a) because of a request having been made to revoke the suspension of the invalidity pay of a recipient member, a notice under subsection (5B) is given to the member or to the member and another person; and

(b) either:

(i) the member complies with the notice; or

(ii) the member fails to comply with the notice but CSC is satisfied that there was a reasonable excuse for the failure;

CSC shall, by notice in writing given to the member or to the member and the other person, as the case may be, revoke the suspension with effect from such day as CSC determines, being a day not later than:

(c) in a case to which subparagraph (b)(i) applies—the day on which the member so complied with the notice; or

(d) in a case to which subparagraph (b)(ii) applies—the day on which CSC became so satisfied.

(5E) Where:

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(a) because of a request having been made to revoke the suspension of the invalidity pay of a recipient member, a notice under subsection (5B) is given to the member or to the member and another person; and

(b) the member fails to comply with the notice and CSC is not satisfied that there was a reasonable excuse for the failure;

CSC shall, by notice in writing given to the member or to the member and the other person, as the case may be, refuse to revoke the suspension.

(6) Where a person whose invalidity pay has been suspended under this section dies before the invalidity pay again becomes payable, he shall, for the purposes of sections 39, 42, 43 and 47, be deemed to have been entitled to invalidity pay immediately before his death and, for the purposes of sections 39, 42 and 43, the invalidity pay shall be deemed to have been payable at the rate at which it would have been payable to him if it had not been suspended.

(6A) Where CSC is required by this section to give a recipient member a notice, the notice shall be taken to have been given to the member if:

(a) the notice is served on the member personally;

(b) the notice is sent to the member by pre-paid post as a letter and the member acknowledges receipt of the letter; or

(c) where CSC has caused all reasonable steps to be taken to ascertain a reliable address of the member, the notice is sent to the member by pre-paid post to:

(i) in a case where CSC is satisfied that at least one reliable address of the member has been ascertained—that address or one of those addresses; or

(ii) in any other case—the last address of the member known to CSC.

(6B) A reference in subsection (6A) to a reliable address of a member shall be read as a reference to an address where, if a letter were sent to the member by pre-paid post to the address, the member would probably receive the letter.

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(7) This section does not apply in relation to a member of the scheme who:

(a) is retired after the commencement of this subsection; and

(b) on his retirement, is classified as Class C under section 30 and is entitled to invalidity pay.

36 Invalidity benefits payable to certain contributors under Superannuation Act or the *Superannuation Act 1990*

(1) This section applies to a member of the scheme:

(a) who becomes entitled to invalidity benefit; and

(b) who, at the time he becomes so entitled:

(i) is an eligible employee for the purposes of the Superannuation Act whose liability to make contributions to CSC is deferred by virtue of section 54 of the Superannuation Act; or

(ii) is a person whose entitlement to pension under that Act is suspended by force of subsection 117(1) of that Act; or

(iii) is a member of the Superannuation (1990) Scheme whose liability to make contributions under that scheme has been deferred under Rule 3.1.17 of the Rules for the administration of the Superannuation (1990) Scheme.

(2) The invalidity benefit to which a member of the scheme to whom this section applies is entitled is benefit under subsection 32(2) as if he were a member of the scheme classified as Class C under section 30.

37 Chief of the Defence Force may inform CSC of grounds of retirement

Where a contributing member has been retired otherwise than on the ground of invalidity or of physical or mental incapacity to perform his duties but, after his retirement, the Chief of the Defence Force or a person authorized in writing by the Chief of the Defence Force informs CSC that, at the time the member was

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retired, grounds existed on which he could have been retired on the ground of invalidity or of physical or mental incapacity to perform his duties, he may, for the purposes of this Act, be treated as if he had been retired on that ground.

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Part VI—Benefits on death of member of scheme

Division 1—Spouse's pension

38 Spouse's pension on death of contributing member

Where a member of the scheme who is a contributing member dies before retirement and is survived by a spouse, the spouse is entitled to a pension at a rate equal to five-eighths of the rate at which invalidity pay would have been payable to the deceased member if, on the date of the deceased member's death, the deceased member had become entitled to invalidity benefit and had been classified as Class A under section 30 and (in the case of a deceased member whose surcharge debt account is in debit when the pension becomes payable) had made an election under subsection 124(1).

39 Spouse's pension on death of recipient member

(1) Where a member of the scheme who is a recipient member dies and is survived by a spouse, then, subject to sections 47 and 75, the spouse is entitled to a pension at a rate equal to five-eighths of the rate at which retirement pay or invalidity pay was payable to the deceased member immediately before the member's death or, if the member had commuted a portion of the member's retirement pay under section 24 or a portion of the member's invalidity pay under section 32A, at a rate equal to five-eighths of the rate at which retirement pay or invalidity pay, as the case may be, would have been payable to the member immediately before the member's death if the member had not so commuted a portion of the member's retirement pay or invalidity pay, as the case may be.

(2) In spite of subsection (1), if, on any of the 7 pay-days immediately following the death of a recipient member, the rate at which pension would, apart from this subsection, be payable to the spouse of the member is less than the rate (in this subsection called the ***putative rate***) at which retirement pay or invalidity pay (as the case may be) would be payable to the deceased member on that day if

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the member had not died, the spouse is entitled to a pension at a rate equal to the putative rate.

40 Set off against spouse's pension in certain circumstances

(1) Where:

(a) the spouse of a deceased member of the scheme who was a recipient member immediately before the member's death is entitled to a pension under subsection 39(2); and

(b) there is paid into an account with a bank an amount purporting to be an instalment of retirement pay or invalidity pay (as the case may be) payable to the member in respect of a period in respect of which a pension is payable to the spouse under subsection 39(2); and

(c) the bank pays, out of that account, to the spouse an amount not exceeding the amount so paid into the account;

then, in spite of any other law:

(d) the bank is not liable to the Commonwealth, the personal representative of the deceased member or anyone else for any loss incurred because of the payment of that amount to the spouse; and

(e) an amount equal to the amount so paid by the bank to the spouse must be set off against any amount of pension payable to the spouse under subsection 39(2).

(2) In this section:

bank includes, but is not limited to, a body corporate that is an ADI (authorised deposit-taking institution) for the purposes of the *Banking Act 1959*.

41 Rate of pension payable on death of member of scheme leaving more than one spouse

(1) If a member of the scheme (***deceased person***) is survived by more than one spouse, CSC must allocate any pension payable to a spouse in respect of the deceased person under this Act among the spouses.

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(2) CSC must have regard to the respective needs of the spouses when making the allocation.

(3) Subject to subsections (4) and (5), a pension is only payable to each spouse in accordance with the allocation.

(4) The rate of pension payable to each spouse under the allocation must be at least three-eighths of the rate of the relevant pension in relation to the deceased person under this Act.

(5) The aggregate of the rates of pension payable under an allocation must not exceed 100% of the rate of the relevant pension in relation to the deceased person under this Act.

(6) In subsections (4) and (5), the rate of the relevant pension in relation to the deceased person under this Act is:

(a) in the case of a deceased person who was not a recipient member—the rate at which invalidity pay would have been payable to the deceased person if, on the date of the death, the deceased person:

(i) had been entitled to invalidity benefit; and

(ii) had been classified as Class A under section 30; and

(iii) in the case of a deceased member whose surcharge debt account is in debit when the pension becomes payable—had made an election under subsection 124(1); or

(b) in the case of a deceased recipient member, then, subject to sections 47 and 75:

(i) if subparagraph (ii) does not apply—the rate at which retirement pay or invalidity pay was payable to the deceased recipient member immediately before the death; or

(ii) if a portion of the retirement pay or invalidity pay had been commuted under section 24 or 32A—the rate at which retirement pay or invalidity pay would have been payable to the member immediately before the death if a portion of that retirement pay or invalidity pay had not been so commuted.

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41A Commutation of spouse's pension

(1) Where:

(a) a person is, or becomes, entitled to a pension under this Division because the person is:

(i) a spouse in relation to a contributing member who died on or after the commencement of the *Commonwealth Superannuation Schemes Amendment Act 1992*; or

(ii) a widow or widower of a contributing member who died on or after the commencement of the *Defence Legislation Amendment Act (No. 2) 1990* but before the commencement of the *Commonwealth Superannuation Schemes Amendment Act 1992*; or

(iii) a widow or widower of a contributing member who died on or after 15 October 1990 but before the commencement of the *Defence Legislation Amendment Act (No. 2) 1990*; and

(b) in the case of a contributing member referred to in subparagraph (a)(iii)—that member is a member of a prescribed class of deceased spouses;

the person (in this section called the ***elector***) may, by notice in writing given to CSC, elect to commute a portion of his or her pension in accordance with this section.

(1A) In subsection (1), ***widow*** and ***widower*** have their respective meanings given by this Act as in force immediately before the commencement of the *Commonwealth Superannuation Schemes Amendment Act 1992*.

(2) A notice given by an elector under subsection (1) must:

(a) specify the amount that is to be payable to him or her by virtue of the commutation (in this section called the ***commuted amount***); and

(b) be given not later than one year after the elector becomes entitled to the pension.

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(3) The amount referred to in subsection (2) must not exceed an amount calculated in accordance with the following formula:

Annual Rate of Pay × 2

where:

Annual Rate of Pay is the annual rate of pay at the time of death of the deceased contributing member who was, immediately before his or her death, the spouse of the elector.

(4) Where an elector makes an election under this section, then, subject to subsection (4A):

(a) the Commonwealth must pay to the elector the commuted amount; and

(b) the amount per annum of the pension payable to the elector, on and after the day on which the election takes effect, is the amount per annum that, but for this paragraph, would be payable to the elector, reduced by an amount calculated by dividing the commuted amount by 25.

(4A) If:

(a) an elector makes an election under this section; and

(b) the deceased contributing member's surcharge debt account is in debit when the pension becomes payable to the elector;

the following provisions apply:

(c) the Commonwealth must pay to the elector the difference between the commuted amount and:

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

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

(d) the amount per annum of the pension payable to the elector, on and after the day on which the election takes effect, is:

(i) if subparagraph (ii) does not apply—the amount per annum referred to in paragraph (4)(b); or

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(ii) if the member's surcharge deduction amount exceeds the commuted 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 (4)(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 commuted amount.

(5) For the purposes of this section, an election is taken to have been made, and takes effect, on the day on which the notice of election is received by CSC.

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Division 2—Children's pensions

42 Eligible children other than orphans

(1) Pension is payable to an eligible child, not being an eligible orphan, in accordance with this section while he is an eligible child.

(2) Pension under this section is payable to an eligible child, being the child of a contributing member who died before retirement, as follows, pension at the rate of $312 per annum, as indexed in accordance with subsection 98B(5A), and additional pension at a rate equal to one-sixth of five-eighths of the rate at which invalidity pay would have been payable to the member if, on the date of his death, he had become entitled to invalidity benefit and had been classified as Class A under section 30.

(3) Subject to sections 47 and 75, pension under this section is payable to an eligible child, being the child of a member of the scheme who was a recipient member at the time of his death, as follows, pension at the rate of $312 per annum, as indexed in accordance with subsection 98B(5A), and additional pension at a rate equal to one-sixth of five-eighths of the rate at which retirement pay or invalidity pay was payable to the member immediately before his death, or, if the member had commuted a portion of his retirement pay under section 24 or a portion of his invalidity pay under section 32A, at a rate equal to one-sixth of five-eighths of the rate at which retirement pay or invalidity pay, as the case may be, would have been payable to the member immediately before his death if he had not so commuted a portion of his retirement pay or invalidity pay, as the case may be.

43 Eligible orphans

(1) Pension is payable to an eligible orphan in accordance with this section while he is an eligible orphan.

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(2) Subject to subsections (2AA) and (2A), pension under this section is payable to an eligible orphan, being the child of a contributing member who died before retirement, as follows, pension at the rate of $5,000 per annum, as indexed in accordance with subsection 98B(5A), and additional pension at a rate equal to one-eighth of five-eighths of the rate at which invalidity pay would have been payable to the member if, on the date of his death, he had become entitled to invalidity benefit and had been classified as Class A under section 30.

(2AA) If:

(a) a contributing member dies and is survived by one or more eligible orphans; and

(b) the member's surcharge debt account is in debit when pension becomes payable to the orphan or orphans;

then, subject to subsection (2A), there is payable to the orphan or each of the orphans, instead of the pensions described in subsection (2), a pension at the rate worked out by using the formula:

$$\text{Basic rate} - \frac{\text{Surcharge deduction amount}}{\text{Conversion factor}}$$

where:

basic rate means the amount per annum equal to the sum of the rates of the pensions described in subsection (2).

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

surcharge deduction amount means the member's surcharge deduction amount.

(2A) Where the number of eligible orphans in respect of whom pensions are payable under subsection (2), or a pension is payable under subsection (2AA), because of the death of the contributing member is such that the sum of the rates of all the pensions so payable exceeds the rate at which invalidity pay would have been payable

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to the member in the circumstances mentioned in subsection (2), then, while that position exists, there is payable, in respect of each of the orphans, instead of the pensions described in subsection (2) or the pension described in subsection (2AA) (as the case may be), a pension at the rate calculated by dividing the number of orphans into the rate exceeded.

(3) Subject to subsection (4) and sections 47 and 75, pension under this section is payable to an eligible orphan, being the child of a member of the scheme who was a recipient member at the time of his death, as follows, pension at the rate of $5,000 per annum, as indexed in accordance with subsection 98B(5A), and additional pension at a rate equal to one-eighth of five-eighths of the rate at which retirement pay or invalidity pay was payable to the member immediately before his death or, if the member had commuted a portion of his retirement pay under section 24 or a portion of his invalidity pay under section 32A, at a rate equal to one-eighth of five-eighths of the rate at which retirement pay or invalidity pay, as the case may be, would have been payable to the member immediately before his death if he had not so commuted a portion of his retirement pay or invalidity pay, as the case may be.

(4) Where the number of eligible orphans in respect of whom pensions are payable under subsection (3) because of the death of the recipient member is such that the sum of the rates of all the pensions so payable exceeds the rate of the retirement or invalidity pay used for the calculation of the orphans' pensions under that subsection, then, while that position exists, there is payable, in respect of each of the orphans, instead of the pensions described in subsection (3), a pension at the rate calculated by dividing the number of orphans into the rate exceeded.

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Division 2A—Special pensions

43A Special pensions

(1) If, at any time after the date of commencement of this section (in this section referred to as the ***commencing date***), pension is not payable under section 39 to a person to whom pension would be payable at that time under that section were this Act, as amended and in force on the commencing date, to have been in force before the date of death of a member of the scheme who died before the commencing date, CSC may grant, from such date as it specifies, a pension to the person at such rate and on such conditions as CSC, having regard to such matters (if any) as are prescribed and such other matters as it considers relevant, determines.

(2) If, at any time after the commencing date, pension is not payable under section 42 or 43 to a person to whom pension would be payable under that section were this Act, as amended and in force on the commencing date, to have been in force before the date of death for a member of the scheme who died before the commencing date, CSC may grant, from such date as it specifies, a pension to the person at such rate and on such conditions as CSC, having regard to such matters (if any) as are prescribed and such other matters as it considers relevant, determines.

(3) A date specified by CSC under subsection (1) or (2) in relation to the granting of an entitlement to pension benefit shall not, unless CSC is satisfied that special circumstances exist that justify an earlier date being so specified, be a date earlier than the date upon which the grant is made, and shall not, in any event, be a date earlier than the commencing date.

(4) A determination by CSC for the purpose of subsection (1) or (2) shall be in writing.

(5) Where, at any time before the commencing date, pension has been paid to a person under section 39 as the widow (within the meaning of this Act as in force at that time) of a deceased recipient member,

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CSC shall not under subsection (1) of this section, grant a pension to any other person in respect of that deceased recipient member.

(6) CSC shall not, under subsection (1), grant a pension to a person unless CSC, having regard to such matters (if any) as are prescribed and such other matters as it considers relevant, is satisfied that the person is in necessitous circumstances or that the grant of the pension is otherwise warranted.

(7) CSC shall not, under subsection (1), grant a pension to a person in relation to a deceased member of the scheme from a specified date at a rate that exceeds the rate at which pension would have been payable from that specified date to the person under this Act had the person been, for the purpose of this Act as amended and in force at the date of death of the deceased member of the scheme, the widow or widower of the deceased member of the scheme.

(8) CSC shall not, under subsection (2), grant a pension to a person in relation to a deceased member of the scheme from a specified date at a rate that exceeds the rate at which pension would have been payable from that specified date to the person under this Act had the person been, for the purposes of this Act as amended and in force at the date of death of the deceased member of the scheme, the child of the deceased member of the scheme and an eligible child.

(9) The grant by CSC, under this section, of a pension to a person does not affect the entitlement of any other person under this Act to a pension benefit that is payable otherwise than by virtue of a grant of pension under this section, or the rate of such a pension benefit.

44 Restoration of pensions for remarried widows and widowers

(1) A widow or widower whose entitlement to a pension under section 39 has ceased on his or her remarriage may apply to CSC for:

(a) restoration of the pension; or

(b) restoration of the full rate of the pension.

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(2) If CSC is satisfied that the widow or widower's entitlement to a pension ceased on his or her remarriage, CSC must, in writing, grant the pension at the rate at which the pension would have been payable to the widow or widower if the pension had not ceased.

(3) The pension is payable to the widow or widower at that rate from the day on which CSC receives the application.

(4) If CSC grants a person a pension under this section at a particular rate, the grant at that rate does not affect:

(a) any other person's entitlement under this Act to any other pension benefit; or

(b) the rate of such a pension benefit.

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Division 3—Miscellaneous

45 Payment of benefits otherwise than to person entitled

(1) Where, in the opinion of CSC, payment of an instalment, or part of an instalment, of pension benefit, or of an amount of any other benefit, should, by reason of the person who, but for this section, would be entitled to the payment, being a child, or being a person who is insane or undergoing imprisonment or otherwise being under a disability, or for any other reason which CSC thinks proper, be made to a person other than the person who would be so entitled to the payment, CSC may authorize the payment to be made to the other person, and payment shall be made to the other person accordingly.

(2) A payment of an instalment of pension benefit payable to a child that, by virtue of subsection (1), is paid to a person other than the child, shall be applied for the maintenance, education or other benefit of the child.

46 Superannuation Act and the *Superannuation Act 1990*

Pension benefit is not payable under this Part in respect of a member of the scheme who dies before retirement and who, immediately before his or her death, was:

(a) an eligible employee for the purposes of the Superannuation Act whose liability to make contributions under that Act was deferred by virtue of section 54 of that Act; or

(b) a person whose entitlement to pension under that Act was suspended by force of subsection 117(1) of that Act; or

(c) a member of the Superannuation (1990) Scheme whose liability to make contributions under that scheme was deferred under Rule 3.1.17 of the Rules for the administration of the Superannuation (1990) Scheme.

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47 Death of recipient member etc. due to retirement disabilities etc.

(1) Where:

(a) a member of a scheme dies and, immediately before dying, the member:

(i) was in receipt of invalidity pay and classified as Class B or Class C under section 30; or

(ii) was entitled to invalidity benefit and classified as Class C (under section 30) because of a reclassification under subsection 34(1) but was not entitled to invalidity pay; and

(b) CSC is satisfied that the death of the member was due to:

(i) a physical or mental impairment that was the cause, or one of the causes, of the invalidity or physical or mental incapacity by reason of which the member was retired; or

(ii) a physical or mental impairment causally connected with a physical or mental impairment referred to in subparagraph (i);

then, for the purposes of section 39, subsection 42(3) and subsection 43(3), the rate at which invalidity pay was payable to the member immediately before his death shall be deemed to be the rate at which invalidity pay would have been payable to him if, immediately before his death, he had been classified as Class A under section 30.

(2) This section does not apply in relation to a member of the scheme who:

(a) is retired after the commencement of this subsection; and

(b) on his retirement, is classified as Class C under section 30 and is entitled to invalidity pay.

48 Lump sum payments on or after death—members with only one period of effective service

(1A) This section applies:

(a) where a member of the scheme dies; and

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(b) there is only one period of effective service in relation to the member.

(1) Where a member of the scheme dies before retirement and, on his death, no pension benefit is payable under this Part, a lump sum payment of an amount worked out under subsection (1AA) shall be paid to the personal representatives of the member, or failing them, to such persons, if any, as CSC determines, and no other benefit under this Act is payable in respect of the member.

(1AA) The amount of the lump sum payment referred to in subsection (1) is:

(a) if paragraph (b) does not apply—an amount equal to 1.5 times the amount of the member's contributions; or

(b) if:

(i) the member's surcharge debt account is in debit when the payment becomes payable in respect of the member; and

(ii) an election has been made under subsection 124(2) in relation to the member's surcharge deduction amount;

an amount equal to the difference between the amount referred to in paragraph (a) and the member's surcharge deduction amount.

(2) Where:

(a) a member of the scheme who is a recipient member dies and, on his death, no pension benefit is payable under this Part; and

(b) the aggregate amount of retirement pay or invalidity pay paid or payable to him before his death is less than an amount equal to one and one-half times the amount of his contributions;

a lump sum payment equal to the difference shall be paid to the personal representatives of the member, or failing them, to such persons, if any, as CSC determines, and no other benefit under this Act is payable in respect of the member.

(3) Where:

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(a) a member of the scheme dies before retirement and, on his death, pension benefit is payable under this Part; and

(b) the aggregate amount of that pension benefit paid or payable in respect of him under this Part is less than an amount equal to one and one-half times the amount of his contributions;

a lump sum payment equal to the difference shall be paid to the personal representatives of the member, or failing them, to such persons, if any, as CSC determines.

(4) Where:

(a) a member of the scheme who is a recipient member dies and, on his death, pension benefit is payable under this Part; and

(b) the aggregate amount of retirement pay or invalidity pay paid or payable to the member before his death and of pension benefit paid or payable in respect of him under this Part is less than an amount equal to one and one-half times the amount of his contributions;

a lump sum payment equal to the difference shall be paid to the personal representatives of the member, or failing them, to such persons, if any, as CSC determines.

(5) In this section, a reference to the amount of retirement pay or invalidity pay paid or payable to a member of the scheme before the member's death shall be read as including the following:

(a) if an election has been made, by or on behalf of the member, under section 24 or 32A, to commute a portion of the retirement pay or invalidity pay, as the case may be, payable to the member—the amount paid or payable to or in respect of the member under paragraph 24(3)(a) or 32A(5)(a), as the case may be, by virtue of that election;

(b) if the member's retirement pay or invalidity pay is reduced under section 49N to reflect a release authority lump sum paid in relation to a release authority issued to the member—the amount of the release authority lump sum.

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48A Lump sum payments on or after death—members with more than one period of effective service

(1) This section applies:

(a) where a member of the scheme dies; and

(b) there are 2 or more periods of effective service in relation to the member.

(2) Where:

(a) a member of the scheme dies before retirement; and

(b) on his or her death, no pension benefit is payable under this Part;

a lump sum payment of an amount worked out under subsection (2A) is payable in respect of the member.

(2A) The amount of the lump sum payment referred to in subsection (2) is:

(a) if paragraph (b) does not apply—an amount equal to 1.5 times the member's contributions in respect of the last period of effective service of the member; or

(b) if:

(i) the member's surcharge debt account is in debit when the payment becomes payable in respect of the member; and

(ii) an election has been made under subsection 124(2) in relation to the member's surcharge deduction amount;

an amount equal to the difference between the amount referred to in paragraph (a) and the member's surcharge deduction amount.

(3) Where:

(a) a recipient member dies; and

(b) on his or her death, no pension benefit is payable under this Part; and

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(c) the total amount of benefits paid or payable to the member after he or she last became a recipient member is less than 1.5 times the member's contributions in respect of the last period of effective service of the member;

a lump sum payment equal to the difference is payable in respect of the member.

(4) Where a lump sum is payable under subsection (2) or (3) in respect of a deceased member of a scheme, no benefit is payable in respect of that member under any other section of this Act.

(5) Where:

(a) a member of the scheme died before retirement and, on or after his or her death, pension benefit was payable under this Part in respect of the member; and

(b) no person is any longer entitled to such pension benefit; and

(c) the total amount of pension benefit paid or payable in respect of the member under this Part is less than 1.5 times the member's contributions in respect of the last period of effective service of the member;

a lump sum payment equal to the difference is payable in respect of the member.

(6) Where:

(a) on or after the death of a recipient member, pension benefit was payable under this Act in respect of the member; and

(b) no person is any longer entitled to such pension benefit; and

(c) the sum of:

(i) the total amount of benefits paid or payable to the member after he or she last became a recipient member; and

(ii) the total amount of pension benefit paid or payable in respect of a member under this Part;

is less than 1.5 times the member's contributions in respect of the last period of effective service of the member;

a lump sum payment equal to the difference is payable in respect of a member.

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(7) If:

(a) a member of the scheme dies; and

(b) the total amount of benefits paid to the member before he or she last became a contributing member is less than 1.5 times the member's contributions in respect of the period, or periods, of effective service (other than the last period of effective service) of the member;

a lump sum payment equal to the difference is payable in respect of the member in addition to the amount payable under subsection (2), (3), (5) or (6) (as the case may be) in respect of the member.

(8) A lump sum payable in respect of a member of the scheme under this section is to be paid to the personal representatives of the member or to such person or persons (if any) as CSC determines.

49 Death of contributing member after 60 days absence without leave

(1) Subject to subsection (2) and to section 94, where:

(a) a member of the scheme dies before retirement and, at the time of his death, he was absent without leave and had been so absent for a period that exceeds 60 consecutive days;

(aa) in a case where the member dies on or after 3 July 1985—both of the following subparagraphs apply:

(i) the salary and allowances of the member in respect of the period of absence without leave are forfeited under regulations made under the *Defence Act 1903*;

(ii) an amount equal to the amount of the salary and allowances forfeited is not subsequently paid, and is not payable, under those regulations to the legal personal representative of the member; and

(b) retirement pay would not, if he had retired at the commencement of the period of absence without leave, have been payable to him;

benefit is not payable in respect of him under this Part.

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(2) CSC may direct that subsection (1) does not apply in relation to a deceased member of the scheme if CSC is satisfied, within a period of 6 months after his death, that by reason that a person who, immediately before his death, was wholly or substantially dependent upon him is in necessitous circumstances, such a direction should be given.

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Part VIA—Family law superannuation splitting

Division 1—Preliminary

49A Definitions

In this Part, unless the contrary intention appears:

associate pension means associate pension under section 49B.

base amount means:

(a) for a splitting agreement—the base amount specified in, or calculated under, the agreement; or

(b) for a splitting order—the amount allocated under subsection 90XT(4) or 90YY(5) (as the case may be) of the *Family Law Act 1975*.

family law value means:

(a) in relation to a superannuation interest within the meaning of Part VIIIB of the *Family Law Act 1975*—the amount determined in accordance with regulations under that Act that apply for the purposes of paragraph 90XT(2)(a) of that Act; or

(b) in relation to a superannuation interest within the meaning of Part VIIIC of the *Family Law Act 1975*—the amount determined in accordance with regulations under that Act that apply for the purposes of paragraph 90YY(2)(a) of that Act.

In applying regulations referred to in paragraph (a) or (b), the relevant date is taken to be the date on which the operative time occurs.

Note: This amount is determined by applying those regulations, whether or not an order has been made under subsection 90XT(1) or 90YY(1) (as the case may be) of the *Family Law Act 1975*.

member spouse means a member spouse within the meaning of Part VIIIB or VIIIC of the *Family Law Act 1975*.

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non-member spouse means a non-member spouse within the meaning of Part VIIIB or VIIIC of the *Family Law Act 1975*.

non-standard pension means a pension benefit other than standard pension.

operative time means:

(a) for a splitting agreement that is a superannuation agreement or a flag lifting agreement within the meaning of Part VIIIB of the *Family Law Act 1975* or for a splitting order within the meaning of that Part—the time that is the operative time for the purposes of that Part in relation to a payment split under the agreement or order; or

(b) for a splitting agreement that is a superannuation agreement or a flag lifting agreement within the meaning of Part VIIIC of the *Family Law Act 1975* or for a splitting order within the meaning of that Part—the time that is the operative time for the purposes of that Part in relation to a payment split under the agreement or order.

Orders means Orders under section 49F.

original interest means a superannuation interest to which section 49B applies.

payment split means a payment split within the meaning of Part VIIIB or VIIIC of the *Family Law Act 1975*.

scheme value means the amount determined under the Orders.

splitting agreement means:

(a) a superannuation agreement (within the meaning of Part VIIIB or VIIIC of the *Family Law Act 1975*); or

(b) a flag lifting agreement (within the meaning of Part VIIIB or VIIIC of the *Family Law Act 1975*) that provides for a payment split.

splitting order means a splitting order within the meaning of Part VIIIB or VIIIC of the *Family Law Act 1975*.

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splitting percentage means:

(a) for a splitting agreement—the percentage specified in the agreement under subparagraph 90XJ(1)(c)(iii) or 90YN(1)(c)(iii) (as the case may be) of the *Family Law Act 1975*; or

(b) for a splitting order—the percentage specified in the order under subparagraph 90XT(1)(b)(i) or 90YY(1)(b)(i) (as the case may be) of the *Family Law Act 1975*.

standard pension means any of the following:

(a) retirement pay;

(b) invalidity benefit;

(c) pension under section 38 or 39;

(d) pension under section 43A or 44;

(e) associate pension.

superannuation interest means a superannuation interest within the meaning of Part VIIIB or VIIIC of the *Family Law Act 1975*.

transfer amount means:

(a) if a splitting percentage applies—the amount calculated by multiplying the splitting percentage by the greater of:

(i) the family law value; and

(ii) the scheme value; or

(b) if a base amount applies and the scheme value is not more than the family law value—the base amount; or

(c) if a base amount applies and the scheme value is more than the family law value—the amount calculated using the formula:

$$\text{Scheme value} \times \frac{\text{Whole dollars in base amount}}{\text{Whole dollars in family law value}}$$

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Division 2—Benefits for non-member spouse

49B Associate pension for non-member spouse if operative time in payment phase

(1) This section applies to a superannuation interest (the ***original interest***) if:

(a) CSC receives a splitting agreement or splitting order in respect of the original interest; and

(b) the original interest is not an entitlement to pension under section 42 or 43; and

(c) the member spouse and the non-member spouse are both alive at the operative time; and

(d) if a base amount applies—the base amount at the operative time is not more than the family law value or the scheme value.

(2) If, at the operative time, standard pension is payable in respect of the original interest, then the non-member spouse is entitled to associate pension from the operative time, at the rate calculated under the Orders by reference to the transfer amount.

Note: If standard pension is not payable at the operative time in respect of the original interest, then the non-member spouse will be entitled to benefits under the *Military Superannuation and Benefits Act 1991*.

49C Commutation of small associate pension

(1) If the annual rate of associate pension to which the non-member spouse becomes entitled is less than the amount determined under the Orders, then the non-member spouse may elect to commute the pension.

(2) The election must be made in writing to CSC not later than 3 months after the non-member spouse becomes entitled to the pension.

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(3) If the non-member spouse makes the election, then the non-member spouse is entitled instead to a lump sum equal to the transfer amount.

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Division 3—Reduction of benefits for member spouse

49D Operative time during growth phase—reduction of later standard pension or lump sum amount

(1) If:

(a) at the operative time, standard pension is not payable in respect of the original interest; and

(b) after the operative time, standard pension becomes payable to the member spouse in respect of the original interest;

then the annual rate of that standard pension is reduced to the amount calculated under the Orders.

Note: If the member spouse dies before becoming entitled to standard pension, then subsection (1) will nevertheless result in an indirect reduction of any widow's pension or spouse pension that becomes payable. This happens because the amount of the widow's pension or spouse pension is based on the amount of invalidity pay (a standard pension) that would have become payable to the member spouse at the time of death.

(2) A reduction under subsection (1) is to be disregarded in calculating the amount of any non-standard pension that later becomes payable.

Note: For example, the reduction will be disregarded in calculating the amount of pension under section 42 payable to a child of the member spouse after the member spouse's death.

(3) If:

(a) at the operative time, standard pension is not payable in respect of the original interest; and

(b) after the operative time, a lump sum amount becomes payable, in respect of the original interest, under section 32, 48, 48A, 56, 57 or 77;

then that lump sum amount is reduced to the amount calculated under the Orders.

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49E Operative time during payment phase—reduction of standard pension or lump sum amount

(1) If, at the operative time, standard pension is payable to the member spouse in respect of the original interest, then the annual rate of that pension is reduced to the amount calculated under the Orders.

Reduction of later standard pensions

(1A) If:

(a) the annual rate of a standard pension (the ***first pension***) payable to the member spouse is reduced under subsection (1); and

(b) after the operative time, another standard pension (the ***later pension***) becomes payable to the member spouse;

then the annual rate of the later pension is reduced to the amount calculated under the Orders.

Reduction in later payments of lump sum amounts

(1B) If:

(a) the annual rate of a standard pension payable to the member spouse is reduced under subsection (1); and

(b) after the operative time, a lump sum amount becomes payable, in respect of the member spouse, under section 32, 48, 48A, 56, 57 or 77;

then the lump sum amount is reduced to the amount calculated under the Orders.

(2) A reduction under this section is to be disregarded in calculating the amount of any non-standard pension that later becomes payable.

Note: For example, the reduction will be disregarded in calculating the amount of pension under section 42 payable to a child of the member spouse after the member spouse's death.

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Division 4—Miscellaneous

49F Ministerial Orders

The Minister may, by legislative instrument, make Orders prescribing matters required or permitted by this Part to be prescribed.

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Part VIB—Sustaining the superannuation contribution concession: release of benefit to meet deferred tax liability

49K Release of benefits under a release authority

A lump sum (the ***release authority lump sum***) may be paid at a time in compliance with a release authority issued to a person under item 3 of the table in subsection 135-10(1) in Schedule 1 to the *Taxation Administration Act 1953* and given to CSC in accordance with Subdivision 135-B in that Schedule.

Note: The purpose of the release authority is to allow a lump sum to be paid to the Commissioner to meet a debt the person has under Subdivision 133-C in Schedule 1 to the *Taxation Administration Act 1953*.

49L Limit on amount that may be released

(1) In addition to any requirements in Division 135 in Schedule 1 to the *Taxation Administration Act 1953*, the amount of a release authority lump sum must not have the effect that a benefit of the person under this Act is reduced below zero.

(2) For the purpose of subsection (1), the effect of a release authority lump sum on the amount of a person's benefit is to be worked out after taking account of any reduction under another provision of this Act, apart from the following:

(a) a reduction under section 24 in relation to an amount not yet paid;

(b) a reduction under section 32A in relation to an amount not yet paid.

Note: Other provisions that reduce a person's benefit before a release authority lump sum include the following:

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(a) subsections 23(6) and 31(4) (which deal with surcharge elections), if the election under section 124 is made before giving CSC the release authority (see subsection 124(3));
(b) subsections 75(3A) and (4A) (which deal with surcharge deduction amounts for deferred benefits);
(c) Part VIA (which deals with family law superannuation splitting).

49M Priority order in relation to commutation of pension

(1) This section applies if:
(a) a person gives CSC a release authority issued to the person under item 3 of the table in subsection 135-10(1) in Schedule 1 to the *Taxation Administration Act 1953*; and
(b) an amount has not yet been paid to the person by virtue of a commutation under section 24 or 32A.

(2) The release authority lump sum is to be paid before an amount is paid to the person by virtue of a commutation under section 24 or 32A.

(3) To avoid doubt, the person's retirement pay or invalidity pay is to be reduced under this Part to reflect the release authority lump sum, and the following are to be worked out having regard to that reduced amount of retirement pay or invalidity pay:
(a) the amount that may be paid by virtue of the commutation;
(b) the retirement pay or invalidity pay payable after the commutation takes effect.

49N Calculation of person's benefits after payment of release authority lump sum

(1) If a release authority lump sum is paid in relation to a release authority issued to a person, any benefits to which the person is entitled under this Act must be reduced to reflect the release authority lump sum.

(2) If:
(a) a release authority lump sum is paid in relation to a release authority issued to a person; and

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(b) the person is entitled to retirement pay or invalidity pay;

the rate at which retirement pay or invalidity pay is payable to the person is to be reduced so that it equals the amount worked out using this formula:

$$\text{Pre-reduction rate} - \frac{\text{Release authority lump sum}}{\text{Conversion factor}}$$

where:

conversion factor means the factor that is applicable to the person under the determination made by CSC under subsection (3).

pre-reduction rate means the annual rate at which retirement pay or invalidity pay would, apart from this section (but having regard to any other provisions of this Act that affect that rate at the time), be payable to the person at the time that pay becomes payable.

(3) CSC may, by legislative instrument, determine the conversion factor, or the method for working out the conversion factor, for the purposes of subsection (2).

49P Modification for candidates at parliamentary elections

For the purposes of paragraph 55(5)(a), disregard a benefit that is a release authority lump sum.

Note: Subsection 55(5) is about benefits that must be repaid.

49Q Modification for section 62

(1) If:

(a) a person's invalidity pay, worked out having regard to section 49N, is cancelled under section 62; and

(b) after that cancellation, the person becomes entitled to retirement pay or invalidity pay;

the rate of the person's retirement pay or invalidity pay mentioned in paragraph (b) is to be reduced in accordance with section 49N.

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(2) However, for the purpose of the formula in subsection 49N(2), the amount of the release authority lump sum is reduced by the amount of any reductions made because of the previous application of section 49N to the invalidity pay before it was cancelled.

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Part VII—Candidates at parliamentary elections

50 Interpretation

In this Part, unless the contrary intention appears:

re-instated candidate means a person who:

(a) ceased to be an eligible member of the Defence Force by reason of having been transferred to a Reserve, having been discharged from the Defence Force or having had his continuous full-time service terminated under the Defence (Parliamentary Candidates) Act;

(b) again became an eligible member of the Defence Force; and

(c) is a person referred to in subsection 10(2), 11(2) or 12(2) of the Defence (Parliamentary Candidates) Act.

re-instated candidate to whom this Part applies means a re-instated candidate who has made an election under section 51.

51 Election by re-instated candidate

A re-instated candidate may, by notice in writing given to CSC within a period of 30 days after again becoming an eligible member of the Defence Force or within such further period as CSC, in special circumstances, allows, elect to be treated as an eligible member of the Defence Force in respect of the period commencing when he ceased to be such an eligible member and ending when he again became such an eligible member.

52 Effect of election under section 51

(1) A re-instated candidate to whom this Part applies shall, in respect of the period to which the election made by him under section 51 relates, be deemed to have been an eligible member of the Defence Force and, notwithstanding subsections 10(2), 11(2) and 12(2) of the Defence (Parliamentary Candidates) Act, shall not, for the

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purposes of this Act, be deemed to have been absent on leave without pay during that period.

(2) For the purpose of calculating the contributions that a reinstated candidate to whom this Part applies is required to pay in respect of the period to which the election made by him under section 51 relates, his annual rate of pay during that period shall be deemed to be the annual rate of pay that would have been applicable to him during that period if he had not ceased to be an eligible member of the Defence Force.

53 Refund of benefits by re-instated candidates to whom this Part applies

(1) Where a person who is a re-instated candidate to whom this Part applies became entitled to retirement pay upon his ceasing to be an eligible member of the Defence Force, he shall pay to the Commonwealth an amount equal to the aggregate of the payments of retirement pay received by him.

(2) Where a person who is a re-instated candidate to whom this Part applies was paid, upon his ceasing to be an eligible member of the Defence Force:

(a) a refund of his contributions; or

(b) a payment of a prescribed kind (being a payment of, or in the nature of, a gratuity or bounty) under legislation relating to conditions of service of members of the Defence Force, in respect of his service before he so ceased;

he shall pay to the Commonwealth an amount equal to that refund of contributions or to that payment, as the case requires.

(3) An election made under section 51 is of no effect unless within a period of 7 days after the date on which the election was made, or within such further period as CSC, in special circumstances, allows, any amount required to be paid to the Commonwealth under subsection (1) or (2) is so paid or arrangements satisfactory to CSC are made for the payment to the Commonwealth of that amount.

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(4) Where:

(a) an amount is payable by a person to the Commonwealth under this section;

(b) the person again ceases to be an eligible member of the Defence Force; and

(c) at the time he so ceases, the amount, or a part of the amount, has not been paid to the Commonwealth;

there shall be deducted from any payment of benefit payable to or in respect of the person under this Act an amount equal to that amount, or that part of that amount, as the case may be, and, to the extent that that amount or that part of that amount is not so deducted, it may be recovered by the Commonwealth in a court of competent jurisdiction as a debt due and payable to the Commonwealth by the person.

54 Re-instated candidates to whom Part does not apply

(1) For the purposes of this Act, subsections 10(2), 11(2) and 12(2) of the Defence (Parliamentary Candidates) Act do not apply to or in relation to a re-instated candidate who is not, and does not become, a re-instated candidate to whom this Part applies.

(2) A re-instated candidate referred to in subsection (1) shall, for the purposes of the definition of ***eligible member of the Defence Force*** in subsection 3(1), be deemed to be serving on continuous full-time service under an appointment or engagement for a period of not less than one year.

55 Rights of contributing members who resign to contest elections and are not re-instated

(1) In this section, unless the contrary intention appears:

person to whom this section applies means a person who ceased to be an eligible member of the Defence Force by reason of having been transferred to a Reserve, having been discharged from the Defence Force or having had his continuous full-time service terminated under the Defence (Parliamentary Candidates) Act.

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the declared date, in relation to an election, means the date that, for the purposes of the Defence (Parliamentary Candidates) Act, is the declared date in relation to the election.

the election, in relation to a person to whom this section applies, means the election in relation to which he made the application in pursuance of which he was transferred to a Reserve, discharged from the Defence Force or had his continuous full-time service terminated under the Defence (Parliamentary Candidates) Act.

(2) Where a person to whom this section applies:

(a) dies on or before the date that is the declared date in relation to the election; or

(b) was a candidate at the election but failed to be elected and dies within a period of 90 days after the date that is the declared date in relation to the election;

then, for the purposes of this Act, he shall be deemed to have continued to have been an eligible member of the Defence Force during the period that commenced upon his ceasing to be an eligible member of the Defence Force and ended on the day on which he dies and his annual rate of pay on the day on which he dies shall be deemed to be the annual rate of pay that would have been applicable to him on that day if he had not ceased to be an eligible member of the Defence Force.

(3) Where CSC is satisfied:

(a) that, if a person to whom this section applies had not ceased to be an eligible member of the Defence Force, he would, at a time (in this subsection referred to as ***the relevant time***) within:

(i) the period that commenced upon his ceasing to be an eligible member of the Defence Force and ended on the date that is the declared date in relation to the election; or

(ii) the period of 90 days after the date that is the declared date in relation to the election;

have been retired on the ground of invalidity or of physical or mental incapacity to perform his duties; and

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(b) that he was prevented from being a candidate at the election by reason of the invalidity or incapacity or was a candidate at the election but failed to be elected;

then, for the purposes of this Act, he shall be deemed to have continued to have been an eligible member of the Defence Force during the period that commenced upon his ceasing to be an eligible member of the Defence Force and ended at the relevant time and his annual rate of pay at the relevant time shall be deemed to be the annual rate of pay that would have been applicable to him at the relevant time if he had not ceased to be an eligible member of the Defence Force, and this Act shall apply to and in relation to him as if he had been retired at the relevant time on the ground referred to in paragraph (a).

(4) Subsections (2) and (3) do not apply in relation to a person to whom this section applies who dies, or would have been retired, within the period of 90 days after the date that is the declared date in relation to the election if CSC is of the opinion that, if he had not died or had not suffered the invalidity or incapacity, as the case may be, he would not have been re-instated in the part of the Defence Force in which he was serving immediately before he ceased to be an eligible member of the Defence Force.

(5) This section does not apply in relation to a person unless, within the period of 90 days after the date that is the declared date in relation to the election or within such further period as CSC allows:

(a) there is paid to the Commonwealth an amount equal to the amount, or to the sum of the amounts, of any benefit paid to or in respect of the person by reason of his having ceased to be an eligible member of the Defence Force;

(b) there is paid to the Commonwealth the contributions that the person would have been required to pay after he ceased to be an eligible member of the Defence Force if he had not so ceased and his annual rate of pay during that period had been the annual rate of pay that would have been applicable to him during that period if he had not ceased to be an eligible member of the Defence Force; and

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(c) there is paid to the Commonwealth an amount equal to the amount of any payment of a prescribed kind (being a payment of, or in the nature of, a gratuity or bounty) paid to the person under legislation relating to conditions of service of members of the Defence Force, in respect of his service before he ceased to be an eligible member of the Defence Force.

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Part VIII—General provisions applicable to contributions and benefits

56 Refund of contributions

(1) Where a contributing member retires and, on his retirement, benefit is not payable to him under any other provision of this Act, he is entitled to a refund of the amount of the contributions paid by him.

(2) Where a contributing member dies before retirement and, by virtue of section 49, benefit is not payable in respect of him under Part VI, a refund of the amount of the contributions paid by him shall be paid to his personal representatives or, failing them, to such persons, if any, as CSC determines.

57 Election by officer on short service commission who continues to serve in respect of period of service under short service commission

(1) Where an officer who is a contributing member:

(a) is serving under a short service commission;

(b) is entitled on the termination of that commission to be paid a gratuity; and

(c) is to be appointed to a permanent commission or to a further short service commission;

he may elect, by notice in writing given to CSC before the date of his appointment to the permanent commission or to the further short service commission, or within such period after that date as CSC, in special circumstances, allows, not to be paid the gratuity and, if he so elects, the gratuity shall not be so paid.

(2) If an officer referred to in subsection (1) does not make an election under that subsection:

(a) he is entitled to a refund, payable by the Commonwealth, of the amount of the contributions paid by him under section 17

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in respect of his period of service under that short service commission; and

(b) any period of service served by him under that short service commission that is a period of effective service in relation to him for the purposes of this Act shall be disregarded as such a period.

59 Instalments of pension benefits

(1) Pension benefit shall be paid in fortnightly instalments.

(2) The amount of a fortnightly instalment of pension benefit shall be an amount calculated in accordance with the formula:

$$\frac{14 \times P}{365},$$

where ***P*** is the amount per annum of the pension benefit.

(3) Where the amount of a fortnightly instalment of pension benefit includes a fraction of a cent:

(a) if the fraction is less than one-half of a cent—the amount of the instalment shall be deemed to be reduced by the amount of the fraction; or

(b) if the fraction is one-half of a cent or more—the amount of the instalment shall be deemed to be increased by treating the fraction as one cent.

(4) The amount of pension benefit payable in respect of a day is one-fourteenth of the amount of a fortnightly instalment of the pension benefit.

60 Prescribed basic annual rate of pay

Where:

(a) a member of the scheme who is a contributing member dies or retires; and

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(b) the annual rate of pay applicable to him immediately before his death or retirement was an amount per annum that is less than the amount per annum that, at the time of his death or retirement, was, under the regulations, the prescribed basic annual rate of pay applicable to him for the purposes of this section;

then, for the purposes of Parts IV, V and VI, the annual rate of pay applicable to him immediately before his death or retirement shall be deemed to be that prescribed basic annual rate of pay.

61 Payment of refund of contributions or of lump sum payment to CSC in discharge of liability under Superannuation Act

Where:

(a) the liability of a person to make contributions under the Superannuation Act has been deferred by virtue of section 54 of that Act;

(b) by reason of the retirement or death of the person, the amount of the deferred contributions has become payable;

(c) the whole or any part of the amount so payable has not been paid; and

(d) benefit has become payable to or in respect of the person under subsection 32(2) or section 48 or 56 of this Act;

the amount of the benefit so payable shall, to the extent that it does not exceed the amount of the deferred contributions payable, be paid to CSC and, upon being so paid, the amount of the deferred contributions payable shall, to the extent of that payment, be deemed to have been paid to CSC under section 54 of the Superannuation Act.

61A Payment of refund of contributions or of lump sum payment to CSC in discharge of liability under the *Superannuation Act 1990*

Where:

(a) the liability of a person to make contributions under the Superannuation (1990) Scheme has been deferred under

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Rule 3.1.17 of the Rules for the administration of the Superannuation (1990) Scheme; and

(b) because of the retirement or death of the person, the amount of the deferred contributions has become payable; and

(c) the whole or any part of the amount so payable has not been paid; and

(d) benefit has become payable to or in respect of the person under subsection 32(2) or section 48 or 56 of this Act;

the amount of the benefit so payable must, to the extent that it does not exceed the amount of the deferred contributions payable, be paid to CSC and, upon being so paid, the amount of the deferred contributions payable is, to the extent of that payment, taken to have been paid to CSC under Rule 3.1.17 of the Rules for the administration of the Superannuation (1990) Scheme.

62 Recipient member who becomes eligible member

Where a member of the scheme who is a recipient member becomes an eligible member of the Defence Force serving under an appointment or enlistment for a period of not less than one year, his or her invalidity pay is, by force of this subsection, cancelled (except if the rate of the invalidity pay is determined under subsection 31(3)).

63 Non-recipient retired member who again becomes an eligible member within 90 days

(1) Where:

(a) a member of the scheme who is a contributing member retires;

(b) upon his retirement, he receives, or is entitled to receive, a refund of contributions under section 56;

(c) he again becomes an eligible member of the Defence Force within a period of 90 days after his retirement; and

(d) he elects, by notice in writing given to CSC, within a period of 90 days after he again becomes an eligible member of the Defence Force, or within such further period as CSC, in

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special circumstances, allows, to have his retirement disregarded;

this Act applies to and in relation to him as if he had not retired and as if he had, during the period during which he was not a member, been on leave of absence without pay.

(2) An election by a person under subsection (1) is of no effect unless, within a period of 7 days after the date on which the election was made, or, within such further period as CSC, in special circumstances, allows, the contributions refunded to him are repaid by him to the Commonwealth or arrangements satisfactory to CSC are made for them to be repaid to the Commonwealth.

(3) This section does not apply in relation to a person who is taken to have retired under section 5B.

64 Non-recipient retired member who again becomes an eligible member after 90 days

(1) Where:

(a) a member of the scheme who is a contributing member retires;

(b) on his retirement, he receives, or is entitled to receive, a refund of contributions under section 56; and

(c) he again becomes an eligible member of the Defence Force but does not so become an eligible member within a period of 90 days after his retirement;

he may, by notice in writing given to CSC within a period of 90 days after he again becomes an eligible member, or within such further period as CSC, in special circumstances, allows, elect to have the whole or a specified part of any period which, before he again became an eligible member of the Defence Force, was a period of effective service taken into account as a period of qualifying service under this Act.

(2) Where a member of the scheme makes an election under subsection (1):

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(a) he shall pay an additional contribution to the Commonwealth under this section of an amount equal to 5.5% of the amount of pay that would have been payable to him in respect of the period to which the election relates if the annual rate of pay applicable to him in respect of that period had been the annual rate of pay applicable to him at the time when he again became an eligible member of the Defence Force;

(b) he shall, if he was paid a payment of a prescribed kind (being a payment of, or in the nature of, a gratuity or bounty) under legislation relating to the conditions of service of members of the Defence Force, in respect of the period to which the election relates, pay to the Commonwealth an amount equal to the amount of that payment; and

(c) upon his death or retirement, the period to which the election relates shall, for the purposes of this Act, be deemed to be a period of effective service in relation to him.

(3) This section does not apply in relation to a person who is taken to have retired under section 5B.

65 Application of sections 63 and 64 to benefit under subsection 32(2)

A reference in section 63 or 64 to a refund of contributions under section 56 shall be read as including a reference to benefit paid to a member of the scheme under subsection 32(2) to the extent that that benefit consists of a refund of contributions.

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Part IX—Preservation of rights of certain members of the scheme

Division 1—Preliminary

66 Interpretation

(1) In this Part, unless the contrary intention appears:

employment means employment by the terms of which persons employed in that employment are required to give the whole of their time to the duties of their employment.

life policy has the same meaning as in the *Life Insurance Act 1995*.

owner of a life policy has the same meaning as in the *Life Insurance Act 1995*.

rules, in relation to a superannuation scheme, means the rules governing the operation of the scheme, whether contained in a law or in a trust deed or other instrument.

(2) For the purposes of this Part, the membership by a person of a House of the Parliament of the Commonwealth or of a State shall be treated as if it were employment of the person by the Commonwealth or by that State, as the case may be.

(2A) For the purposes of this Part, the membership by a person of the Legislative Assembly of the Northern Territory or a legislative or advisory body for another Territory prescribed for the purposes of section 7 of the *Defence (Parliamentary Candidates) Act 1969-1974* shall be treated as if it were employment of the person by the Commonwealth.

(3) A reference in this Part to a superannuation scheme shall be read as a reference to a superannuation or retirement scheme, however established, and, unless the contrary intention appears, shall be

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read as including a reference to the previous benefits scheme or to the benefits scheme constituted by this Act.

(4) For the purposes of this Part, a benefit payable to or in respect of a member under a superannuation scheme shall not be taken to have been based partly on contributions under the scheme by the employer by reason only that the benefit included interest upon contributions made under the scheme by the member.

(5) A person in respect of whom benefits are applicable under a superannuation scheme by reason of his being employed in any employment, whether or not he has made contributions under the scheme, shall be deemed to be a member of the superannuation scheme.

67 Variation of determinations by CSC

Where, in pursuance of this Part, CSC has power to make a determination in relation to a matter, the power shall be construed as including a power, exercisable in the like manner and subject to the like conditions (if any), to vary a determination so made.

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Division 2—Contributing members who have preserved rights from previous employment

68 Transfer value payable in respect of previous employment

(1) In this Division:

(a) a reference, in relation to a contributing member, to a transfer value payable to or in respect of the member under a superannuation scheme applicable in relation to any employment in which he was employed at any time before the date on which he became an eligible member of the Defence Force is a reference to a benefit by way of a lump sum payable to or in respect of the member under that scheme upon the termination of the employment otherwise than on the ground of invalidity or of physical or mental incapacity to perform the duties of the employment, being a benefit that was based wholly upon contributions under that scheme by the employer or was based partly upon such contributions and partly upon contributions under the scheme by the member; and

(b) a reference to the amount of a transfer value to which paragraph (a) applies does not include a reference to any part of the lump sum that was based upon contributions by the member that were of a similar nature to contributions under the *Superannuation Act 1922*, or that Act as amended and in force from time to time, for reserve units of pension or to supplementary contributions under the Superannuation Act.

(2) If, after a transfer value became payable to or in respect of a person under a superannuation scheme, an amount equal to the whole or any part of that transfer value was paid to a person administering another superannuation scheme (not being the benefits scheme constituted by this Act):

(a) where the whole of the transfer value was so paid—that transfer value shall be disregarded for the purposes of this Division; or

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(b) where part of the transfer value was so paid—the amount of that transfer value shall be deemed, for the purposes of this Division, to be reduced by the amount so paid.

(3) Subject to subsection (4), a transfer value shall be deemed, for the purposes of this Division, to have become payable in respect of a person under a superannuation scheme upon the termination of any employment if, upon the termination of that employment, the person was the owner of a life policy, or was entitled to have the rights of the owner of a life policy assigned to him or her, being a policy the premiums for which were, while the person was employed in that employment, paid in whole or in part by the person's employer, and, in that case, the surrender value of the policy as at the date of the termination of the employment shall be taken to be the amount of the transfer value.

(4) Where a transfer value is, by virtue of subsection (3), to be deemed, for the purposes of this Division, to have become payable in respect of a person upon the termination of any employment by reason that, upon the termination of that employment, the person was the owner of a life policy, or was entitled to have the rights of the owner of a life policy assigned to him or her, a transfer value shall not be deemed, for those purposes, to have become payable in respect of the person upon the termination of any previous employment by reason that, upon the termination of that previous employment, the person was the owner of that policy, or was entitled to have the rights of the owner of that policy assigned to him or her.

69 Members who pay transfer values to Commonwealth

(1) Where a person who becomes a contributing member has, at any time before becoming a member, been in employment within or outside Australia upon the termination of which a transfer value became payable to or in respect of him on or after 25 May 1971 under a superannuation scheme applicable in relation to that employment, and:

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(a) the member, by notice in writing given to CSC within a period of 90 days after the date on which he becomes a contributing member, or within such further period as CSC, in special circumstances, allows, elects to pay to the Commonwealth an amount equal to the amount of that transfer value or, if 2 or more transfer values became payable, the sum of the amounts of those transfer values; and

(b) that amount is, before the expiration of that period of 90 days or that further period, as the case may be, paid to the Commonwealth;

the succeeding provisions of this section have effect.

(2) So much of the amount paid to the Commonwealth as is equal to the employee component of the transfer value, or to the sum of the employee components of the transfer values, as the case may be, shall, to the extent to which it was payable to the member upon the termination of the employment in respect of which the transfer value or any of the transfer values became payable irrespective of whether he engaged in further employment, be deemed, for the purposes of this Act, to be contributions paid to the Commonwealth by the member under section 17.

(3) The total period of effective service of a contributing member referred to in subsection (1) of this section, or of a contributing member in respect of whom a transfer value was paid to the Board under section 82R of the previous Act, shall be deemed to be increased by such period as is determined by CSC, having regard to such matters as are prescribed for the purposes of this section, as being appropriate.

(4) If:

(a) under the superannuation scheme applicable in relation to any previous employment of the person, the whole or any part of the employer component of a transfer value was payable to the contributing member upon the termination of that employment irrespective of whether he engaged in further employment; and

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(b) the contributing member ceases to be an eligible member of the Defence Force and benefit is payable to him under subsection 32(2) or under section 48 or 56;

so much of the amount paid to the Commonwealth under subsection (1) as is equal to the employer component of the transfer value or to that part of that employer component, as the case may be, is payable to or in respect of him.

(5) For the purposes of this section:

(a) the employee component of a transfer value payable to or in respect of a person is the part (if any) of that transfer value that was based upon contributions made by the person; and

(b) the employer component of a transfer value payable to or in respect of a person is the part of that transfer value that was based upon contributions by an employer or employers of the person.

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Division 3—Preservation of rights of contributing members ceasing to be eligible members of the Defence Force

70 Interpretation

(1) For the purposes of this Division, the prescribed period in relation to a person who has ceased to be an eligible member of the Defence Force is:

(a) in the case of a person other than a person in relation to whom paragraph (b) applies—the period of 90 days immediately after he ceased to be an eligible member of the Defence Force; or

(b) in the case of a person who ceased to be an eligible member of the Defence Force by reason of his having been transferred to a Reserve or discharged from the Defence Force, or having had his continuous full-time service terminated, under the Defence (Parliamentary Candidates) Act for the purpose of enabling him to become a candidate for election as a member of a House of the Parliament of Australia or of a State or of the Legislative Assembly of the Northern Territory or a legislative or advisory body for another Territory prescribed for the purposes of section 7 of the *Defence (Parliamentary Candidates) Act 1969-1974* and was a candidate at the election:

(i) if he is elected—the period commencing immediately after he ceased to be an eligible member and ending on the date on which he becomes a member of that House, Assembly or body, as the case may be; or

(ii) if he is not elected—the period of 90 days immediately after the date that is the declared date in relation to the election under the Defence (Parliamentary Candidates) Act.

(2) For the purposes of this Division but subject to subsection (3):

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(a) a period in respect of which invalidity pay was payable to a person under this Act and immediately before the commencement of which he was a contributing member, or a period in respect of which a pension, being invalidity benefit, was payable to a person under the previous Act and immediately before the commencement of which he was a contributor under that Act, shall be treated as if it had been a period during which he was a contributing member or a contributor, as the case may be;

(b) a period in respect of which invalidity pay was payable to a person under this Act and immediately before the commencement of which he was employed in public employment, or a period in respect of which a pension, being invalidity benefit, was payable to a person under the previous Act and immediately before the commencement of which he was employed in public employment, shall be treated as if it had been a period during which he was employed in public employment; and

(c) a period in respect of which a pension was payable to a person under a superannuation scheme applicable in respect of any employment of the person (other than the previous benefits scheme or the benefits scheme constituted by this Act) by reason of his invalidity or of his physical or mental incapacity to perform the duties of that employment and immediately before the commencement of which he was employed in that employment shall be treated as if it had been a period in which he was employed in that employment.

(3) Where invalidity pay was not payable to a person under this Act during any period by reason only of section 35, or a pension, being invalidity benefit, was not payable to a person under the previous Act during any period by reason only of section 53A or section 53B of the previous Act, that period shall be treated for the purposes of this Division as if it had been a period during which that invalidity pay or pension, as the case may be, was payable but:

(a) if the person was, immediately before the invalidity pay or the pension, as the case may be, became payable, a contributing member for the purposes of this Act or a

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contributor under the previous Act—shall not, in the calculation of the period during which he was employed in eligible employment, be treated as if it had been a period of effective service in relation to him under this Act; or

(b) if the person was, immediately before the invalidity pay or the pension, as the case may be, became payable, employed in public employment—shall not, in the calculation of the period during which he was employed in public employment, be treated as if it had been a period during which he was employed in public employment.

71 Eligible employment

(1) For the purposes of the application of this Division in relation to a person who has ceased to be an eligible member of the Defence Force, the following periods of employment of the person are periods of eligible employment:

(a) a period of employment during which the person was a member of the Defence Force and which is a period of effective service in relation to him under this Act;

(b) subject to subsections (2) and (3), a period of employment of the person by the Commonwealth, by the Northern Territory, by the Administration of a Territory (including the Northern Territory) or by an authority or other body, being:

(i) a body corporate incorporated for a public purpose by an Act, regulations made under an Act or a law of a Territory;

(ii) an authority or body, not being a body corporate, established for a public purpose by, or in accordance with, the provisions of an Act, regulations made under an Act or a law of a Territory;

(iii) a company or other body corporate incorporated under a law of the Commonwealth or of a State or Territory, being a body corporate in which the Commonwealth has a controlling interest; or

(iv) an authority or body established, whether by or in accordance with the provisions of an Act, regulations

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made under an Act, or a law of a Territory or otherwise and whether a body corporate or not, being an authority or body which is financed in whole or in substantial part, either directly or indirectly, by moneys provided by the Commonwealth;

(c) subject to subsection (4), a period of employment (whether within or outside Australia) of the person during which he was a member of a superannuation scheme under which, upon the termination of that employment:

(i) a lump sum that was based, or included an amount that was based, wholly upon contributions by the employer under the scheme or partly upon such contributions and partly upon contributions under the scheme by the person was paid to or in respect of the person;

(ii) a pension that was based, or included an amount that was based, wholly upon contributions by the employer under the scheme or partly upon such contributions and partly upon contributions under the scheme by the person became payable to the person; or

(iii) benefits, whether by way of a lump sum or of a pension, that were payable at a future time and were based, or included an amount or amounts based, wholly upon contributions by the employer under the scheme or partly upon such contributions and partly upon contributions under the scheme by the person became applicable in respect of the person;

(d) subject to subsection (5), a period of employment of the person during which he was a contributor to a State Fund within the meaning of Part VII of the *Superannuation Act 1922* or that Act as amended and in force from time to time (in this section referred to as the ***superseded Superannuation Act***) or a contributor to a Public Service Superannuation Fund within the meaning of Part VIII of the superseded Superannuation Act; and

(e) subject to subsection (5A), a period of employment of the person during which he was a contributor to a State

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Superannuation Fund within the meaning of section 132 of the Superannuation Act.

(2) Paragraph (1)(b) does not apply in relation to a period of employment of a person that terminated before 25 May 1971 unless, before the expiration of a period of 90 days after the termination of that employment, the person became employed in other employment that is eligible employment.

(3) Paragraph (1)(b) does not apply in relation to a period of employment of a person that terminated after 25 May 1971 unless:

(a) a lump sum that was based, or included an amount based, wholly upon contributions by his employer under a superannuation scheme applicable in relation to that employment or partly upon such contributions and partly upon contributions under the scheme by the person was paid to the Defence Forces Retirement Benefits Board in accordance with subsection 82R(1) of the previous Act or was paid to the Commonwealth under paragraph 69(1)(b) of this Act;

(b) a pension that was based, or included an amount based, wholly upon contributions by his employer under a superannuation scheme applicable in relation to that employment or partly upon such contributions and partly upon contributions under the scheme by the person became payable to him;

(c) benefits, whether by way of a lump sum or of a pension, that were payable at a future time and were based, or included an amount or amounts based, wholly upon contributions by his employer under a superannuation scheme applicable in relation to that employment or partly upon such contributions and partly upon contributions under the scheme by the person became applicable in respect of him; or

(d) before the expiration of a period of 90 days after the termination of that employment he became employed in other employment that was eligible employment and:

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(i) a lump sum of a kind referred to in paragraph (a) did not become payable to or in respect of him in relation to the first-mentioned employment and he was not entitled to make an election or choice, exercise an option or do any other act or thing as a result of which such a lump sum would have become so payable;

(ii) a pension of a kind referred to in paragraph (b) did not become payable to or in respect of him in relation to the first-mentioned employment and he was not entitled to make an election or choice, exercise an option or do any other act or thing as a result of which such a pension would have become so payable; and

(iii) benefits of a kind referred to in paragraph (c) did not become applicable in respect of him in relation to the first-mentioned employment and he was not entitled to make an election or choice, exercise an option or do any other act or thing as a result of which any such benefits would have become so applicable.

(4) Paragraph (1)(c) does not apply in relation to a period of employment of a person by reason of the operation of subparagraph (1)(c)(i) unless an amount equal to the lump sum referred to in that subparagraph, or an amount that included an amount based upon that lump sum, was paid to the Defence Forces Retirement Benefits Board in accordance with subsection 82R(1) of the previous Act or was paid to the Commonwealth under paragraph 69(1)(b) of this Act.

(5) Paragraph (1)(d) does not apply in relation to a period of employment of a person unless:

(a) an amount equal to the amount refunded to the person from a Fund referred to in that paragraph was, in accordance with Part VII or Part VIII of the superseded Superannuation Act, paid to the Superannuation Board established under that Act; and

(b) a period of employment during which the person was a contributor to the Superannuation Fund established under that Act that immediately followed the period of the

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first-mentioned employment was a period of eligible employment.

(5A) Paragraph (1)(e) does not apply in relation to a period of employment of a person unless:

(a) an amount equal to the amount refunded to the person from the State Superannuation Fund was, in accordance with section 132 of the Superannuation Act, paid to the Commissioner for Superannuation; and

(b) the person became an eligible employee immediately after, or within a period of 3 months after, his period of employment during which he was a contributor to the State Superannuation Fund.

(6) A reference in paragraph (1)(b), (c), (d) or (e) to a period of employment of a person does not include a reference to a period of employment in relation to which a paragraph of subsection (1) that precedes that paragraph applies.

72 Public employment

(1) The Finance Minister may, by instrument under his hand published in the *Gazette*, declare employment, whether within or outside Australia, by a person, or by persons included in a class of persons, specified in the instrument to be public employment for the purposes of this Division.

(2) A declaration under subsection (1) shall come into force on the day on which the instrument of declaration is published in the *Gazette* or, if an earlier day (not being earlier than 1 October 1972) is specified in the instrument as the day on which the declaration is to be deemed to have come into force, shall be deemed to have come into force on that earlier day.

(3) A person shall be taken, for the purposes of this Division, to have been employed in public employment at a particular time if, and only if, the employer by whom he was employed at that time was a person, or was a person included in a class of persons, specified in

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a declaration by the Finance Minister under this section that was, or is to be deemed to have been, in force at that time.

(4) Where any public employment in which a person is employed terminates and, within a period of 90 days after the date of the termination, he again becomes employed in public employment, he shall, for the purposes of this Division, be deemed not to have ceased, by reason of the termination, to be employed in public employment but, in ascertaining the period in which he has been employed in public employment, any period between the termination of a period in which he was employed in public employment and the commencement of a further period in which he was employed in public employment shall not be treated as itself being a period in which he was employed in public employment.

73 Eligible superannuation schemes

(1) The Finance Minister may, by instrument under his hand published in the *Gazette*, declare a superannuation scheme specified in the instrument to be an eligible superannuation scheme for the purposes of this Division.

(2) A declaration under subsection (1) shall come into force on the day on which the instrument of declaration is published in the *Gazette* or, if an earlier day (not being earlier than 1 October 1972) is specified in the instrument as the day on which the declaration is to be deemed to have come into force, shall be deemed to have come into force on that earlier day.

(3) A person shall be taken, for the purposes of this Division, to have been a member of an eligible superannuation scheme at a particular time if, and only if, he was at that time a member of a superannuation scheme in respect of which a declaration by the Finance Minister under this section was, or is to be deemed to have been, in force at that time.

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74 Transfer value

(1) Subject to subsections (2) and (3), a reference in this Division to a transfer value payable in accordance with this Division to or in respect of a person who has ceased to be an eligible member of the Defence Force is a reference to such amount as is determined by CSC, having regard to such matters as are prescribed for the purposes of this section, to be the value of the rights of the person under this Act as at the time immediately before he ceased to be such a member.

(2) If:

(a) the surcharge debt account of a person who ceases to be an eligible member of the Defence Force is in debit when a transfer value becomes payable to the person; and

(b) the person makes an election under subsection 124(1);

the amount of the transfer value is the difference between:

(c) the amount determined by CSC as provided in subsection (1); and

(d) the person's surcharge deduction amount.

(3) If:

(a) the surcharge debt account of a person who ceases to be an eligible member of the Defence Force is in debit when a transfer value becomes payable to the person; and

(b) the person does not make an election under subsection 124(1); and

(c) the person's surcharge deduction amount exceeds the amount of the person's productivity superannuation benefit;

the amount of the transfer value is the difference between:

(d) the amount determined by CSC as provided in subsection (1); and

(e) the amount by which the person's surcharge deduction amount exceeds the amount of the person's productivity superannuation benefit.

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Section 75

75 Deferred benefits

(1) The deferred benefits applicable under this Division to or in respect of a person who is a member of the scheme shall, subject to this Division, be benefits of the same nature, and payable in the same circumstances, on the same conditions and, upon his death, to the same persons (if any), as the benefits that would have been payable to or in respect of the person under this Act if he had not retired from the Defence Force and had not made the election by virtue of which the deferred benefits became applicable to or in respect of him and:

(a) if paragraph 78(2)(a) applies to him:

(i) he had retired from the Defence Force on whichever date specified in subparagraph (i) or (ii) of that paragraph is applicable to him; and

(ii) in a case where his total period of effective service is less than 20 years—his total period of such service were 20 years;

(b) if paragraph 78(2)(b) applies in relation to him—he had, immediately before his death become entitled, by virtue of this subsection, to retirement pay under section 23;

(c) if paragraph 78(2)(c) applies to him—he had retired from the Defence Force on whichever date specified in that paragraph is applicable to him;

(d) if paragraph 78(2)(d) applies to him—he had retired from the Defence Force on the date specified in that paragraph;

(e) if paragraph 78(2)(e) applies to him and his total period of effective service is less than 15 years—his total period of such service were 15 years; and

(f) if paragraph 78(2)(e) applies to him and he had not attained the age of 60 years before he ceased to be an eligible member of the Defence Force—he had retired from the Defence Force on the date on which he attained that age.

(2) Subject to subsection 78(3), no period after the actual retirement of a member of the scheme from the Defence Force shall, by virtue of

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the operation of subsection (1), be treated as a period of effective service in relation to him for the purposes of this Act.

(3) Where, by virtue of the operation of subsection (1), a person becomes entitled to retirement pay under section 23, then, subject to subsection (3A), the rate at which that retirement pay is payable to the person is, in lieu of the rate provided for in that section, an amount per annum equal to 1.75% of the product of the number of complete years included in his total period of effective service and the amount of the annual rate of pay applicable to him immediately before his actual retirement.

(3A) If:

(a) because of subsection (1), a person becomes entitled to retirement pay under section 23; and

(b) the person's surcharge deduction amount exceeds the amount of the person's productivity superannuation benefit;

the rate at which retirement pay is payable to the person is (instead of the rate provided for in section 23) an 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 subsection (3).

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

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

Note: For ***productivity superannuation benefit*** see subsection 3(1).

(4) Where:

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(a) by virtue of subsection (1), a person becomes entitled to retirement pay under section 23;
(b) he is a person to whom paragraph 78(2)(d) applies;
(c) he was, immediately before his actual retirement, an officer; and
(d) at the time he becomes entitled to retirement pay, he had not attained the age that, having regard to his rank immediately before his actual retirement, is his notional retiring age as ascertained under Schedule 2;

then, subject to subsection (4A), the rate at which retirement pay is payable to him is the amount per annum that, but for this subsection, would be payable under subsection (3) of this section, reduced by 3% of that amount for each year included in the period equal to the difference between his age on his birthday last preceding the time when he becomes entitled to retirement pay and his notional retiring age as ascertained under Schedule 2.

(4A) If:
(a) because of subsection (1), a person becomes entitled to retirement pay under section 23; and
(b) paragraphs 4(b), (c) and (d) apply to a person; and
(c) the person's surcharge deduction amount exceeds the amount of the person's productivity superannuation benefit;

the rate at which retirement pay is payable to the person 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 subsection (4).

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

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

(5) Where, upon the death of a person to whom paragraph 78(2)(b) applies, a person becomes entitled, by virtue of subsection (1) of this section, to spouse pension under section 39 or to child's pension under subsection 42(3) or subsection 43(3), then, for the purposes of section 39, subsection 42(3) or subsection 43(3), as the case may be, the person in relation to whom paragraph 78(2)(b) applies shall be deemed to have been in receipt of retirement pay immediately before his death at such rate as would have been payable to him if he were a person to whom paragraph 78(2)(a) applies.

(6) A reference in this section to the actual retirement of a person from the Defence Force, being a person who has made an election under section 76, shall be read as a reference to the retirement by virtue of which, upon his ceasing to be an eligible member of the Defence Force, he made the election.

76 Election that Division apply

(1) Subject to this section, where, a person, being a contributing member, ceases to be an eligible member of the Defence Force and is not entitled to a pension benefit, or is not a person to whom section 36 applies, he may by notice in writing given to CSC within a period of 21 days after the date on which he ceases to be such a member, elect that this Division shall apply in relation to him.

(2) CSC may, if it is satisfied that there are special circumstances that justify it in so doing, extend the period for the making of an election under subsection (1).

(3) If a person makes an election for the purposes of this section within a period of 30 days before he ceases to be an eligible member of the Defence Force, the election has effect as if it had been made on the day after he ceased to be a member.

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(4) Subject to subsection (5), an election under this section (except where the election is made by virtue of subsection 128(2)) is of no effect unless the person who made the election gives notice in writing to CSC within a period of 21 days, or within such further period as CSC, in special circumstances, allows, after the expiration of the period that is the prescribed period in relation to him:

(a) stating whether he was employed at the expiration of that prescribed period and, if so, the name and address of his employer; and

(b) stating whether he was at the expiration of that prescribed period a member of a superannuation scheme applicable in relation to that employment and, if so, specifying the scheme concerned.

(5) Subsection (4) does not apply if the person who made the election dies before the expiration of the period for the giving of a notice by him under that subsection and without having given such a notice.

(6) This section does not apply in relation to a person to whom section 54 of the Superannuation Act applied immediately before he ceased to be an eligible member of the Defence Force and who, at the time when he ceased to be such a member, had not ceased to be an eligible employee for the purposes of that Act.

(7) This section does not apply in relation to a contributing member who:

(a) ceases to be an eligible member of the Defence Force by reason of his having been retired on the ground of invalidity or of physical or mental incapacity to perform his duties; and

(b) is not entitled to invalidity benefit by reason of the operation of section 27 or 29.

77 Circumstances in which transfer value payable

(1) Subject to this Division, where:

(a) a person makes an election under section 76; and

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(b) within the period that is the prescribed period in relation to him, he:

(i) becomes employed in public employment; and

(ii) becomes a member of an eligible superannuation scheme that is applicable in relation to persons employed in that employment;

a transfer value in respect of the person is payable to the person administering that scheme.

(2) This section does not apply in relation to a person unless the person administering the superannuation scheme agrees to accept the transfer value and, under the rules of the scheme, the first-mentioned person will become entitled to retirement benefits under the scheme based upon the transfer value.

78 Circumstances in which person entitled to deferred benefits

(1) Where a person makes an election under section 76 and:

(a) he becomes employed in public employment within the period that is the prescribed period in relation to him but a transfer value is not payable in respect of him under section 77; or

(b) he does not become employed in public employment within that period but at the time when he ceased to be an eligible member of the Defence Force he had completed 20 years' eligible employment or had attained the age of 60 years;

deferred benefits are, subject to this Division, applicable in respect of the person.

(2) Deferred benefits that are applicable in respect of a person are payable as from the day immediately following the earliest of the following dates:

(a) where CSC is satisfied that the person has, by reason of invalidity or of physical or mental incapacity, become incapable (otherwise than temporarily), at a time when he was employed in public employment or after he had completed 20 years' eligible employment, of performing

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duties of a kind suitable to be performed by him having regard to the duties performed by him in the employment in which he was employed immediately before he ceased to be an eligible member of the Defence Force and the duties performed by him in employment (if any) in which he was employed after he ceased to be such a member:

(i) if, at the date that CSC is satisfied was the date on which he became so incapable, he was not employed in public employment—that date; or

(ii) if, at that date, he was employed in public employment—the date on which that public employment terminates;

(b) if, at the date of his death, he was employed in public employment or had completed 20 years' eligible employment—that date;

(c) the date on which he attains the age that was the retiring age for the rank held by him immediately before he ceased to be an eligible member of the Defence Force or the date on which his total period of effective service amounts to 15 years, whichever is the later;

(d) the date on which his total period of effective service amounts to 20 years; and

(e) the date on which he attains the age of 60 years or, if he attained that age before he ceased to be an eligible member of the Defence Force, the date on which he ceased to be such a member.

(3) For the purposes of subsection (2), the total period of effective service of a person shall be deemed to be the aggregate of:

(a) his total period of effective service as defined in section 3;

(b) any period of public employment in which the person was employed after he ceased to be an eligible member of the Defence Force; and

(c) any period (not being a period of public employment referred to in paragraph (b)) occurring after the person ceased or last ceased to be an eligible member of the Defence Force and

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after the person has completed 20 years' eligible employment.

(4) For the purposes of subsections (2) and (3), a period of public employment in which a person became employed after he ceased to be an eligible member of the Defence Force shall be deemed to be a period of eligible employment of the person.

(5) Deferred benefits are not payable unless:

(a) an application in writing has been made to CSC requesting payment of the benefits; and

(b) the applicant has furnished to CSC any information that is necessary to enable CSC to determine whether the benefits are payable.

(6) Subject to subsections (7) and (8), where a person in relation to whom paragraph (1)(a) applies and who, at the time when he ceased to be an eligible member of the Defence Force, had not completed 20 years' eligible employment ceases to be employed in public employment and the deferred benefits applicable in respect of him have not become payable under subsection (2), then, those deferred benefits cease to be applicable in respect of him but this Act has effect in relation to him as if the election by him under section 76 had not been made.

(7) If a deferred benefit by way of a pension benefit has previously become payable to a person referred to in subsection (6) by reason of paragraph (2)(a), any amount that, but for this subsection, would be payable to the person by reason of subsection (6) is payable only to the extent to which it exceeds the sum of the amounts previously paid to him.

(8) Subsection (6) does not apply in relation to a person if the sum of the periods of eligible employment in which the person has been employed and the period of public employment in which he was employed after he ceased to be an eligible member of the Defence Force is not less than 20 years.

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79 Person who is entitled to rights under this Division not entitled to other retirement benefits

(1) Subject to subsection 78(6), where either of sections 77 or 78 applies in relation to a person, any benefit that, but for this Division, would be payable to or in respect of him by reason of his having ceased to be an eligible member of the Defence Force is not payable except where that benefit is payable by virtue of the operation of this Division.

(2) Where:

(a) a payment of benefit has been made under subsection 32(2) or section 56 to a person who has ceased to be an eligible member of the Defence Force; and

(b) after the payment was made, the person makes an election under section 76;

the election does not have any effect unless an amount equal to the amount of the payment is paid to the Commonwealth within 7 days after the date of the election or within such further period as CSC, in special circumstances, allows.

80 Certain former contributing members not entitled to benefits under this Division

(1) Where a person (other than a person who, at the time when he ceased to be an eligible member of the Defence Force, had completed 20 years' eligible employment) who has made an election under section 76 is not employed in public employment at the expiration of the period that is the prescribed period in relation to him, then, unless:

(a) the sum of the periods of eligible employment in which he has been employed and the period of public employment (if any) in which he was employed during that prescribed period was not less than 20 years;

(b) he died or attained the age of 60 years within that prescribed period at a time when he was employed in public employment;

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(c) within that prescribed period he attained, at a time when he was employed in public employment, the age that was the retiring age for the rank held by him immediately before he ceased to be an eligible member of the Defence Force or, having attained that age, his total period of effective service, within the meaning of subsection 78(3), is not less than 15 years;

(d) he attained the age of 60 years before he ceased to be an eligible member of the Defence Force; or

(e) CSC is satisfied that:

(i) he ceased within that prescribed period, by reason of invalidity or of physical or mental incapacity, to be employed in public employment; and

(ii) that invalidity or incapacity rendered him incapable (otherwise than temporarily) of performing duties that are of a kind suitable to be performed by him having regard to the duties performed by him in employment (if any) in which he was employed immediately before he ceased to be an eligible member of the Defence Force and the duties performed by him in employment in which he was employed after he ceased to be such a member;

this Act has effect as if the election had not been made.

(2) Where:

(a) a person who ceases to be an eligible member of the Defence Force is, at the expiration of the period that is the prescribed period in relation to him, employed in public employment in respect of which a superannuation scheme (other than an eligible superannuation scheme) is applicable and is, at the expiration of that period, a member of that scheme;

(b) the person has made an election under section 76; and

(c) if a payment of benefit were made to him under subsection 32(2) or section 56, he would, under the rules of the superannuation scheme applicable in respect of that employment, be entitled to pay the amount of the payment of benefit or a part of that amount to the person administering

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that scheme in exchange for benefits under that scheme, being benefits that CSC is satisfied are appropriate in the circumstances;

this Act has effect as if the election had not been made.

81 Member who resigned to contest an election

Where a person who has made an election under section 76 is, for the purposes of Part VII, a re-instated candidate to whom that Part applies or is, by virtue of section 55, to be deemed to have continued to have been an eligible member of the Defence Force, this Act has effect as if the election had not been made.

82 Provisions applicable to certain recipient members restored to health

(1) Where deferred benefit is payable to a person by reason that CSC is satisfied as to the matters referred to in paragraph 78(2)(a):

(a) section 34 does not apply in relation to him but subsection (2) of this section has effect in relation to him;

(b) section 35 applies in relation to him as if he were a recipient member in receipt of invalidity pay; and

(c) if, in the application of section 35 in relation to him, any retirement pay payable to him is suspended under that section:

(i) the deferred benefit does not cease to be applicable in relation to him by reason only of the suspension; and

(ii) the suspension ceases to have effect if the deferred benefit becomes payable under paragraph 78(2)(b), (c) or (d).

(2) If CSC is satisfied that the health of the person has become so restored as to enable him to perform duties of a kind suitable to be performed by him, having regard to the duties performed by him immediately before he ceased to be an eligible member of the Defence Force and the duties performed by him in employment (if any) in which he was employed after he ceased to be such a

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member, CSC may cancel his retirement pay but the deferred benefit does not cease to be applicable in relation to him by reason only of the cancellation.

(3) The retirement pay payable to a person shall not be cancelled under subsection (2) at a time when the retirement pay would have become payable, apart from the operation of paragraph 78(2)(a).

83 Person entitled to deferred benefits again becoming a member etc. before benefits payable

If a person to whom deferred benefits are applicable again becomes an eligible member of the Defence Force, or becomes a member of the MSB scheme, before the deferred benefits become payable by virtue of subsection 78(2), the deferred benefits cease to be applicable in respect of him.

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Division 4—Miscellaneous

84 Special provisions affecting former members of certain superannuation schemes

(1) Where:

(a) a person who becomes a contributing member was, at any time, a member of:

(i) a superannuation scheme conducted in accordance with the system established in the United Kingdom of Great Britain and Northern Ireland and known as the Federated Superannuation System for Universities; or

(ii) a superannuation scheme that was, or is to be deemed to have been, an approved superannuation scheme for the purposes of this section at the time when the person became a contributing member;

(b) by virtue of subsection 68(3) a transfer value is to be deemed, for the purposes of Division 2 of this Part to have become payable in respect of the person under that superannuation scheme because the person was the owner of a life policy or policies of a kind referred to in that subsection, or because the person was entitled to have the rights of the owner of such a policy or policies assigned to him or her; and

(c) the person has elected in accordance with paragraph 69(1)(a) to pay to the Commonwealth an amount equal to the amount of that transfer value;

the succeeding provisions of this section have effect.

(2) The person may, within the period within which he was entitled to make an election under paragraph 69(1)(a), elect that this section shall have effect in relation to him and, where an election is so made, section 69 has effect as if the amount referred to in paragraph (1)(b) of that section, or, if part only of that amount relates to the transfer value referred to in subsection (1) of this section, that part of that amount, had been paid to the Commonwealth in accordance with paragraph 69(1)(b).

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(3) An election under subsection (2) does not have effect unless the person causes to be assigned to the Commonwealth, within the period referred to in that subsection, the life policy or life policies referred to in paragraph (1)(b) free from any mortgages, charges or other encumbrances.

(4) If:

(a) the annual rate of pay of the person upon his becoming an eligible member of the Defence Force was greater than the annual remuneration that was payable to him in respect of the last employment in which he was employed and to which a superannuation scheme referred to in subsection (1) related; or

(b) after the person became such a member his annual rate of pay is increased;

CSC, on behalf of the Commonwealth shall, so far as is practicable, arrange for the amount or amounts of any life policy or life policies assigned to the Commonwealth by the person to be increased by the amount or amounts by which the life policy or life policies would have been increased under that scheme, or for the issue of such additional life policy or life policies in relation to the person as would have been issued under that scheme, if he had remained a member of that scheme and had been in receipt of an annual remuneration equal to that annual rate of pay or that increased annual rate of pay, as the case may be.

(5) So much of any premium payable in respect of any life policy assigned to the Commonwealth in accordance with subsection (3) or issued in accordance with subsection (4) as relates to a period during which the person is an eligible member of the Defence Force shall be paid by the Commonwealth out of the Consolidated Revenue Fund, which is appropriated accordingly.

(6) Where the amount of the fortnightly contributions payable by the person to the Commonwealth at any time is less than the amount that is the prescribed amount in relation to him at that time, he is liable to pay to the Commonwealth an amount equal to the difference.

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(7) Where the person (in this subsection referred to as ***the former contributor***) makes an election under subsection 76(1) and, within the period that is the prescribed period in relation to him for the purposes of Division 3, he becomes employed in employment in respect of which a superannuation scheme referred to in paragraph (1)(a) is applicable and becomes a member of that scheme, then:

(a) subject to paragraph (c), Division 3 has effect in relation to him as if that employment were public employment and that superannuation scheme were an eligible superannuation scheme;

(b) the Commonwealth shall assign to the person administering that superannuation scheme the life policies assigned by the former contributor to the Commonwealth in accordance with subsection (3) or issued in relation to the former contributor in accordance with subsection (4);

(c) the assignment of those life policies in accordance with paragraph (b) shall be deemed to constitute the payment of a transfer value in respect of the former contributor in accordance with section 77 to the person administering that scheme; and

(d) the Commonwealth shall, if the amount of any fortnightly contribution paid by the former contributor under this Act to the Commonwealth exceeded the amount that was the prescribed amount in relation to him at the time of the payment, pay to him an amount equal to the amount of the excess.

(8) If the life policy or life policies assigned by the person to the Commonwealth in accordance with subsection (3) or issued in relation to him in accordance with subsection (4) becomes or become payable at or before the time when he ceases to be an eligible member of the Defence Force, the Commonwealth shall pay to the person or, if he is dead, to his personal representatives:

(a) an amount equal to so much of any premiums paid by the person in respect of the policy or policies as related to, or to any part of, the period that commenced on the date on which the transfer value referred to in paragraph (1)(b) is to be

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deemed for the purposes of Division 2 to have become payable in respect of him and ended on the date on which he became a contributing member; and

(b) an amount equal to the sum of any amounts paid by the person to the Commonwealth under subsection (6).

(9) Where the person ceases to be a contributing member and neither subsection (7) or subsection (8) applies in relation to him, then, if the election made by him under subsection (2) has not been revoked in accordance with subsection (10):

(a) CSC on behalf of the Commonwealth shall arrange for the surrender of the life policy or life policies assigned by him to the Commonwealth in accordance with subsection (3) or issued in relation to him in accordance with subsection (4); and

(b) the Commonwealth shall pay to the person:

(i) in the case of a policy or policies assigned by the person to the Commonwealth in accordance with subsection (3) an amount equal to so much of any premiums paid by the person in respect of the policy or policies as related to, or to any part of, the period that commenced on the date on which the transfer value referred to in paragraph (1)(b) is to be deemed for the purposes of Division 2 to have become payable in respect of him and ended on the date on which he became a contributing member; and

(ii) an amount equal to the sum of any amounts paid by him to the Commonwealth under subsection (6).

(10) A person who has made an election under subsection (2) may, if:

(a) he has not ceased to be a contributing member; and

(b) the life policy or life policies assigned by him to the Commonwealth in accordance with subsection (3) or issued in relation to him in accordance with subsection (4) has not or have not become payable;

by notice in writing to CSC revoke the election and, in that case, paragraphs (9)(a) and (b) have effect in relation to him.

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(11) The Finance Minister may, by instrument under his hand published in the *Gazette*, declare a superannuation scheme, being a scheme under which benefits are provided for by means of life policies, to be an approved superannuation scheme for the purposes of this section.

(12) A declaration under subsection (11) shall come into force on the day on which the instrument of declaration is published in the *Gazette* or, if an earlier day (not being earlier than 1 October 1972) is specified in the instrument as the day on which the declaration is to be deemed to have come into force, shall be deemed to have come into force on that earlier day.

(13) A superannuation scheme shall be taken, for the purposes of this section, to have been an approved superannuation scheme at a particular time if a declaration by the Finance Minister under subsection (11) in respect of that scheme was, or is to be deemed to have been, in force at that time.

(14) In this section, ***the prescribed amount***, in relation to a person in relation to any time, is an amount ascertained in accordance with the formula $\frac{ab}{26c}$, where:

a is the amount of the annual premium, or the sum of the amounts of the annual premiums, applicable at that time under the life policy or life policies assigned by him to the Commonwealth in accordance with subsection (3) or issued in relation to him in accordance with subsection (4).

b is a number equal to the number of whole dollars included in the amount, or sum of the amounts, payable by him under the superannuation scheme referred to in subsection (4) immediately before he ceased to be a member of that scheme in respect of the annual premium or the annual premiums under the life policy or life policies assigned by him to the Commonwealth in accordance with subsection (3).

c is a number equal to the number of whole dollars included in the amount of the annual premium, or the sum of the amounts of the annual premiums, applicable under the life policy or life policies

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assigned by him to the Commonwealth in accordance with subsection (3) immediately before he ceased to be a member of the superannuation scheme referred to in subsection (4).

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Part X—Contributors under previous benefits scheme etc.

85 Interpretation

(1) In this Part, unless the contrary intention appears:

Fund means the Defence Forces Retirement Benefits Fund.

period of previous contributory qualifying service, in relation to an existing contributor, means a period equal to the sum of:

(a) any periods of service of the existing contributor before 1 October 1972 in respect of which, before that day, the existing contributor had contributed or was liable to contribute under the previous legislation, other than:

(i) any period that under the regulations is not to be taken into account for the purposes of this paragraph;

(ii) in a case where the existing contributor had, whether before or after that day, received or become entitled to receive, a refund of the contributions paid by the existing contributor under the previous legislation in respect of a period—that period; or

(iii) in a case where the existing contributor had, before that day, retired and did not, without a break in continuity of service, again become a member of the Defence Force on continuous full-time service—any other period of service before the existing contributor so retired or last retired; and

(b) any other periods of service before 1 October 1972 that would have been periods of effective service applicable to him under this Act if this Act had come into operation on the day on which he first became a member of the Defence Force serving on continuous full-time service, other than such a period that, under regulations made for the purposes of this

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definition, is not to be taken into account for the purposes of this paragraph.

period of previous non-contributory qualifying service, in relation to a member of the scheme, means a period that the member has, under section 89 or 93, elected to have taken into account as a period of qualifying service for the purposes of this Act.

post-1959 contributor means an existing contributor who is not a pre-1959 contributor.

pre-1959 contributor means a person who is an existing contributor for the purposes of this Act and who was also an existing contributor as defined by subsection 38(1) of the *Defence Forces Retirement Benefits Act 1959*, but does not include a person in relation to whom regulation 5 or regulation 7 of the Defence Forces Retirement Benefits (Existing Contributors) Regulations, or regulation 6 of the Defence Forces Retirement Benefits (Prescribed Contributors) Regulations, apply or have applied.

transitional period means the period commencing on the date of commencement of the scheme, and ending immediately before the day on which this Act receives the Royal Assent.

(2) For the purposes of this Part, the aggregate pay of an existing contributor, in respect of, or in respect of a part of, his period of previous contributory qualifying service, is such amount as is ascertained by CSC, in accordance with the regulations, as the amount that, for the purposes of this Part, is to be treated as the amount of aggregate pay received by him in respect of that period or of that part of that period, as the case may be.

86 Refund of previous contributions

(1) Where the amount of previous contributions of an existing contributor exceeds an amount equal to 5.5% of the amount of his aggregate pay in respect of his period of previous contributory qualifying service, he is entitled to a refund of so much of the previous contributions as is equal to the amount of the excess.

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(2) The amount of any refund to which a person is entitled under subsection (1) shall be paid by the Commonwealth.

87 Additional contribution by certain pre-1959 contributors

(1) This section applies to an existing contributor:

(a) who is a pre-1959 contributor;

(b) the amount of whose previous contributions is less than 5.5% of the amount of his aggregate pay in respect of his period of previous contributory qualifying service; and

(c) who (not being an existing contributor to whom, immediately before 1 October 1972, Part VIB of the previous Act applied) was not, immediately before that date, or who (being an existing contributor to whom, immediately before that date, Part VIB of the previous Act applied) was not, immediately before his retirement prior to his becoming a person to whom that Part applied:

(i) a contributor for maximum additional basic pension for the purposes of Part III of the *Defence Forces Retirement Benefits Act 1959-1968*;

(ii) a contributor for maximum additional basic pension for the purposes of Part IV of the *Defence Forces Retirement Benefits Act 1962-1963*; or

(iii) a contributor for maximum additional basic pension for the purposes of Part IV of the *Defence Forces Retirement Benefits Act 1963-1968*;

or who, whether or not he was a contributor of a kind referred to in subparagraph (i), (ii) or (iii), made an election not to increase his contributions under section 61A or 61B of the *Defence Forces Retirement Benefits Act 1963-1968*, or of that Act as amended and in force from time to time.

(2) In subsection (3), a reference to the period of reduced contributions of a contributor to whom this section applies shall be read as a reference to that part of his period of previous contributory qualifying service as occurred after the time that is the time from which, by reason of his being an existing contributor of the kind

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referred to in paragraph (1)(c), he commenced to make contributions to the Fund at a rate less than the rate that would otherwise have applied to him.

(3) Where an amount equal to 5.5% of the amount of aggregate pay of an existing contributor to whom this section applies in respect of his period of reduced contributions exceeds the amount of his previous contributions made in respect of that period, he shall pay an additional contribution to the Commonwealth under this section of such amount, not exceeding the amount of the excess, as CSC determines as being appropriate in the circumstances.

87A Additional contributions by certain persons purchasing service under section 27 of the previous Act

(1) This section applies to an existing contributor:

(a) who had, before 1 October 1972, elected under section 27 of the previous Act to have a period of service taken into account as service for pension under that Act;

(b) who had not, before that date, paid, under that section, an amount equal to the lesser of the amount of the contributions determined by the Defence Forces Retirement Benefits Board to be payable by him in respect to that period and an amount equal to 5.5% of his aggregate pay in respect of that period; and

(c) the amount of whose previous contributions is less than 5.5% of the amount of his aggregate pay in respect of his period of previous contributory qualifying service.

(2) An existing contributor to whom this section applies:

(a) shall pay an additional contribution to the Commonwealth under this section of such an amount, not exceeding the difference between the amount (if any) paid by him under section 27 of the previous Act and the amount first mentioned in paragraph (1)(b), as CSC determines as being appropriate in the circumstances; and

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(b) shall not be required to make any further payments under section 27 of the previous Act in relation to the period to which the election under that section relates.

88 Contribution equal to deferred contributions under previous Act

(1) Where:

(a) under an agreement entered into under section 78 or section 79 of the *Defence Forces Retirement Benefits Act 1959*, or of that Act as amended and in force from time to time; or

(b) under section 79A of that Act, or of that Act as amended and in force from time to time, or under section 44, 45, 46 or 47 of the *Defence Forces Retirement Benefits Act 1962*, or of that Act as amended and in force from time to time or under section 54, 55, 56 or 57 of the *Defence Forces Retirement Benefits Act 1963*, or of that Act as amended and in force from time to time;

payment of any contributions or contribution, or of part thereof, payable by a pre-1959 contributor has been deferred, there is payable to the Commonwealth by him a contribution under this Act equal to the amount of the deferred contributions or contribution, or the part thereof, and compound interest at the rate of 5% per annum upon that amount, and he is not otherwise liable to make any payment in respect of the deferred contribution or contributions.

(2) For the purposes of this Act, a contribution paid under this section, other than such part of that contribution as consists of interest, shall, for the purposes of this Act, be deemed to be a contribution made under the previous legislation.

89 Purchase of previous non-contributory service

(1) Subject to this section, where an eligible member of the Defence Force, not being an existing contributor, had, before 1 October 1972, served as a member of the Defence Force on continuous full-time service for a period of not less than one year, he may, by

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notice in writing given to CSC within a period of 90 days after the date upon which this Act receives the Royal Assent or of the date on which he first became an eligible member of the Defence Force, whichever last occurs, or within such further period as CSC, in special circumstances, allows, elect to have that period of service, or such part of that period as he specifies in the election, taken into account as qualifying service under this Act.

(2) Subject to this section, where an eligible member of the Defence Force, being an existing contributor, had, before 1 October 1972:

(a) served as a member of the Defence Force on continuous full-time service for a period of not less than one year, being a period that is not, or is not included in, a period of previous contributory qualifying service of the member; or

(b) served as a member of the Defence Force on continuous full-time service for a period of less than one year, being a period that is not, or is not included in, a period of previous contributory qualifying service of the member but which is continuous with such a period;

he may, by notice in writing given to CSC, within a period of 90 days after the day on which this Act receives the Royal Assent, or within such further period as CSC, in special circumstances, allows, elect to have the period during which he so served, or such part of that period as he specifies in the election, taken into account as qualifying service under this Act.

(3) An eligible member of the Defence Force is not entitled to make an election under subsection (1) or (2) in respect of any period which, if this Act had come into operation on the day on which he first became a member of the Defence Force, would have been a period of non-effective service in relation to him.

(4) Where, under subsection (1) or subsection (2), an eligible member of the Defence Force has elected to have a period of service before 1 October 1972 taken into account as qualifying service under this Act, he shall pay an additional contribution to the Commonwealth under this section, which shall be:

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(a) if he is an existing contributor and he has served continuously as a member of the Defence Force from the commencement of the period to which the election relates until 1 October 1972 and became a contributor under the previous Act upon the termination of the period to which the election relates—an amount equal to 5.5% of the amount of pay that CSC determines would have been the pay received by him in respect of the period to which the election relates if, from time to time during that period, his rate of pay had been the maximum rate of pay payable to persons of the rank, branch and group that was from time to time applicable to him during that period, or such other rate of pay as CSC determines as being appropriate in the circumstances; and

(b) in any other case—an amount equal to 5.5% of the amount of pay that would have been payable to him in respect of the period to which the election relates if, at all times during that period, his annual rate of pay had been the annual rate of pay applicable to him at the time when he became an eligible member of the Defence Force or such other annual rate of pay as CSC approves in the circumstances.

(5) A person is not entitled to make an election under this section in respect of any period in respect of which he is entitled to make an election under section 93.

(6) An election under subsection (1) or (2) is of no effect unless, at the time when the election is made, or, within such period after that time as CSC, in special circumstances, allows, there is refunded to the Commonwealth, or arrangements satisfactory to CSC are made for there to be refunded to the Commonwealth, any payment of a prescribed kind (being a payment of, or in the nature of, a gratuity or bounty, deferred pay or a part of a pension) paid to the person under the previous legislation, or under legislation relating to conditions of service of members of the Defence Force, in respect of the period to which the election relates.

(6A) Where a person who makes an election under this section had credited to him, in respect of the period to which the election relates, under the previous legislation or under legislation relating

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to the conditions of service of members of the Defence Force, any deferred pay or interest thereon, that credit shall, by force of this section, be deemed to have been cancelled.

(7) In this section, ***eligible member of the Defence Force*** includes a person who, at any time during the transitional period, was an eligible member of the Defence Force.

90 Elections to become contributors by certain members

(1) This section applies:

(a) to a person who, under section 78 of the *Defence Forces Retirement Benefits Act 1948*, elected not to become a contributor under that Act and who, immediately before 1 October 1972, was a member of the Defence Force on continuous full-time service (being service that is continuous with his service at the time he became entitled to make the election) but who was not a contributor under the previous Act;

(b) to a person who, under section 80 of the *Defence Forces Retirement Benefits Act 1948*, or of that Act as amended and in force at any time before the commencement of the *Defence Forces Retirement Benefits Act 1959*, elected not to become a contributor under that Act, or that Act as amended, and who, immediately before 1 October 1972, was a member of the Defence Force on continuous full-time service (being service that is continuous with his service at the time he became entitled to make the election) but was not a contributor under the previous Act;

(c) to a person who, under section 82C of the *Defence Forces Retirement Benefits Act 1948-1950*, elected not to become a contributor under that Act and who, immediately before 1 October 1972, was a member of the Defence Force on continuous full-time service (being service that is continuous with her service at the time she became entitled to make the election) but was not a contributor under the previous Act;

(d) to a person who, under subsection 83(6) of the *Defence Forces Retirement Benefits Act 1959*, or of that Act as

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amended and in force from time to time, elected not to be a contributor under the *Defence Forces Retirement Benefits Act 1948-1959* and who, immediately before 1 October 1972, was a member of the Defence Force on continuous full-time service (being service that is continuous with her service at the time she became entitled to make the election) but was not a contributor under the previous Act.

(2) A person to whom this section applies and who, but for this subsection, would, on 1 October 1972, be an eligible member of the Defence Force, shall be deemed not to be an eligible member of the Defence Force in respect of any period commencing on that date unless, by notice in writing given to CSC within a period of 90 days after the day on which this Act receives the Royal Assent, or within such further period as CSC, in special circumstances, allows, the person elects to be treated as an eligible member of the Defence Force.

(3) Where a person referred to in paragraph (1)(a) makes an election under subsection (2):

(a) he is not entitled to receive, or to have credited to him, any deferred pay or interest thereon to which he would, but for this subsection, have been entitled after 30 September 1972 by virtue of his service as a member of the Defence Force on continuous full-time service on or after that date;

(b) he shall repay to the Commonwealth the amount of any deferred pay or interest thereon that he has received in respect of such service; and

(c) any credit to him of deferred pay in respect of such service shall be cancelled.

91 Certain periods of previous service deemed to be periods of effective service

(1) Subject to subsection (1A), a period that is a period of previous contributory qualifying service in relation to an existing contributor, or a period that is a period of previous non-contributory qualifying service in relation to a member of the

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scheme, shall, for the purposes of this Act, be deemed to be a period of effective service in relation to him.

(1A) Where a period would be a period of effective service in relation to a person by virtue of section 63 or 64 if the person were to make an election under subsection 63(1) or 64(1), as the case requires, and comply with subsection 63(2) or 64(2), as the case requires, subsection (1) of this section does not apply in relation to the period unless the period is also a period of effective service in relation to the person by virtue of section 63 or 64.

(2) Where deferred benefits are applicable in respect of a person under section 82ZB of the previous Act but, before those benefits become payable, he became or becomes an eligible member of the Defence Force and those benefits cease to be applicable to him by virtue of section 82ZG of the previous Act, such period as CSC determines in relation to his service before 1 October 1972 shall be deemed to be a period of effective service in relation to him.

92 Application of Act in respect of elections under subsection 4A(3B) of previous Act

(1) Where:

(a) by virtue of an election made by an existing contributor under subsection 4A(3B) of the previous Act, his category number for the purposes of that Act was, immediately before 1 October 1972, a number higher than the number that it would otherwise have been; and

(b) the amount per annum that, but for this section, would be the annual rate of pay applicable to him under this Act on 1 October 1972 is less than the annual pay (in this section referred to as ***his previous notional pay***) by reference to which the category number applicable to him immediately before that date was ascertained;

his annual rate of pay on 1 October 1972 shall, for the purposes of this Act, be deemed to have been the rate of his previous notional pay and shall continue to be deemed to be that rate until his annual rate of pay as ascertained in accordance with the definition of

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annual rate of pay in subsection 3(1) becomes greater than the rate of his previous notional pay.

(2) Where, during the transitional period, an existing contributor made on election in accordance with subsection 4A(3B) of the previous Act by reason of a change in his category, that election shall, for the purposes of this Act, be deemed to have been an election made under subsection 20(1) of this Act to have the change in his annual rate of pay that occurred at the time of the change in category disregarded for the purposes of this Act.

(3) Where:

(a) an existing contributor who becomes entitled to make an election under subsection 20(1) of this Act in relation to a change in his annual rate of pay does not make an election; and

(b) his category number for the purposes of the previous Act immediately before 1 October 1972 was a number greater than the number that would have been his category number at the time of the change in his annual rate of pay if the provisions of the previous Act relating to contributions had continued to apply to him;

he is entitled, in addition to a refund of contributions under subsection 20(2) of this Act to a refund, payable by the Commonwealth, of such part of his previous contributions as CSC, having regard to the provisions of subsection 4A(3B) and section 35 of the previous Act, determines as being appropriate in the circumstances, and the amount of any previous contributions in respect of which he becomes so entitled to a refund shall, for the purposes of this Act, be deemed not to have been paid by him.

93 Election by member of scheme to whom subsection 69(1A) of previous Act applies

(1) This section applies to a member of the scheme, not being an existing contributor, who:

(a) immediately before 1 October 1972, was a member of the Defence Force on continuous full-time service and was in

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receipt of a pension under the previous legislation a part of which had been cancelled under subsection 69(1A) of the previous Act; and

(b) on 1 October 1972, without having ceased to be on continuous full-time service, became an eligible member of the Defence Force for the purposes of this Act.

(2) A member of the scheme to whom this section applies may, by notice in writing given to CSC within a period of 90 days after the day on which this Act receives the Royal Assent, or within such further period as CSC, in special circumstances, allows, elect to have the period, or a specified part of the period, during which a part of his pension under the previous legislation was cancelled by force of subsection 69(1A) of the previous Act taken into account as qualifying service under this Act.

(3) Where a member of the scheme has elected under subsection (2) to have a period taken into account as qualifying service under this Act, he shall pay an additional contribution to the Commonwealth under this section of an amount equal to 5.5% of the amount of pay that CSC determines would have been the pay received by him in respect of that period if, from time to time during that period, his rate of pay had been the maximum rate of pay payable to persons of the rank, branch and group that was from time to time applicable to him during that period.

(4) A member of the scheme who is required to pay an additional contribution to the Commonwealth under subsection (3) shall also pay to the Commonwealth an amount equal to the amount of pension paid to him under the previous Act in respect of the period to which the election made by him under subsection (2) relates.

94 Death of contributing member after 60 days absence without leave

In the application of section 49 in relation to a member of the scheme who died during the transitional period, the reference in subsection (2) of that section to the period of 6 months after the death of a person shall be read as a reference to that period or the

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period of 90 days after this Act receives the Royal Assent, whichever last expires.

95 Pre-existing invalidity or incapacity

(1) Where a contributing member who became a member of the scheme during the transitional period, or an existing contributor, has been, during the transitional period, or is, after the transitional period, retired on the ground of invalidity or of physical or mental incapacity to perform his duties, then, in the application to him of subsection 28(1), the reference in that subsection to a period of one year after a contributing member became a contributing member shall be read as a reference to the period of 90 days after the person became a contributing member or, if he was an existing contributor, to the period of 90 days after he became a contributor under the previous Act.

(2) Where the Board was, during the transitional period, satisfied with respect to a member of the Defence Force who, within a period of 90 days after becoming a contributing member, or, if he was an existing contributor, within a period of 90 days after becoming a contributor for the purposes of the previous Act, was retired on the ground of invalidity or of physical or mental incapacity to perform his duties, that:

(a) the invalidity or incapacity was caused, or was substantially contributed to, by a physical or mental condition that existed at the time he became a contributing member or a contributor, as the case may be; and

(b) the condition was not aggravated, or was not materially aggravated, by his service as a member of the Defence Force;

he is not entitled, and shall be deemed not to have become entitled, to invalidity benefit under this Act.

96 Invalidity classification

Where, during the transitional period, a contributing member (whether an existing contributor or not) retired and, on his retirement, became entitled to invalidity benefit under Part V, any

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classification of the person during the transitional period by the Board purporting to be under section 51 of the previous Act shall, for the purposes of this Act, be deemed to be a classification of the incapacity of the person by the Authority under section 30 of this Act, and any reclassification of the incapacity of a person during the transitional period by the Board purporting to be under section 53 of the previous Act shall, for the purposes of this Act, be deemed to be a reclassification of the person made by the Authority under section 34 of this Act.

97 Medical examination of member of scheme entitled to invalidity pay

Where, under section 53B of the previous Act, the Board, at any time during the transitional period, suspended a pension that, at that time, was payable to a member of the scheme, by reason that the person failed to comply with a notice given to him under section 53B of the previous Act, the suspension has effect, and shall be deemed to have had effect, for the purposes of this Act as if any invalidity pay to which the person is entitled under this Act had been suspended at that time by the Authority under section 35 of this Act, and the notice given by the Board shall, for the purposes of section 35 of this Act, be deemed to have been a notice given by the Authority under that section.

98 Incapacity due to wilful action

Where, during the transitional period, a contributing member (whether an existing contributor or not) retired on the ground of invalidity or of physical or mental incapacity to perform his duties and the invalidity or incapacity was, in the opinion of the Board, due to wilful action on his part for the purpose of obtaining pension under the previous Act, he is not entitled to invalidity benefit, and shall be deemed not to have become entitled to invalidity benefit, under this Act.

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Part XA—Pension increases

Division 1—Introduction

98AA Simplified outline of this Part

Certain pension benefits are indexed each 1 January and 1 July.

For pensioners aged under 55, the indexation is based on positive movements in the consumer price index.

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

(a) the consumer price index; and

(b) the pensioner and beneficiary living cost index;

with an adjustment if needed to ensure that affected pension benefits are increased by at least the percentage required to maintain a hypothetical pension at 27.7% of male total average weekly earnings.

98A Definitions

In this Part, unless the contrary intention appears:

55-plus percentage has the meaning given by step 7 of the method statement in subsection 98GB(2).

current indicative pension amount has the meaning given by step 4 of the method statement in subsection 98GB(2).

December quarter means the quarter ending on 31 December.

first quarter, in relation to a half-year, means:

(a) for a half-year beginning on 1 January in a year—the March quarter of the year; and

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(b) for a half-year beginning on 1 July in a year—the September quarter of the year.

half-year means a period of 6 months beginning on 1 January or 1 July in any year.

indicative pension amount has the meaning given by subsection 98GC(1).

June quarter means the quarter ending on 30 June.

LCI percentage (short for living cost index percentage) has the meaning given by section 98GD.

March quarter means the quarter ending on 31 March.

pension benefit includes a pension granted under section 43A or 44.

pensioner means a person to whom a pension benefit is payable.

prescribed half-year means the half-year commencing on 1 January 2002 or a subsequent half-year.

prescribed percentage has the meaning given by subsection 98B(3).

relevant rate has the meaning given by subsection 98B(4).

September quarter means the quarter ending on 30 September.

Statistician means the Australian Statistician.

98AB Substitutions and changes by Statistician

(1) Subject to subsection (2), if at any time (whether before or after the commencement of this Part) the Statistician publishes:

(a) an index number of the kind referred to in subsection 98B(3) or 98GD(1); or

(b) an amount of the kind referred to in subsection 98GE(2);

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in substitution for an index number or amount previously published by the Statistician, disregard the publication of the later index number or amount for the purposes of this Part.

(2) If at any time (whether before or after the commencement of this Part), the Statistician changes the index reference period for:

(a) the All Groups Consumer Price Index referred to in subsection 98B(3); or

(b) the All Groups Pensioner and Beneficiary Living Cost Index referred to in subsection 98GD(1);

then, for the purposes of applying this Part after the change takes place, have regard only to index numbers published in terms of the new index reference period.

(3) If at any time the Statistician changes the reference period for amounts of the kind referred to in subsection 98GE(2), then, for the purposes of applying this Part after the change takes place, have regard only to amounts published in terms of the new reference period.

98AC Rounding of percentages

If any of the following is or includes a fraction of one-tenth of 1%:

(a) the prescribed percentage;

(b) the LCI percentage;

(c) the 55-plus percentage;

then:

(d) disregard the fraction if it is less than half of one-tenth; and

(e) otherwise—treat the fraction as if it were one-tenth.

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Division 2—General provisions about pension increases

98AD Simplified outline of this Division

Certain pension benefits are indexed each 1 January and 1 July.

For pensioners aged under 55, the indexation is based on positive movements in the consumer price index.

For pensioners aged 55 or older, movements in the consumer price index are relevant, but they are only part of the indexation method.

For all pensioners, there are rules dealing with special cases including pension benefits that have only recently become payable and situations involving commutation of a portion of a pension benefit.

98B Increase in certain pensions

Increase

(1) Subject to this Part, a pensioner is entitled, at the commencement of a prescribed half-year, to an increase in the pensioner's relevant rate of pension benefit in relation to that half-year. The increase is worked out by using:

(a) if the pensioner is aged 55 or older at the commencement of the prescribed half-year—the 55-plus percentage; and

(b) otherwise—the prescribed percentage.

Increase by prescribed percentage

(2) The increase provided for by subsection (1), for a pensioner aged under 55 at the commencement of a prescribed half-year (the ***relevant prescribed half-year***), is the prescribed percentage of the pensioner's relevant rate of pension benefit in relation to the relevant prescribed half-year.

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Prescribed percentage

(3) Subject to subsection (3A), the ***prescribed percentage*** for a prescribed half-year is:

$$\frac{\text{First quarter CPI number} - \text{Base quarter CPI number}}{\text{Base quarter CPI number}} \times 100$$

where:

base quarter CPI number means the CPI number in respect of the March quarter or September quarter that:

(a) is before the first quarter of the half-year immediately before the prescribed half-year; and

(b) has the highest CPI number.

CPI number, in respect of a quarter, means the All Groups Consumer Price Index number that is the weighted average of the 8 capital cities and is published by the Statistician in respect of the quarter.

first quarter CPI number means the CPI number in respect of the first quarter of the half-year immediately before the prescribed half-year.

(3A) If the first quarter CPI number is equal to or less than the base quarter CPI number, then, for the relevant prescribed half-year:

(a) the prescribed percentage is taken to be 0%; and

(b) subsection (1) does not provide for an increase for a pensioner aged under 55 at the commencement of that half-year.

Relevant rate of pension benefit

(4) The ***relevant rate*** of a pensioner's pension benefit, in relation to a relevant prescribed half-year, is:

(a) in relation to a pensioner who is a recipient member to whom invalidity pay is payable—the rate at which invalidity pay was payable to the pensioner immediately before the

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commencement of the relevant prescribed half-year or, if a notional rate of invalidity pay is applicable to the pensioner in accordance with subsection (5) and the notional rate of invalidity pay so applicable immediately before the commencement of that half-year is lower than the rate at which invalidity pay was payable to the pensioner immediately before the commencement of that half-year, the notional rate of invalidity pay so applicable immediately before the commencement of that half-year;

(ab) in relation to a pensioner who is the spouse of a recipient member to whom, immediately before his death, invalidity pay was payable—a rate equal to five-eighths of the rate at which invalidity pay would have been payable to the deceased recipient member immediately before the commencement of the relevant prescribed half-year if he had not died or, if a notional rate of invalidity pay is applicable to the deceased recipient member in accordance with subsection (5) and the notional rate of invalidity pay so applicable immediately before the commencement of that half-year is lower than the rate at which invalidity pay would have been payable to the deceased recipient member before the commencement of that half-year if he had not died, a rate equal to five-eighths of the notional rate of invalidity pay so applicable immediately before the commencement of that half-year;

(ac) in relation to a pensioner who is the spouse of a person who, immediately before his death, was a contributing member—the rate at which pension benefit was payable to the pensioner immediately before the commencement of the relevant prescribed half-year;

(b) in relation to a pensioner who is a recipient member to whom retirement pay is payable—the rate at which retirement pay was payable to the pensioner immediately before the commencement of the relevant prescribed half-year or, if a notional rate of retirement pay is applicable to the pensioner in accordance with subsection (5) and the notional rate of retirement pay so applicable immediately before the commencement of that half-year is lower than the rate at

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which retirement pay was payable to the pensioner immediately before the commencement of that half-year, the notional rate of retirement pay so applicable immediately before the commencement of that half-year;

(c) in relation to a pensioner who is the spouse of a recipient member to whom, immediately before his death, retirement pay was payable—a rate equal to five-eighths of the rate at which retirement pay would have been payable to the deceased recipient member immediately before the commencement of the relevant prescribed half-year if he had not died or, if a notional rate of retirement pay is applicable to the deceased recipient member in accordance with subsection (5) and the notional rate of retirement pay so applicable immediately before the commencement of that half-year is lower than the rate at which retirement pay would have been payable to the deceased recipient member immediately before the commencement of that half-year if he had not died, a rate equal to five-eighths of the notional rate of retirement pay so applicable immediately before the commencement of that half-year;

(d) in relation to a pensioner to whom subsection 42(2) or 43(2) applies—the rate at which pension benefit referred to as additional pension was payable immediately before the commencement of the relevant prescribed half-year to the pensioner under whichever of those subsections is applicable;

(e) in relation to a pensioner to whom subsection 42(3) or 43(3) applies and who is the child of a deceased recipient member—a rate equal to such proportion as, under subsection (6), is the appropriate proportion of the rate at which retirement pay or invalidity pay, as the case may be, would, immediately before the commencement of the relevant prescribed half-year, have been payable to the deceased recipient member if he had not died or, if a notional rate of retirement pay or invalidity pay, as the case may be, is applicable to the deceased recipient member in accordance with subsection (5) and the notional rate of retirement pay or invalidity pay, as the case may be, so applicable immediately before the commencement of that half-year is lower than the

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rate at which retirement pay or invalidity pay, as the case may be, would have been payable to the deceased recipient member immediately before the commencement of that half-year if he had not died, a rate equal to such proportion as, under subsection (6), is the appropriate proportion of the notional rate of retirement pay or invalidity pay, as the case may be, so applicable immediately before the commencement of that half-year; or

(f) in relation to a pensioner to whom a pension benefit is payable under section 43A or 44—a rate determined by CSC, being the rate which, in the opinion of CSC, is the appropriate rate to be regarded as the relevant rate of pension in relation to the pensioner for the relevant prescribed half-year.

(4A) For the purposes of paragraphs (4)(ab), (c) and (e), in working out the rate at which invalidity pay or retirement pay would have been payable to a deceased recipient member, work out any increases to which the member would have been entitled on or after the later of:

(a) 1 July 2014; and

(b) the day of the member's death;

using the pensioner's age at the time of the increase (not the age that the member would have been at that time, had the member not died).

(5) For the purposes of subsection (4):

(aa) a notional rate of invalidity pay is applicable to a recipient member if and only if that member:

(i) is a member of the scheme who:

(A) was retired after the commencement of section 32A; and

(B) on his retirement, was classified as Class C under section 30; and

(ii) has not elected under section 32A to commute a portion of his invalidity pay equal to or greater than 4 times the amount per annum of the invalidity pay to which he was entitled upon his retirement;

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and the notional rate of invalidity pay applicable to the member at a particular time is the rate at which invalidity pay would have been payable to him at that time if he had immediately upon his retirement commuted a portion of his invalidity pay equal to 4 times the amount per annum of the invalidity pay to which he was entitled;

(ab) a notional rate of invalidity pay is applicable to a deceased recipient member if and only if that deceased member:

(i) was a member of the scheme who:

(A) was retired after the commencement of section 32A; and

(B) on his retirement, was classified as Class C under section 30; and

(ii) had not, before his death, elected under section 32A to commute a portion of his invalidity pay equal to or greater than 4 times the amount per annum of the invalidity pay to which he was entitled upon his retirement;

and the notional rate of invalidity pay applicable to the deceased member at a particular time is the rate at which invalidity pay would have been payable to him at that time if he had not died and if he had immediately upon his retirement commuted a portion of his invalidity pay equal to 4 times the amount per annum of the invalidity pay to which he was entitled;

(a) a notional rate of retirement pay is applicable to a recipient member if and only if that member has not elected under section 24 to commute a portion of his retirement pay equal to or greater than 4 times the amount per annum of the retirement pay to which he was entitled upon his retirement, and the notional rate of retirement pay applicable to the member at a particular time is the rate at which retirement pay would have been payable to him at that time if he had immediately upon his retirement commuted a portion of his retirement pay equal to 4 times the amount per annum of the retirement pay to which he was entitled; and

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(b) a notional rate of retirement pay is applicable to a deceased recipient member if and only if that deceased member had not, before his death, elected under section 24 to commute a portion of his retirement pay equal to or greater than 4 times the amount per annum of the retirement pay to which he was entitled upon his retirement and the notional rate of retirement pay applicable to the deceased member at a particular time is the rate at which retirement pay would have been payable to him at that time if he had not died and if he had immediately upon his retirement commuted a portion of his retirement pay equal to 4 times the amount per annum of the retirement pay to which he was entitled.

Increases in children's pensions

(5A) If the all groups consumer price index number for the weighted average of the 8 capital cities published by the Statistician in respect of the first quarter of the half-year immediately preceding a prescribed half-year exceeds the highest all groups consumer price index number for the weighted average of the 8 capital cities published by the Statistician in respect of the first quarter of any earlier half-year, not being a half-year earlier than the half-year that commenced on 1 July 1985, sections 42 and 43 have effect, in that prescribed half-year, as if:

(a) for the amount of $312 specified in subsections 42(2) and (3); and

(b) for the amount of $5,000 specified in subsections 43(2) and (3);

there were substituted, on the first day of that prescribed half-year, an amount calculated by adding to the existing amount the prescribed percentage of the existing amount.

(5B) For the purposes of the application of subsection (5A) to a provision specified in that subsection, the existing amount is:

(a) in relation to the prescribed half-year that commenced on 1 July 2001—the amount that was the existing amount in relation to that provision, as calculated under this section immediately before the commencement of item 14 of

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Schedule 3 to the *Superannuation Legislation Amendment (Indexation) Act 2001*; and

(b) in relation to any subsequent prescribed half-year—the amount that, because of a previous application or previous applications of subsection (5A), is taken to have been substituted, or last substituted, for the amount specified in that provision.

(6) For the purposes of subsection (4), the appropriate proportion is:

(a) in the case of a pension benefit payable under subsection 42(3)—one-sixth of five-eighths; and

(b) in the case of a pension benefit payable under subsection 43(3)—one-eighth of five-eighths.

Death of recipient member on 30 June or 31 December

(7) Where, by reason of the death of a recipient member on 30 June or 31 December (as the case requires) immediately preceding the commencement of a prescribed half-year, a pension benefit becomes payable, on the following day, to another person, that other person shall be entitled, at the commencement of that prescribed half-year, to such an increase in the rate of that pension benefit as he would have been entitled to had the pension benefit become payable to him on that 30 June or 31 December (as the case requires).

98C Application of increase to suspended pension benefits

Where a pension benefit would, but for its suspension under subsection 35(3), be payable to a person immediately before the commencement of a prescribed half-year, that pension benefit shall, for the purposes of this Part, be deemed to have been payable to that person immediately before the commencement of that prescribed half-year but any increase in the rate of that pension benefit by virtue of this Part does not take effect in respect of any part of that period of suspension.

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98D Adjustment of increase in case of certain pension benefits

(1) Where a person to whom pension benefit has become payable (whether or not it has become payable to the person by virtue of section 78) would, but for this section, be entitled to an increase in the rate at which the pension benefit was payable to the person immediately before the commencement of the prescribed half-year and:

(a) if the pension benefit became payable to the person otherwise than as a spouse or as an eligible child—the pension benefit became payable to the person during the half-year (in this section referred to as the ***preceding half-year***) immediately preceding the prescribed half-year;

(b) if the pension benefit became payable to the person as the spouse of a member of the scheme and pension benefit in accordance with that section was not payable to the member immediately before his death—the pension benefit became payable to the spouse during the preceding half-year;

(c) if the pension benefit became payable to the person as the spouse of a member of the scheme and pension benefit was payable to the member immediately preceding his death—the member's pension benefit became payable during the half-year;

(d) if the pension benefit became payable to the person as an eligible child and pension benefit was not payable to the member of the scheme in relation to whom the person is an eligible child—the pension benefit became payable to the child during the preceding half-year; and

(e) if the pension benefit became payable to the person as an eligible child and pension benefit was payable to a member of the scheme in relation to whom the person is an eligible child—the member's pension benefit became payable during the preceding half-year;

this section applies to the first-mentioned pension benefit.

(2) Where a pension benefit is, under section 43A or 44, payable to a person immediately before the commencement of a prescribed half-year:

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(a) in a case where the pension benefit became so payable by virtue of the retirement and death, during the preceding half-year, of a member of the scheme who was, at the time of his death, a recipient member—this section applies to the pension benefit as if it were a pension benefit payable to the person otherwise than as a spouse or as an eligible child from the day following the date of retirement of the member of the scheme;

(b) in a case where the pension benefit became so payable by virtue of the death, during the preceding half-year, of a member of the scheme who was, at the time of his death, a contributing member—this section applies to the pension benefit as if it were a pension benefit payable to the person otherwise than as a spouse or as an eligible child from the day following the date of death of the member of the scheme; or

(c) in any other case—this section does not apply to the pension benefit.

(3) If:

(a) the pension benefit;

(b) where paragraph (1)(c) applies—the pension benefit that was payable to the member of the scheme in relation to whom the person is a spouse; or

(c) where paragraph (1)(e) applies—the pension benefit that was payable to the member of the scheme in relation to whom the person was an eligible child;

became payable after 16 June or 16 December (as the case requires) in the preceding half-year the person is not entitled to the increase.

(4) If:

(a) the pension benefit;

(b) where paragraph (1)(c) applies—the pension benefit that was payable to the member of the scheme in relation to whom the person is a spouse; or

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(c) where paragraph (1)(e) applies—the pension benefit that was payable to the member of the scheme in relation to whom the person was an eligible child;

became payable on or before 16 June or 16 December (as the case requires) in the preceding half-year, the amount of the increase is so much only of the amount that, but for this section, would have been the amount of the increase as bears to that last-mentioned amount the same proportion as the number of months in the period that commenced on the day on which the pension benefit referred to in paragraph (a), (b) or (c) became payable and ended on 30 June or 31 December (as the case requires) in the preceding half-year bears to 6.

(5) If the period referred to in subsection (4) is less than 1 month, that period shall be treated as 1 month.

(6) If the period referred to in subsection (4) consists of a number of whole months and a part of a month:

(a) where the number of days in that part of that month is less than one-half of the number of days in that month—that part shall be disregarded; and

(b) where the number of days in that part of that month is not less than one-half of the number of days in that month—that part shall be treated as a whole month.

98E Date of payment of increases

Subject to sections 98F and 98G, an increase payable by virtue of this Part in the rate of a pension benefit that was, or is, under subsection 98B(7), to be treated as having been, payable to a person on 30 June or 31 December (as the case requires) in a half-year applies in relation to the instalment of pension benefit falling due on the first pension pay-day occurring after that day and in relation to all subsequent instalments.

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98F Rate of invalidity pay payable on reclassification during a prescribed half-year

(1) Where:

(a) a person to whom pension benefit, being invalidity pay, is payable, is reclassified under section 34 during a prescribed half-year; and

(b) the person became entitled at the commencement of that half-year to an increase under this Part in the rate at which the pension benefit was payable to him immediately before the commencement of that half-year;

the rate at which the pension benefit is payable to him on and after the date from which the reclassification has effect is the rate at which the pension benefit would have been payable to him at the commencement of that half-year if his classification, on and after the date on which he became entitled to the pension benefit, had been in accordance with the reclassification.

(3) Where:

(a) at the commencement of a prescribed half-year, a member of the scheme entitled to invalidity benefit was classified as Class C under section 30 (whether on retirement or because of a reclassification under section 34) but was not entitled to invalidity pay; and

(b) during the prescribed half-year the member is reclassified as Class A or Class B;

the rate at which pension benefit, being invalidity pay, is payable to the member on or after the day from which the reclassification has effect is the rate at which the benefit would be payable to the member on that day if, at all times during the period during which the member was classified as Class C, the member had been classified as Class A or Class B (as the case may be).

98G Commutation of pension benefits during a prescribed half-year

(1) Sections 24 and 32A do not authorize the commutation of a pension benefit in so far as the pension benefit has been increased by virtue of this Part.

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(2) Where:

(a) a portion of the pension benefit of a person is commuted during a prescribed half-year; and

(b) the person became entitled at the commencement of the half-year to an increase under this Part in the rate at which pension benefit was payable to him immediately before the commencement of that half-year;

the rate at which the pension benefit is payable to him on and after the date on which that portion of the pension benefit is so commuted is the rate at which the pension benefit would have been payable to him at the commencement of the half-year if:

(c) he had commuted that portion of his pension benefit on the date on which he became entitled to the pension benefit; and

(d) he had attained, on the date on which he became entitled to the pension benefit, the age that is his age on the date of commutation.

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Division 3—Increase for pensioners aged 55 or older

98GA Simplified outline of this Division

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

(a) the consumer price index (CPI); and

(b) the pensioner and beneficiary living cost index (LCI);

with an adjustment if needed to ensure that affected pension benefits are increased by at least the percentage required to maintain a hypothetical pension at 27.7% of male total average weekly earnings (MTAWE).

The hypothetical pension (called the indicative pension amount) is part of the method used to work out what the percentage increase should be (called the 55-plus percentage). The hypothetical pension does not represent the amount of any actual pension benefit, or the amount that any actual pension benefit should be. It is just a device to work out the percentage by which actual pension benefits should be increased.

Each 1 January and 1 July, the amount of the hypothetical pension, as indexed by the higher of CPI and LCI, is compared with what the amount of the hypothetical pension should be if it is to continue to be at least 27.7% of MTAWE. If the CPI/LCI result is higher than the MTAWE result, the 55-plus percentage is the higher of the percentage movements in CPI and LCI. If the MTAWE result is higher, the 55-plus percentage is the percentage increase needed to maintain the hypothetical pension at 27.7% of MTAWE.

Once the 55-plus percentage has been worked out, affected pension benefits are increased by that percentage.

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98GB Increase for pensioners aged 55 or older

Increase by 55-plus percentage

(1) The increase provided for by subsection 98B(1), for a pensioner aged 55 or older at the commencement of a prescribed half-year (the ***relevant prescribed half-year***), is the 55-plus percentage of the pensioner's relevant rate of pension benefit in relation to the relevant prescribed half-year.

55-plus percentage

(2) This is how to work out the 55-plus percentage for the relevant prescribed half-year:

Method statement

Step 1. Work out the prescribed percentage for the prescribed half-year.

Step 2. Use section 98GD to work out the LCI percentage for the prescribed half-year.

Step 3. Take the higher of the percentages worked out in steps 1 and 2. (If they are the same, use the step 1 percentage.) This is the CPI/LCI percentage.

Step 4. Take the indicative pension amount for the prescribed half-year immediately before the relevant prescribed half-year. This is the current indicative pension amount.

Step 5. Work out the amount that is the CPI/LCI percentage of the current indicative pension amount and add it to the current indicative pension amount. This is the CPI/LCI result.

Step 6. Use section 98GE to work out the MTAWE result.

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Step 7.	If the CPI/LCI result is the same as or higher than the MTAWE result, the 55-plus percentage for the prescribed half-year is the CPI/LCI percentage. If the CPI/LCI result is lower than the MTAWE result, the 55-plus percentage for the prescribed half-year is the percentage worked out under section 98GF.

Nil or negative change

(3) If, for a prescribed half-year:

(a) the CPI/LCI result in step 5 is the same as the current indicative pension amount; and

(b) the MTAWE result in step 6 is the same as or lower than the current indicative pension amount;

then, for that prescribed half-year:

(c) the 55-plus percentage is taken to be 0%; and

(d) subsection 98B(1) does not provide for an increase for a pensioner aged 55 or older at the commencement of that half-year.

98GC Indicative pension amount

(1) The ***indicative pension amount*** is:

(a) for the prescribed half-year commencing on 1 January 2014—$19,541.91; and

(b) for a later prescribed half-year—the amount most recently substituted in accordance with subsection (2).

Note: The indicative pension amount is a hypothetical amount that does not represent the amount of any actual pension benefit, or the amount that any actual pension benefit should be. It is just a device to work out the percentage by which actual pension benefits should be increased.

(2) The indicative pension amount for the prescribed half-year commencing on 1 January 2014 is to be increased, on 1 July 2014 and each later 1 January and 1 July, by the 55-plus percentage, as if the amount were a pension benefit payable to a pensioner aged 55

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or older on the day. Immediately after the increase, the increased amount is substituted as the indicative pension amount.

(3) The reference in subsection (2) to the increased amount includes a reference to an amount that, because the 55-plus percentage for a prescribed half-year was 0%, has not changed.

98GD LCI percentage

LCI percentage

(1) Subject to subsection (2), the ***LCI percentage*** for a prescribed half-year is:

$$\frac{\text{First quarter LCI number} - \text{Base quarter LCI number}}{\text{Base quarter LCI number}} \times 100$$

where:

base quarter LCI number means the LCI number in respect of the March quarter or September quarter that:

(a) is before the first quarter of the half-year immediately before the prescribed half-year; and

(b) has the highest LCI number.

first quarter LCI number means the LCI number in respect of the first quarter of the half-year immediately before the prescribed half-year.

LCI number, in respect of a quarter, is the All Groups Pensioner and Beneficiary Living Cost Index number that is the weighted average of the 8 capital cities and is published by the Statistician in respect of the quarter.

Nil or negative change

(2) If the first quarter LCI number is equal to or less than the base quarter LCI number, the LCI percentage for the prescribed half-year is taken to be 0%.

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98GE MTAWE result

(1) For the purposes of step 6 of the method statement in subsection 98GB(2), the ***MTAWE result*** is the amount that is 27.7% of the annualised MTAWE figure for the quarter for which the Statistician has most recently published the amount referred to in subsection (2).

(2) For the purposes of subsection (1), the ***annualised MTAWE figure***, for a quarter, is 52 times the amount set out for the reference period in the quarter under the headings "Average Weekly Earnings of Employees, Australia—Males—All males—Total earnings—ORIGINAL" in a document published by the Statistician entitled "Average Weekly Earnings, States and Australia".

(3) If at any time (whether before or after the commencement of this section), the Statistician publishes the amount referred to in subsection (2):

(a) under differently described headings (the ***new headings***); or

(b) in a document entitled otherwise than as described in subsection (2) (the ***new document***);

then the annualised MTAWE figure is to be calculated in accordance with subsection (2) as if the references to:

(c) "Average Weekly Earnings of Employees, Australia—Males—All males—Total earnings—ORIGINAL"; or

(d) "Average Weekly Earnings, States and Australia";

were references to either of the new headings or the new document, or both of them, as the case requires.

(4) For the purposes of this section, the ***reference period*** in a particular quarter is the period described by the Statistician as the pay period ending on or before a specified day that is the third Friday of the middle month of that quarter.

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98GF 55-plus percentage if MTAWE result is higher

For the purposes of step 7 of the method statement in subsection 98GB(2), if this section applies then the ***55-plus percentage***, for the prescribed half-year, is:

$$\frac{\text{MTAWE result} - \text{Current indicative pension amount}}{\text{Current indicative pension result}} \times 100$$

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Part XB—Provisions relating to certain members of the Defence Force

98H Interpretation

In this Part:

prescribed member means a person who was a member of the Defence Force at any time during the prescribed period.

prescribed period means the period that commenced on 1 October 1972 and ended on 13 May 1981.

98J Waiving of contributions

(1) Notwithstanding any other provision of this Act, where:

(a) throughout any part (in this subsection referred to as the ***relevant part***) of the prescribed period, a prescribed member held an acting or temporary rank; and

(b) the amount paid by, or deducted from the pay of, the member in respect of a contribution payable by him during the relevant part of the prescribed period was less than the amount of that contribution but was equal to the amount that would have been the amount of that contribution if the member had not held that acting or temporary rank;

that member or the personal representative of that member, as the case requires, is not liable to pay the difference between the amount of that contribution and the amount so paid or deducted unless:

(c) the member retired or died at the end of the relevant part of the prescribed period; and

(d) by reason of his retirement or death, a pension benefit, or a deferred benefit applicable under Division 3 of Part IX, became payable during the prescribed period.

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(2) In ascertaining, for the purposes of this Act, the amount of a refund of contributions or the amount of a lump sum required to be calculated by reference to contributions, the amount of a contribution a part of which, by virtue of subsection (1), a member, or the personal representative of a member, is not liable to pay shall be taken to be reduced by the amount of that part.

(3) Where:

(a) after the commencement of this section, a prescribed member, or the personal representative of a prescribed member, who, during the prescribed period, held an acting or temporary rank, is liable to pay an amount to the Commonwealth in respect of contributions that were payable by the member when he held that rank by reason that the amounts that were paid, or deducted, in respect of those contributions were calculated by reference to the contributions that would have been payable if the member had not held that rank;

(b) a benefit has become payable to or in respect of that member, being:

(i) invalidity pay payable to a member classified as Class A or Class B under section 30;

(ii) a spouse pension under section 38;

(iii) a child's pension under subsection 42(2) or 43(2); or

(iv) a deferred benefit applicable under Division 3 of Part IX that is of the same nature, and payable in the same circumstances, as a pension referred to in subparagraph (i), (ii) or (iii); and

(c) but for this subsection, the amount of the liability referred to in paragraph (a) would exceed the amount that was payable to or in respect of the member during the prescribed period in respect of benefits referred to in paragraph (b) but was not paid during that period;

the amount of the liability referred to in paragraph (a) is reduced by the excess.

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98K Variation of pension benefits

(1) Subject to subsection (3) but notwithstanding any other provision of this Act, where a prescribed member:

(a) retired during the prescribed period; and

(b) throughout a period that ended immediately before his retirement, held an acting or temporary rank;

the rate of any pension benefit payable, after 13 May 1981, to, or in respect of, that member shall be reduced by the difference between:

(c) the amount that, but for this section and subsections 24(3) and 32A(4), would be the amount per annum of the benefit; and

(d) the amount that, but for this section and those subsections, would have been the amount per annum of the benefit if, immediately before the retirement of the member, he had not held that acting or temporary rank.

(2) Subject to subsection (3) but notwithstanding any other provision of this Act, where a prescribed member:

(a) died during the prescribed period before retirement; and

(b) throughout a period that ended immediately before his death, held an acting or temporary rank;

the rate of any widow's pension or child's pension payable, after 13 May 1981, in respect of that member shall be reduced by the difference between:

(c) the amount that, but for this section, would be the amount per annum of that pension; and

(d) the amount that, but for this section, would have been the amount per annum of that pension if, immediately before the death of the member, he had not held that acting or temporary rank.

(3) Subsections (1) and (2) do not apply in relation to:

(a) a rate of pension benefit that has been calculated by reference to another rate of pension benefit that has been reduced in accordance with either of those subsections; or

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(b) a rate of pension benefit that has been reduced in accordance with either of those subsections and increased in accordance with Part XA.

(4) In this section, ***pension benefit*** includes a deferred benefit applicable under Division 3 of Part IX.

98L Commutation of retirement pay and invalidity pay

(1) Notwithstanding any other provision of this Act, where a prescribed member:

(a) retired during the prescribed period;

(b) throughout a period that ended immediately before his retirement, held an acting or temporary rank; and

(c) has made:

(i) an election under section 24 in respect of retirement pay; or

(ii) an election under section 32A in respect of invalidity pay;

the member may make:

(d) a further election under section 24 in respect of retirement pay; or

(e) a further election under section 32A in respect of invalidity pay;

as the case may be, before 1 September 1982.

(2) For the purposes of this Act, where a prescribed member who has made:

(a) an election or elections under section 24 in respect of retirement pay; or

(b) an election or elections under section 32A in respect of invalidity pay;

makes a further election under section 24 or 32A, as the case may be, that he would not have been entitled to make but for subsection (1), that further election shall, notwithstanding subsections 24(4) and 32A(6), as the case may be, be deemed to

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have taken effect on the day on which that first-mentioned election or the earliest of those first-mentioned elections took effect.

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Part XI—Review of decisions by CSC

Division 1—Review of decisions by CSC

99 Review of decisions of CSC

(2) A person who is affected by a decision of CSC and is dissatisfied with the decision may, by notice in writing given to CSC, within a period of 30 days after the date on which the decision first comes to the notice of the person, or within such further period as CSC allows, request CSC to reconsider the decision.

(3) There shall be set out in the request the ground on which the request is made.

(4) After receiving a request for reconsideration of a decision, CSC must:

(a) refer the decision to the Defence Force Case Assessment Panel for the Panel to make recommendations to CSC in relation to the decision; or

(b) refer the decision to the Defence Force Case Assessment Panel for the Panel to reconsider the decision; or

(c) reconsider the decision itself.

(4A) If CSC reconsiders a decision, it may:

(a) confirm the decision; or

(b) vary the decision; or

(c) set aside the decision and substitute a new decision.

(5) CSC shall, by notice in writing to the person who made the request, inform the person of the result of its reconsideration of the decision.

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Division 2—Defence Force Case Assessment Panel

100 Establishment

CSC must establish the Defence Force Case Assessment Panel.

101 Members

(1) The Panel comprises:

(a) a director of CSC nominated by the Chief of the Defence Force under the *Governance of Australian Government Superannuation Schemes Act 2011*, as determined by CSC; and

(b) a person nominated, in writing, by the Chief of the Air Force; and

(c) a person nominated, in writing, by the Chief of the Army; and

(d) a person nominated, in writing, by the Chief of the Navy; and

(e) up to 2 other persons, as determined by CSC.

(2) The director of CSC determined by CSC under paragraph (1)(a) is to be the Chair of the Panel.

102 Functions

(1) The functions of the Panel are to review any decision referred to it under this Part or Part 5 of the *Australian Defence Force Cover Act 2015* and:

(a) if CSC has delegated its powers to reconsider the decision to the Panel—to confirm, vary, substitute or set aside the decision; or

(b) if CSC has delegated to the Panel any of CSC's powers in relation to the decision (other than the power to reconsider the decision)—to exercise those powers; or

(c) in any other case—to make recommendations to CSC in relation to the decision.

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Note 1: Paragraph (c)—see section 106.

Note 2: Part 5 of the *Australian Defence Force Cover Act 2015* provides for CSC to refer to the Panel a decision of CSC under that Act if a person affected by the decision requests CSC to reconsider the decision.

(2) When reviewing a decision, the Panel:

(a) must take into account any evidence relevant to the decision that is submitted to it; and

(b) may also take steps to obtain any other evidence that it considers necessary for a proper review of the decision.

103 Proceedings

(1) Subject to any directions given by CSC, the Panel may regulate its proceedings as the Panel thinks fit.

(2) If a direction is given in writing, the direction is not a legislative instrument.

104 Indemnification

Any matter or thing done, or omitted to be done, in good faith by a member of the Panel in the performance of functions under this Division does not subject him or her to any action, liability, claim or demand.

Note: See also section 35 of the *Governance of Australian Government Superannuation Schemes Act 2011*.

105 Remuneration and allowances

(1) A member of the Panel is to be paid such remuneration as is determined by the Remuneration Tribunal. If no determination of that remuneration by the Tribunal is in operation, the member is to be paid such remuneration as is prescribed.

(2) A member of the Panel is to be paid such allowances (if any) as are prescribed.

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(3) This section has effect subject to the *Remuneration Tribunal Act 1973*.

106 Recommendations by Panel to CSC

(1) If the Panel makes recommendations to CSC in relation to a decision referred to it under section 99, then, after CSC takes into account:

(a) the recommendations of the Panel; and

(b) any other matter that CSC considers relevant;

CSC must make a decision in writing:

(c) confirming the decision under review; or

(d) varying the decision under review; or

(e) setting aside the decision under review and substituting a new decision.

Note: Part 5 of the *Australian Defence Force Cover Act 2015* contains similar provisions for CSC to take into account recommendations of the Panel relating to decisions referred to it under that Part, and to confirm or vary those decisions or set them aside and substitute new decisions.

(2) CSC's written decision must include the reasons for its decision.

(3) CSC must make a copy of its written decision available to the applicant.

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Division 3—Review of decisions by the Administrative Appeals Tribunal

107 Review by the Administrative Appeals Tribunal

Applications may be made to the Administrative Appeals Tribunal for:

(a) review of a decision of CSC that has been confirmed or varied by CSC under paragraph 99(4A)(a) or (b); and

(b) review of a decision of CSC that has been confirmed or varied by the Panel under paragraph 102(1)(a); and

(c) review of a decision of CSC that has been confirmed or varied by CSC under paragraph 106(1)(c) or (d).

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Part XII—Miscellaneous

124 Election relating to surcharge deduction amount

(1) A member of the scheme whose surcharge debt account is in debit when benefits (other than deferred benefits) become payable to the member under this Act may, not earlier than 3 months before, and not later than one year after, that benefit becomes payable, elect in writing that those benefits (instead of any productivity superannuation benefit payable to the member) be adjusted to take the member's surcharge deduction amount into account.

(2) If the surcharge debt account of a member of the scheme is in debit when a benefit becomes payable in respect of the member under subsection 48(1) or 48A(2), then:

(a) the personal representative or a personal representative of the member; or

(b) if there are no personal representatives of the member—a person determined by CSC for the purposes of that subsection;

may, not earlier than 3 months before, and not later than one year after, that benefit becomes payable, elect in writing that that benefit (instead of any productivity superannuation benefit payable to the member) be adjusted to take the member's surcharge deduction amount into account.

(3) However, a person may not make an election under subsection (1) if the person has given CSC a release authority issued to the person under item 3 of the table in subsection 135-10(1) in Schedule 1 to the *Taxation Administration Act 1953*.

124A Determinations with respect to surcharge deduction amount

(1) CSC must, in accordance with advice received from the Australian Government Actuary, determine in writing the conversion factor that, having regard to:

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(a) the age of a member of the scheme when a benefit becomes payable to the member; and

(b) other relevant factors (if any);

is applicable for the purpose of working out, in relation to the member, the yearly amount that would have to be paid to discharge a liability equal to the member's surcharge deduction amount.

(2) A determination under subsection (1) must be published in the *Gazette*.

124B Recoverable payments

(1) If, apart from this subsection, the Commonwealth does not have power, under this Act or the previous legislation, to pay an amount (the ***relevant amount***) to a person (the ***recipient***) purportedly as a benefit, then the Commonwealth may pay the relevant amount to the recipient.

Recovery

(2) If a payment is made under subsection (1) to the recipient, the relevant amount:

(a) is a debt due to the Commonwealth by the recipient; and

(b) may be recovered by CSC, on behalf of the Commonwealth, in a court of competent jurisdiction.

(3) If:

(a) a payment is made under subsection (1) to the recipient; and

(b) the recipient is receiving, or is entitled to receive, a benefit;

then:

(c) the relevant amount; or

(d) such part of the relevant amount as the Board of CSC determines;

may, if the Board of CSC so directs, be recovered by deduction from that benefit.

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(4) For the purposes of subsections 126(4) and (5), in determining whether an amount is payable, disregard subsection (1) of this section.

(5) If the relevant amount is recovered under subsection 126(4) or (5), the relevant amount cannot be recovered under subsection (2) or (3) of this section.

(6) If the relevant amount is recovered under subsection (2) or (3) of this section, the relevant amount cannot be recovered under subsection 126(4) or (5).

Benefit

(7) For the purposes of this section, ***benefit*** includes pension or other money payable under the previous legislation.

124C Recoverable death payments

(1) If, apart from this subsection, the Commonwealth does not have power, under this Act or the previous legislation, to pay an amount (the ***relevant amount***) in any of the following circumstances:

(a) the relevant amount is deposited to an account kept in the name of a deceased person;

(b) the relevant amount is deposited to an account kept in the names of a deceased person and another person;

(c) the relevant amount is paid by way of a cheque made out to a deceased person;

the Commonwealth may pay the relevant amount in the circumstances mentioned in paragraph (a), (b) or (c), so long as:

(d) on the last day on which changes could reasonably be made to the payment of the relevant amount, the chief executive officer (however described) of CSC did not know that the deceased person had died; and

(e) apart from this subsection, the relevant amount would have been payable as a benefit to the deceased person if the deceased person had not died.

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(2) If a payment is made under subsection (1), the relevant amount is taken to have been paid to the deceased person's estate.

Recovery

(3) If a payment is made under subsection (1), the relevant amount:
  (a) is a debt due to the Commonwealth by the legal personal representative of the deceased person; and
  (b) may be recovered by CSC, on behalf of the Commonwealth, in a court of competent jurisdiction.

(4) For the purposes of subsections 126(4) and (5), in determining whether an amount is payable, disregard subsection (1) of this section.

(5) If the relevant amount is recovered under subsection 126(4) or (5), the relevant amount cannot be recovered under subsection (3) of this section.

(6) If the relevant amount is recovered under subsection (3) of this section, the relevant amount cannot be recovered under subsection 126(4) or (5).

Benefit

(7) For the purposes of this section, ***benefit*** includes pension or other money payable under the previous legislation.

124D Reports about recoverable payments and recoverable death payments

(1) CSC must cause a report of the following information to be published, in such manner as the Board of CSC thinks fit:
  (a) the number of payments that any employee of CSC was aware of that were made under subsection 124B(1) or 124C(1) during the reporting period (see subsection (2) of this section);
  (b) the total amount of payments referred to in paragraph (a);

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(c) the number of payments made under subsection 124B(1) or 124C(1) that any employee of CSC became aware of during the reporting period that were made during an earlier reporting period;
(d) the total amount of payments referred to in paragraph (c);
(e) for each payment referred to in paragraph (c)—the reporting period in which the payment was made.

(2) The ***reporting period*** is:
(a) a financial year; or
(b) if a shorter recurring period is prescribed under paragraph (5)(a)—that period.

(3) A report is not required if no employee of CSC is aware of any payments referred to in paragraph (1)(a) or (c).

When report must be provided

(4) The report must be provided before the end of the following period:
(a) 4 months after the end of the reporting period;
(b) if a lesser number of months has been prescribed for the reporting period under paragraph (5)(b)—that number of months after the end of the reporting period.

Power to make legislative instruments

(5) The Minister may, by legislative instrument, prescribe:
(a) a period for the purposes of paragraph (2)(b); or
(b) a number of months for a reporting period for the purposes of paragraph (4)(b).

125 Payments by the Commonwealth

(1) Any payment of benefit under this Act shall be paid by the Commonwealth.

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(2) The costs of and incidental to a medical examination carried out for the purposes of section 35 shall be paid by the Commonwealth.

(3) All payments by the Commonwealth under this Act shall be paid out of the Consolidated Revenue Fund, which is appropriated accordingly.

126 Recovery of amounts payable to Commonwealth

(1) An amount payable to the Commonwealth under this Act, including an amount of unpaid contributions, may be paid to the Commonwealth in a lump sum or in such instalments and at such times as CSC approves.

(2) Where the amount of any contributions payable by a person to the Commonwealth has not been paid and benefit is payable to or in respect of the person, the amount of the unpaid contributions may be deducted from any payment or payments of that benefit.

(3) An amount payable to the Commonwealth under this Act, including an amount of unpaid contributions, may be recovered by CSC, on behalf of the Commonwealth in a court of competent jurisdiction as a debt due and payable to the Commonwealth.

(4) Where, for any reason (including the making of, or cancellation of, an election under this Act), an amount of benefit has been paid that is not payable, or has become not payable, the amount so paid may be recovered by CSC, on behalf of the Commonwealth, in a court of competent jurisdiction as a debt due and payable to the Commonwealth.

(5) Where, for any reason (including the making of, or cancellation of, an election under this Act), an amount of benefit has been paid that is not payable, or has become not payable, and the person to whom that amount was paid is receiving, or is entitled to receive, a benefit, that amount, or such part of that amount as CSC determines, may, if CSC in its discretion so directs, be recovered by deduction from that benefit.

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(6) In subsections (4) and (5), ***benefit*** includes pension or other money payable under the previous legislation.

127 Recipient member etc. to inform CSC if he becomes eligible member

(1) A person who is a recipient member, a person in receipt of a pension under the previous legislation (other than section 55 or 57 of the previous Act) or a person to whom deferred benefit is applicable under section 78 of this Act or section 82ZB of the previous Act, commits an offence if:

(a) the person becomes an eligible member of the Defence Force; and

(b) the person does not, within 14 days after becoming such a member, inform CSC in writing that the person has become such a member.

Penalty: 1 penalty unit.

(2) Subsection (1) does not apply to an eligible member of the Defence Force who:

(a) was a recipient member immediately before he or she became an eligible member; and

(b) is serving an appointment or enlistment for a period of less than one year that commenced after the commencement of this subsection.

128 Extension of periods of elections

(1) Where any period within which a person is entitled to make an election under this Act has expired before the day on which this Act receives the Royal Assent, the election may be made within such further period after that day as CSC allows.

(2) Subject to subsection (3), where a person who is entitled to make an election under a provision of this Act:

(a) is, by reason of a physical or mental incapacity, unable to make that election; or

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(b) dies before the expiration of the period within which the election may be made or, if a further period has been allowed, before the expiration of that further period, without his having made the election;

CSC may, if it thinks it proper to do so, allow such other person as CSC thinks appropriate to make the election within such period as CSC allows, and, where the election is made by that other person, the election shall, for the purposes of this Act, be deemed to have been made by the first-mentioned person, and has effect accordingly.

(3) Notwithstanding subsection (2), CSC shall not, after the death of a recipient member, allow another person to make an election under section 24 to commute a portion of the member's retirement pay or to make an election under section 32A to commute a portion of the member's invalidity pay.

128A Cancellation of elections

Where:

(a) a person makes an election (whether before or after the commencement of this section) under section 24, 32A, 69 or 76 or is deemed by subsection 128(2) to have made such an election;

(b) that person, or another person whom CSC has, under subsection 128(2), allowed to make an election under a provision of this Act on behalf of the first-mentioned person, makes an application to CSC not later than 3 months after the day on which the election is made or is deemed to have been made, or within such further period as CSC, in special circumstances, allows, requesting that CSC cancel the election; and

(c) CSC, having regard to such matters (if any) as it considers relevant, is satisfied that the election should be cancelled;

CSC may direct that the election shall be cancelled and, if it so directs, this Act has effect as if the election had not been made.

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129 Assignment of pensions

Subject to section 130, no pension benefit or other benefit under this Act is capable of being assigned or charged or of passing by operation of law, and any moneys payable by the Commonwealth on the death of a contributing member are not liable to be applied or made available in payment of his debts or liabilities.

130 Attachment of benefits

(1) Where a judgment given by a court for the payment of a sum of money has not been fully satisfied by the judgment debtor and the judgment debtor is entitled to a benefit under this Act, the judgment creditor may serve on CSC a copy of the judgment, certified under the hand of the Registrar or other proper officer of the court by which the judgment was given, and a statutory declaration by the judgment creditor stating that the judgment has not been fully satisfied by the judgment debtor and specifying the amount due by the judgment debtor under the judgment.

(2) Where a copy of a judgment and a statutory declaration are served on CSC in accordance with subsection (1), CSC shall, as soon as practicable, by notice in writing given to the judgment debtor, inform him of the service of those documents and require him, within such period as is specified in the notice and in such manner as is so specified, to notify CSC whether the amount specified in the declaration is still due under the judgment and, if no amount or a lesser amount is due under the judgment, to furnish to CSC, in such manner as is specified in the notice, evidence in support of that fact.

(3) A person commits an offence if:

(a) the person is given a notice under subsection (2); and

(b) the person does not comply with the requirements in the notice.

Penalty: 1 penalty unit.

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(4) If, at the expiration of the period specified in the notice, CSC is satisfied that an amount is due under the judgment, CSC may, in its discretion, authorize the deduction from the benefit, and the payment to the judgment creditor, of such sums as do not exceed that amount, and those deductions and those payments shall be made accordingly.

(5) A deduction shall not be authorized from:

(a) an instalment of child's pension; or

(b) an instalment of any other pension benefit if the deduction will reduce the amount of the instalment payable to less than one-half of the amount that would, but for this section, be payable.

(6) If, after a copy of a judgment given against any person entitled to a benefit under this Act, being a judgment in respect of which CSC is satisfied that an amount is due, has been served in accordance with subsection (1), a copy of another judgment given (whether before or after the first-mentioned judgment) against the same person in favour of the person in whose favour the first-mentioned judgment was given, or in favour of another person, is served in accordance with that subsection, a payment shall not be made in pursuance of this section to the judgment creditor under the other judgment in respect of the amount due under that judgment until the amount due under the first-mentioned judgment has been paid.

(7) A payment made to a judgment creditor in pursuance of this section shall, as between the Commonwealth and the person entitled to benefit under this Act, be deemed to be a payment by the Commonwealth to the person entitled to benefit.

(8) A judgment creditor commits an offence if:

(a) the judgment creditor serves a copy of a judgment on CSC under subsection (1); and

(b) the judgment creditor does not notify CSC immediately the judgment debt is satisfied.

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Penalty:

(a) if the offender is a natural person—imprisonment for 3 months or 1 penalty unit; or

(b) if the offender is a body corporate—5 penalty units.

(9) If the amounts paid in pursuance of this section to a judgment creditor in respect of a judgment exceed, in the aggregate, the amount due under the judgment, the excess is repayable by the judgment creditor to the judgment debtor and, in default of payment, may be recovered by the judgment debtor from the judgment creditor in any court of competent jurisdiction.

130A Repayment of amounts that have been refunded to the Commonwealth

Where a person:

(a) made an election under section 21, 53, 55, 64 or 89;

(b) paid to the Commonwealth, in accordance with the requirements of that section, the amount of any gratuity, bounty or deferred pay received by him in respect of the period to which the election relates; and

(c) is not, upon ceasing to be a member of the Defence Force after having made that election and made that payment, entitled to retirement pay or invalidity pay, or to a gratuity in respect of the period in relation to which the election relates;

the Commonwealth shall repay to the person any amounts so paid by him.

130B Trustee of Scheme for purposes of the *Superannuation Contributions Tax (Assessment and Collection) Act 1997*

(1) For the purposes of the definition of ***trustee*** in section 43 of the *Superannuation Contributions Tax (Assessment and Collection) Act 1997*, CSC is taken to be the person who manages the superannuation scheme constituted by this Act (the ***Scheme***).

Note: The definitions of ***public sector superannuation scheme***, ***superannuation fund*** and ***trustee*** in section 43 of the *Superannuation*

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Contributions Tax (Assessment and Collection) Act 1997 are relevant to this section.

(2) Section 4 of the *Superannuation Contributions Tax (Application to the Commonwealth—Reduction of Benefits) Act 1997* does not apply to CSC in its capacity (because of subsection (1)) of trustee of the Scheme for the purposes of the *Superannuation Contributions Tax (Assessment and Collection) Act 1997*.

131 Regulations

(1) The Governor-General may make regulations, not inconsistent with this Act, prescribing all matters which, by this Act, are required or permitted to be prescribed, or which are necessary or convenient to be prescribed for carrying out or giving effect to this Act, and in particular:

(b) for prescribing the manner in which notices under this Act may be given; and

(c) for prescribing penalties, not exceeding a fine of 2 penalty units, for offences against the regulations.

(2) Where the pay of a class of members of the Defence Force is increased or reduced, regulations for the purpose of the definition of ***annual rate of pay*** in section 3 in relation to members of the Defence Force included in that class made after the date on and from which the increase or reduction took effect may be expressed to have taken effect from and including that date.

(3) Regulations made within a period of 6 months after the day on which this Act receives the Royal Assent may be expressed to have taken effect from and including the date of commencement of the scheme.

(4) The regulations may make provision for or in relation to a matter by applying, adopting or incorporating, with or without modification, any of the provisions of a determination, as in force at a particular time or as in force from time to time, made under section 58H of the *Defence Act 1903* or under section 24 of the *Public Service Act 1999*.

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Section 131

Note: In addition, section 14 of the *Legislation Act 2003* allows regulations to prescribe matters by reference to disallowable legislative instruments as in force at a particular time or from time to time. That section would, for example, allow a regulation to prescribe matters by reference to a determination under section 58B of the *Defence Act 1903* as in force at a particular time or from time to time.

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Part XIII—Transfer to MSB scheme

132 Election to remain member of scheme or to join MSB scheme

(1) Subject to this section, an eligible member of the Defence Force must, on or before election day in relation to the member, in writing addressed to the Authority, elect:

(a) to continue to be a contributing member; or

(b) to become a member of the MSB scheme.

(2) Election day in relation to an eligible member of the Defence Force is:

(a) if the service of the member is due to terminate before 30 September 1992—the day on which his or her service is due to terminate; or

(b) if paragraph (a) does not apply—30 September 1992.

(3) An eligible member of the Defence Force, being a person:

(a) who is serving on continuous full-time service for a period that does not exceed, or successive periods that together do not exceed, 3 months; and

(b) who, immediately before that period or the first of those periods, was a recipient member;

may not make an election under subsection (1).

(4) Subsection (1) does not apply to a member whose service terminates, or is due to terminate, before 1 October 1991.

133 Election where member dies

(1) This section applies if an eligible member of the Defence Force:

(a) is unable, because of any illness or any physical or mental incapacity, to make an election under section 132; or

(b) dies before making such an election.

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(2) If the member is unable to make the election, the election may be made by a person acting on behalf of the member.

(3) If the member dies and is survived by a widow or widower, the widow or widower may, subject to subsection (6), elect that this Act apply in relation to the member as if the member had, on the day immediately preceding his or her death, elected to become a member of the MSB scheme.

(4) If the member dies and is not survived by a widow or widower but is survived by an eligible child or eligible children, a person acting on behalf of the child or children may, subject to subsection (6), elect that this Act apply in relation to the member as if the member had, on the day immediately preceding his or her death, elected to become a member of the MSB scheme.

(5) An election under subsection (3) or (4) must be made on or before the day that would have been election day in relation to the member if he or she had not died.

(6) If:

(a) a member who has died:

(i) had made an election under subsection 21(1), paragraph 63(1)(d) or subsection 64(1) or 89(1) or (2); or

(ii) had received payment of an amount under a prescribed provision (within the meaning of section 137); and

(b) at the time of his or her death, the member had not repaid:

(i) the total amount that the member was required to pay to the Commonwealth under subsection 21(3), 63(2), 64(2) or 89(4) (as the case may be); or

(ii) the total amount that the member had to repay to the Commonwealth under a provision of an enactment (within the meaning of section 137) because of the payment referred to in subparagraph (a)(ii);

an election may not be made:

(c) under subsection (3) by the widow or widower of a deceased member; or

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(d) under subsection (4) by a person acting on behalf of the eligible child or eligible children of the deceased member;

unless the balance of the amount referred to in subparagraph (b)(i) or (ii) (as the case may be) that remains unpaid is paid to the Commonwealth.

(7) If:

(a) the widow or widower of a deceased member makes an election under subsection (3); or

(b) a person acting on behalf of the eligible child or eligible children of a deceased member makes an election under subsection (4);

the member is taken to have, on the day immediately preceding his or her death, elected under section 132 to become a member of the MSB scheme.

134 Effect of election

Subject to section 138, a person who elects, or is taken to have elected, under section 132 to become a member of the MSB scheme ceases, or is taken to have ceased, to be an eligible member of the Defence Force:

(a) if the election is made, or is taken to have been made, on or before 30 September 1991—at the end of that day; or

(b) if paragraph (a) does not apply—at the end of the day on which the election is made or is taken to have been made.

135 Loss of entitlement to benefits etc.

Subject to this section, a person who ceases, or is taken to have ceased, to be an eligible member of the Defence Force under section 134 or 138 is not entitled to be paid any benefits, or to receive any refund of contributions, under this Act.

136 Failure to make election

(1) If an election is not made by, or on behalf of, an eligible member of the Defence Force who is required to make an election under

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subsection 132(1), the member is taken to have elected, on election day in relation to him or her, to continue to be a contributing member.

(2) If:

(a) an eligible member of a Defence Force who is required to make an election under subsection 132(1) dies without making the election; and

(b) the widow or widower of the deceased member, or a person acting on behalf of his or her eligible child or children (as the case may be) does not make an election under subsection 133(3) or (4);

this Act has effect as if the member had elected, on the day immediately preceding his or her death, to continue to be a contributing member.

137 Certain persons liable to make repayments to Commonwealth on making of election

(1) In this section:

enactment means:

(a) an Act; or

(b) an instrument made under an Act.

prescribed provision means:

(a) subsection 42A(1) or (2) of the previous Act; or

(b) regulation 11, 14, 15 or 16 or subregulation 19(1) or (2) of the Defence Force (Bounties and Gratuities) Regulations; or

(c) clause 6, 10, 13, 15, 17 or 30 of Determination 0705, Gratuities made under section 58B of the *Defence Act 1903*, being that determination as in force from time to time.

(2) Where an eligible member of the Defence Force who has received payment of an amount under a prescribed provision elects under section 132 to become a member of the MSB scheme, then, in spite of any provision of an enactment regarding the repayment of that amount, that amount, or any part of that amount that remains

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unpaid at the time of the election, becomes payable to the Commonwealth and may be recovered as a debt.

138 Persons precluded from transferring to MSB scheme

(1) This section applies to:

(a) an eligible member of the Defence Force who:

(i) made an election under subsection 21(1), paragraph 63(1)(d) or subsection 64(1) or 89(1) or (2); and

(ii) elects under section 132 to become a member of the MSB scheme; or

(b) an eligible member of the Defence Force who is liable to pay an amount to the Commonwealth under section 137.

(2) Subject to subsections (3) and (4), a person to whom this section applies ceases to be an eligible member of the Defence Force:

(a) in the case of a person referred to in paragraph (1)(a)—at the end of the day on which the total amount that the person is required to pay to the Commonwealth under subsection 21(3), 63(2), 64(2) or 89(4) (as the case may be) is fully paid; or

(b) in the case of a person referred to in paragraph (1)(b)—at the end of the day on which the total amount that the person is liable to pay under section 137 is fully paid.

(3) Where, apart from this subsection, a person would cease under subsection (2) to be an eligible member of the Defence Force before 30 September 1991, the person ceases to be an eligible member of the Defence Force at the end of 30 September 1991.

(4) If a person to whom this section applies has not, on or before 30 September 1992, paid to the Commonwealth:

(a) in the case of a person referred to in paragraph (1)(a)—the total amount that the person is required to pay to the Commonwealth under subsection 21(3), 63(2), 64(2) or 89(4) (as the case may be); or

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(b) in the case of a person referred to in paragraph (1)(b)—the total amount that the person is liable to pay to the Commonwealth under section 137;

the person is taken:

(c) not to have elected under section 132 to become a member of the MSB scheme; and

(d) to have elected under that section to continue to be a contributing member.

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Schedule 1—Retirement pay expressed as a percentage of annual rate of pay

Section 23

Number of complete years included in total period of effective service	Percentage of annual rate of pay
15	30.00%
16	31.00%
17	32.00%
18	33.00%
19	34.00%
20	35.00%
21	36.50%
22	38.00%
23	39.50%
24	41.00%
25	42.50%
26	44.00%
27	45.75%
28	47.50%
29	49.25%
30	51.25%
31	53.25%
32	55.50%
33	57.75%
34	60.25%
35	62.75%
36	65.25%
37	67.75%
38	70.50%
39	73.50%

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Schedule 1 Retirement pay expressed as a percentage of annual rate of pay

Number of complete years included in total period of effective service	Percentage of annual rate of pay
40 or more	76.50%

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Schedule 2—Notional retiring age for certain officers retiring at own request or on disciplinary grounds, or entitled to deferred benefit retirement pay

Sections 23 and 75

Rank			Notional Retiring Age—Years
Navy	**Army**	**Air Force**	
Admiral Vice-Admiral	General Lieutenant-General	Air Chief Marshal Air Marshal	55
Rear-Admiral	Major-General	Air Vice-Marshal	52
Commodore Captain	Brigadier Colonel	Air Commodore Group Captain Group Officer	50
Commander Chief Officer (WRANS) Matron (RANNS) Superintendent (Naval Police)	Lieutenant-Colonel	Wing Commander Wing Officer	45
Lower rank	Lower rank	Lower rank	42

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Schedule 3—Commutation of retirement pay and Class C invalidity pay—expectation of life factor

Sections 24 and 32A

Age (in years) on date of effect of election	Factor	
	Male	**Female**
30	41.12	46.49
31	40.18	45.53
32	39.25	44.57
33	38.31	43.61
34	37.38	42.65
35	36.45	41.70
36	35.51	40.75
37	34.59	39.81
38	33.67	38.86
39	32.75	37.92
40	31.84	36.99
41	30.93	36.06
42	30.03	35.13
43	29.14	34.21
44	28.25	33.29
45	27.38	32.38
46	26.51	31.48
47	25.65	30.58
48	24.80	29.69
49	23.96	28.80
50	23.13	27.92
51	22.31	27.05
52	21.51	26.18

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Age (in years) on date of effect of election	Factor	
	Male	**Female**
53	20.72	25.32
54	19.94	24.47
55	19.18	23.63
56	18.43	22.79
57	17.70	21.96
58	16.99	21.13
59	16.29	20.32
60	15.60	19.51
61	14.94	18.72
62	14.29	17.94
63	13.67	17.17
64	13.06	16.42
65	12.47	15.68

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Endnotes

Endnote 1—About the endnotes

The endnotes provide information about this compilation and the compiled law.

The following endnotes are included in every compilation:

Endnote 1—About the endnotes
Endnote 2—Abbreviation key
Endnote 3—Legislation history
Endnote 4—Amendment history

Abbreviation key—Endnote 2
The abbreviation key sets out abbreviations that may be used in the endnotes.

Legislation history and amendment history—Endnotes 3 and 4
Amending laws are annotated in the legislation history and amendment history.

The legislation history in endnote 3 provides information about each law that has amended (or will amend) the compiled law. The information includes commencement details for amending laws and details of any application, saving or transitional provisions that are not included in this compilation.

The amendment history in endnote 4 provides information about amendments at the provision (generally section or equivalent) level. It also includes information about any provision of the compiled law that has been repealed in accordance with a provision of the law.

Editorial changes
The *Legislation Act 2003* authorises First Parliamentary Counsel to make editorial and presentational changes to a compiled law in preparing a compilation of the law for registration. The changes must not change the effect of the law. Editorial changes take effect from the compilation registration date.

If the compilation includes editorial changes, the endnotes include a brief outline of the changes in general terms. Full details of any changes can be obtained from the Office of Parliamentary Counsel.

Misdescribed amendments
A misdescribed amendment is an amendment that does not accurately describe how an amendment is to be made. If, despite the misdescription, the amendment

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can be given effect as intended, then the misdescribed amendment can be incorporated through an editorial change made under section 15V of the *Legislation Act 2003*.

If a misdescribed amendment cannot be given effect as intended, the amendment is not incorporated and "(md not incorp)" is added to the amendment history.

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Endnote 2—Abbreviation key

ad = added or inserted

am = amended

amdt = amendment

c = clause(s)

C[x] = Compilation No. x

Ch = Chapter(s)

def = definition(s)

Dict = Dictionary

disallowed = disallowed by Parliament

Div = Division(s)

ed = editorial change

exp = expires/expired or ceases/ceased to have effect

F = Federal Register of Legislation

gaz = gazette

LA = *Legislation Act 2003*

LIA = *Legislative Instruments Act 2003*

(md) = misdescribed amendment can be given effect

(md not incorp) = misdescribed amendment cannot be given effect

mod = modified/modification

No. = Number(s)

o = order(s)

Ord = Ordinance

orig = original

par = paragraph(s)/subparagraph(s) /sub-subparagraph(s)

pres = present

prev = previous

(prev…) = previously

Pt = Part(s)

r = regulation(s)/rule(s)

reloc = relocated

renum = renumbered

rep = repealed

rs = repealed and substituted

s = section(s)/subsection(s)

Sch = Schedule(s)

Sdiv = Subdivision(s)

SLI = Select Legislative Instrument

SR = Statutory Rules

Sub-Ch = Sub-Chapter(s)

SubPt = Subpart(s)

underlining = whole or part not commenced or to be commenced

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Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Defence Force Retirement and Death Benefits Act 1973	81, 1973	19 June 1973	ss. 3–6 and Parts III–IX (ss. 17–84): 1 Oct 1972 Remainder: Royal Assent	
Election Candidates (Public Service and Defence Force) Act 1974	59, 1974	27 Sept 1974	Parts I, IV and V (ss. 1–6 and 23–37): Royal Assent Remainder: 27 Aug 1974	—
Defence Force Re-organization Act 1975	96, 1975	9 Sept 1975	s 156–163: 9 Feb 1976 (s 2 and gaz 1975, No G42, p 2)	s 158(2), 159(2), 161(2) and 162(2)
as amended by				
Defence Force Retirement and Death Benefits Amendment Act 1976	33, 1976	7 May 1976	s 16: 9 Sept 1975 (s 2(3))	—
Defence Force Retirement and Death Benefits Amendment Act 1976	33, 1976	7 May 1976	s 3–8 and 10–15: 1 July 1976 (s 2(4), (5)) s 9: 1 Oct 1972 (s 2(2))	s 13(2) and 15
Defence Force (Retirement and Death Benefits Amendments) Act 1977	13, 1977	28 Feb 1977	ss. 3 and 4: 1 July 1976 Remainder: Royal Assent	—
Defence Force (Retirement and Death Benefits Amendments) Act (No. 2) 1977	161, 1977	10 Nov 1977	ss. 5, 11–17, 24, 26, 27(2), 28(2), 34, 35(1), 36, 38–42, 46 and 48: 1 Oct 1972 Remainder: Royal Assent	ss. 25(2), 30(2)–(5), 35(2) and 49–51

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Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
as amended by				
Defence Legislation Amendment Act 1987	65, 1987	5 June 1987	s 51: 10 Nov 1977 (s 2(3))	—
Administrative Changes (Consequential Provisions) Act 1978	36, 1978	12 June 1978	12 June 1978	s. 8
Defence Force (Retirement and Death Benefits Amendments) Act 1979	15, 1979	19 Mar 1979	19 Mar 1979	s. 10
Defence Force (Retirement and Death Benefits Amendments) Act (No. 2) 1979	135, 1979	23 Nov 1979	23 Nov 1979	—
Statute Law Revision Act 1981	61, 1981	12 June 1981	Sch 2: 30 Sept 1983 (s 2(2) and gaz 1983, No S222)	—
Companies (Miscellaneous Amendments) Act 1981	92, 1981	18 June 1981	s. 45: 1 July 1982 (*see* s. 2(3) and *Gazette* 1982, No. S124)	—
Defence Force Retirement and Death Benefits Amendment Act 1981	144, 1981	21 Oct 1981	ss. 4(1) and 7(1): 1 Oct 1972 ss. 4(2), 5(1), 6(1), 8 and 9: 14 May 1981 ss. 3, 5(2), 6(2) and 7(2)–(4): 18 Nov 1981 Remainder: Royal Assent	s. 7(3) and (4)
Defence Legislation Amendment Act 1984	164, 1984	25 Oct 1984	s 83, 85, 87, 88 and Sch 2: 1 July 1983 (s 2(5)) s 84 and 86: 1 Oct 1972 (s 2(6))	s 83(2) and 85(2)

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Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
as amended by				
Statute Law (Miscellaneous Provisions) Act (No.1) 1985	65, 1985	5 June 1985	Sch 1: 1 July 1983 (s 2(18))	—
Superannuation and Other Benefits Legislation Amendment Act 1986	93, 1986	13 Oct 1986	10 Oct 1986	—
Defence Legislation Amendment Act 1987	65, 1987	5 June 1987	s 37(1): 10 Nov 1977 (s 2(3)) s 37(2) and 38–41: 3 July 1985 (s 2(4)) s 42–45, 48 and 49: 5 June 1987 (s 2(1), (5)) s 46 and 47: 19 June 1973 (s 2(2))	—
Defence Legislation Amendment Act 1988	100, 1988	2 Dec 1988	s. 5: 1 July 1988 (*see* s. 2(2) and *Gazette* 1988, No. S173) s. 16: 1 July 1988 (*see* s. 2(3) and *Gazette* 1988, No. S173) Remainder: Royal Assent	—
Defence Legislation Amendment Act (No. 2) 1988	104, 1988	6 Dec 1988	s. 18: 1 Sept 1989 (*see Gazette* 1989, No. S268) s. 25: 1 Oct 1972 ss. 29 and 36: 1 July 1978 Part IX (ss. 52 and 53): 18 Dec 1987 Remainder: Royal Assent	—

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Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Superannuation and Other Benefits Legislation Amendment Act 1989	125, 1989	17 Oct 1989	20 Oct 1989	—
Defence Legislation Amendment Act 1990	75, 1990	22 Oct 1990	s 4(2): 22 Oct 1990 (s 2(1)) Sch 2: 30 June 1989 (s 2(4))	s 4(2)
Defence Legislation Amendment Act (No. 2) 1990	21, 1991	5 Feb 1991	ss. 10–13 and 16–18: 1 July 1990 Remainder: Royal Assent	—
Defence Force Superannuation Legislation Amendment Act 1991	126, 1991	2 Sept 1991	s 4(1), 15, 18 and 22: 1 July 1990 (s 2(2)) s 4(2), 5–14, 16, 17, 19–21, 23 and 24: 2 Sept 1991 (s 2(1))	—
as amended by				
Statute Law Revision Act 1996	43, 1996	25 Oct 1996	Sch 3 (item 19): 2 Sept 1991 (s 2(3))	—
Military Superannuation and Benefits Act 1991	135, 1991	7 Sept 1991	Parts 1, 2, 6, 7 (ss. 1–5, 18–28), ss. 42, 47, 49(1)(a) and 50–52: Royal Assent s. 61: 1 Sept 1991 Remainder: 1 Oct 1991	—
Defence Legislation Amendment Act 1992	91, 1992	30 June 1992	ss. 13 and 14: 1 Sept 1992 (*see Gazette* 1992, No. S211) Remainder: Royal Assent	—

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Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Superannuation Guarantee (Consequential Amendments) Act 1992	92, 1992	30 June 1992	1 July 1992	—
Commonwealth Superannuation Schemes Amendment Act 1992	185, 1992	17 Dec 1992	25 June 1993	s. 4
Qantas Sale Act 1992	196, 1992	21 Dec 1992	s 29: 30 July 1995 (s 2(2), (3)(b) and gaz 1995, No S324) Sch (Pt 3, 6): repealed before commencing (s 2(3)(b), (c), (5), (6))	s 29
as amended by				
Qantas Sale Amendment Act 1993	60, 1993	3 Nov 1993	s 4: 10 Mar 1993 (s 2)	—
Qantas Sale Amendment Act 1994	168, 1994	16 Dec 1994	Sch (item 17): 16 Dec 1994 (s 2(1))	—
Life Insurance (Consequential Amendments and Repeals) Act 1995	5, 1995	23 Feb 1995	1 July 1995 (*see* s. 2 and *Gazette* 1995, No. GN24)	s. 3(1)
Defence Legislation Amendment Act (No. 1) 1997	1, 1997	19 Feb 1997	Schedules 1 and 3: 30 Apr 1997 (*see Gazette* 1997, No. S91) Remainder: Royal Assent	—
Superannuation Legislation Amendment (Superannuation Contributions Tax) Act 1997	187, 1997	7 Dec 1997	Sch 6: 7 Dec 1997 (s 2(1))	—

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Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Financial Sector Reform (Consequential Amendments) Act 1998	48, 1998	29 June 1998	Sch 1 (item 43): 1 July 1998 (s 2(2))	—
Financial Sector Reform (Amendments and Transitional Provisions) Act (No. 1) 1999	44, 1999	17 June 1999	Sch 7 (items 28, 29): 1 July 1999 (s 3(2)(e), (16) and gaz 1999, No S283)	—
as amended by				
Financial Sector Legislation Amendment Act (No. 1) 2000	160, 2000	21 Dec 2000	Sch 4 (item 4): 18 Jan 2001 (s 2(1))	—
Public Employment (Consequential and Transitional) Amendment Act 1999	146, 1999	11 Nov 1999	Sch 1 (item 370): 5 Dec 1999 (s 2(1), (2))	—
Defence Legislation Amendment (Enhancement of the Reserves and Modernisation) Act 2001	10, 2001	22 Mar 2001	Sch 2 (items 44–48, 94, 95): 19 Apr 2001 (s 2(1))	Sch 2 (items 94, 95)
as amended by				
Statute Law Revision Act 2002	63, 2002	3 July 2002	Sch 2 (item 11): 19 Apr 2001 (s 2(1) item 40)	—
Defence Legislation Amendment (Application of Criminal Code) Act 2001	141, 2001	1 Oct 2001	s. 4: Royal Assent Schedule 1 (items 89–92): 15 Dec 2001	s. 4 s. 2(2) (am. by 135, 2003, Sch. 2 [item 28])
as amended by				
Defence Legislation Amendment Act 2003	135, 2003	17 Dec 2003	Sch 2 (item 28): 1 Oct 2001 (s 2(1) item 9)	—

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Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Superannuation Legislation Amendment (Indexation) Act 2001	148, 2001	1 Oct 2001	1 Oct 2001	Sch. 3 (item 31)
Abolition of Compulsory Age Retirement (Statutory Officeholders) Act 2001	159, 2001	1 Oct 2001	29 Oct 2001	Sch 1 (item 97)
Superannuation (Surcharge Rate Reduction) Amendment Act 2003	112, 2003	12 Nov 2003	Schedule 1: 1 July 2003 Remainder: Royal Assent	Sch. 1 (item 33)
Superannuation Legislation Amendment (Family Law and Other Matters) Act 2004	58, 2004	4 May 2004	Schedule 1: 18 May 2004 Remainder: Royal Assent	s. 4
Superannuation Budget Measures Act 2004	106, 2004	30 June 2004	30 June 2004	Sch. 2 (item 11(2))
Superannuation Laws Amendment (Abolition of Surcharge) Act 2005	102, 2005	12 Aug 2005	12 Aug 2005	—
Defence Legislation Amendment Act (No. 1) 2005	121, 2005	6 Oct 2005	Sch 5: 1 Jan 2005 (s 2(1) item 3)	—
Superannuation Legislation Amendment Act 2007	165, 2007	25 Sept 2007	Schedule 4 (items 1–5, 8): Royal Assent Schedule 6: 1 Jan 2008 (*see* F2007L04119)	Sch. 4 (item 8) and Sch. 6 (items 4, 6)
Superannuation Legislation Amendment (Trustee Board and Other Measures) (Consequential Amendments) Act 2008	26, 2008	23 June 2008	Schedule 1 (item 57): Royal Assent	—

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Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Same-Sex Relationships (Equal Treatment in Commonwealth Laws—Superannuation) Act 2008	134, 2008	4 Dec 2008	Schedule 3 (items 1–24): 1 Jan 2009	Sch. 3 (item 24)
Statute Law Revision Act 2011	5, 2011	22 Mar 2011	Schedule 5 (items 94, 95): 19 Apr 2011	—
Acts Interpretation Amendment Act 2011	46, 2011	27 June 2011	Schedule 2 (item 519) and Schedule 3 (items 10, 11): 27 Dec 2011	Sch. 3 (items 10, 11)
Superannuation Legislation (Consequential Amendments and Transitional Provisions) Act 2011	58, 2011	28 June 2011	Sch 1 (items 36–58, 246): 1 July 2011 (s 2(1) item 2)	Sch. 2 (items 15(1), (2))
Financial Framework Legislation Amendment Act (No. 2) 2012	82, 2012	28 June 2012	Sch 1 (item 43): 29 June 2012	—
Superannuation Laws Amendment (MySuper Capital Gains Tax Relief and Other Measures) Act 2013	89, 2013	28 June 2013	Sch 2: 28 June 2013 (s 2(1) item 9)	—
Defence Force Retirement Benefits Legislation Amendment (Fair Indexation) Act 2014	22, 2014	9 Apr 2014	Sch 1 (items 1–12, 21, 22): 10 Apr 2014	Sch 1 (items 21, 22)
Statute Law Revision Act (No. 1) 2014	31, 2014	27 May 2014	Sch 5 (items 1, 2): 24 June 2014	—

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Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Public Governance, Performance and Accountability (Consequential and Transitional Provisions) Act 2014	62, 2014	30 June 2014	Sch 8 (items 102–104) and Sch 14: 1 July 2014 (s 2(1) items 6, 14)	Sch 14
as amended by				
Public Governance and Resources Legislation Amendment Act (No. 1) 2015	36, 2015	13 Apr 2015	Sch 2 (items 7–9) and Sch 7: 14 Apr 2015 (s 2)	Sch 7
as amended by				
Acts and Instruments (Framework Reform) (Consequential Provisions) Act 2015	126, 2015	10 Sept 2015	Sch 1 (item 486): 5 Mar 2016 (s 2(1) item 2)	—
Acts and Instruments (Framework Reform) (Consequential Provisions) Act 2015	126, 2015	10 Sept 2015	Sch 1 (item 495): 5 Mar 2016 (s 2(1) item 2)	—
Statute Law Revision Act (No. 1) 2015	5, 2015	25 Feb 2015	Sch 1 (item 15): 25 Mar 2015 (s 2(1) item 2)	—
Acts and Instruments (Framework Reform) Act 2015	10, 2015	5 Mar 2015	Sch 1 (items 126, 127, 166–169, 171–177, 179): 5 Mar 2016 (s 2(1) item 2)	Sch 1 (items 166–169, 171–177, 179)

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Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
as amended by				
Acts and Instruments (Framework Reform) (Consequential Provisions) Act 2015	126, 2015	10 Sept 2015	Sch 3 (item 1): 5 Mar 2016 (s 2(1) item 8)	—
Governance of Australian Government Superannuation Schemes Legislation Amendment Act 2015	65, 2015	17 June 2015	Sch 1 (items 14–20) and Sch 2 (items 1–22): 1 July 2015 (s 2(1) item 2)	Sch 1 (items 16, 19) and Sch 2 (items 1–22)
Defence Legislation Amendment (Superannuation and ADF Cover) Act 2015	120, 2015	10 Sept 2015	Sch 1 (items 3–39, 66): 11 Sept 2015 (s 2(1) item 2) Sch 2 (item 5): 1 July 2016 (s 2(1) item 3)	Sch 1 (item 66)
Defence Legislation Amendment (First Principles) Act 2015	164, 2015	2 Dec 2015	Sch 2 (items 21–24, 80): 1 July 2016 (s 2(1) item 2)	Sch 2 (item 80)
Statute Law Revision Act (No. 1) 2016	4, 2016	11 Feb 2016	Sch 4 (items 1, 129): 10 Mar 2016 (s 2(1) item 6)	—
Statute Update Act 2016	61, 2016	23 Sept 2016	Sch 1 (items 217–219): 21 Oct 2016 (s 2(1) item 1)	—
Marriage Amendment (Definition and Religious Freedoms) Act 2017	129, 2017	8 Dec 2017	Sch 3 (item 27) and Sch 4: 9 Dec 2017 (s 2(1) item 7)	Sch 4

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Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
as amended by				
Federal Circuit and Family Court of Australia (Consequential Amendments and Transitional Provisions) Act 2021	13, 2021	1 Mar 2021	Sch 2 (item 540): 1 Sept 2021 (s 2(1) item 5)	—
Civil Law and Justice Legislation Amendment Act 2018	130, 2018	25 Oct 2018	Sch 6 (items 58, 59): 22 Nov 2018 (s 2(1) item 10)	—
Family Law Amendment (Western Australia De Facto Superannuation Splitting and Bankruptcy) Act 2020	112, 2020	8 Dec 2020	Sch 3 (items 9–18) and Sch 4 (items 1, 5): 28 Sept 2022 (s 2(1) item 1)	Sch 4 (items 1, 5)

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Endnote 4—Amendment history

Provision affected	How affected
Part I	
s 2	am No 164, 1984
s 3	am No 96, 1975; No 33, 1976; No 161, 1977; No 61, 1981; No 164, 1984; No 65, 1987; No 104, 1988; No 126, 1991; No 135, 1991; No 185, 1992; No 187, 1997; No 10, 2001; No 26, 2008; No 134, 2008; No 5, 2011; No 58, 2011; No 89, 2013; No 62, 2014; No 120, 2015
s 5	am No 65, 1987; No 120, 2015
s 5A	ad No 135, 1991
	am No 10, 2001 (as am by No 63, 2002); No 120, 2015
s 5B	ad No 120, 2015
s 6	am No 164, 1984; No 65, 1987
s 6A	ad No 185, 1992
	am No 134, 2008; No 46, 2001; No 58, 2011; No 129, 2017
	ed C44
s 6B	ad No 185, 1992
	am No 165, 2007; No 134, 2008; No 58, 2011
s 6BA	ad No 165, 2007
	am No 134, 2008
s 6C	ad No 187, 1997
	am No 112, 2003; No 58, 2004; No 106, 2004; No 102, 2005; No 58, 2011
s 6D	ad No 141, 2001
Part II	rep No 58, 2011
s 7	am No 33, 1976
	rep No 58, 2011
s 8	am No 96, 1975; No 33, 1976; No 164, 1984; No 126, 1991; No 1, 1997; No 159, 2001
	rep No 58, 2011
s 9	am No 96, 1975; No 161, 1977; No 164, 1984; No 126, 1991; No 91, 1992; No 1, 1997; No 159, 2001

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Endnote 4—Amendment history

Provision affected	How affected
	rep No 58, 2011
s. 10	rs. No. 96, 1975
	am. No. 161, 1977
	rep. No. 58, 2011
s. 11	am. No. 126, 1991
	rep. No. 58, 2011
s. 12	am. No. 126, 1991 (as am. by No. 43, 1996)
	rep. No. 58, 2011
s. 13	rep. No. 58, 2011
s. 14	am. No. 164, 1984; No. 126, 1991; No. 91, 1992
	rep. No. 58, 2011
s. 15	rep. No. 58, 2011
s. 16	am. No. 164, 1984
	rep. No. 58, 2011
Part III	
s. 17	am. No. 144, 1981; No. 104, 1988; No. 126, 1991
s. 18A	ad. No. 126, 1991
s 19	am No 164, 1984; No 120, 2015; No 164, 2015
s. 20	am. No. 144, 1981; No. 164, 1984; No. 58, 2011
s. 21	am. No. 161, 1977; No. 164, 1984; No. 58, 2011
Part IV	
s 23	am No 96, 1975; No 161, 1977; No 164, 1984; No 1, 1997; No 187, 1997; No 58, 2011; No 120, 2015; No 164, 2015
s 24	am No 161, 1977; No 135, 1979; No 144, 1981; No 164, 1984; No 100, 1988; No 126, 1991; No 135, 1991; No 187, 1997; No 58, 2011; No 89, 2013; No 120, 2015
s. 25	am. No. 161, 1977; No. 164, 1984; No. 58, 2011
Part V	
s. 27	am. No. 58, 2011
s. 28	am. No. 58, 2011
s. 29	am. No. 164, 1984; No. 65, 1987; No. 58, 2011

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Endnote 4—Amendment history

Provision affected	How affected
s 30	am No 15, 1979; No 164, 1984; No 126, 1991; No 126, 1991; No 135, 1991; No 58, 2011; No 120, 2015
s. 31	am. No. 135, 1979; No. 164, 1984; No. 187, 1997; No. 58, 2011
s. 32	am. No. 135, 1979; No. 187, 1997
s 32A	ad No 135, 1979
	am No 144, 1981; No 164, 1984; No 100, 1988; No 187, 1997; No 58, 2011; No 89, 2013; No 120, 2015
s. 33	am. No. 161, 1977; No. 164, 1984; No. 58, 2011
s. 34	am. Nos. 15 and 135, 1979; No. 126, 1991; No. 58, 2011
s. 35	am. No. 161, 1977; No. 135, 1979; No. 104, 1988; No. 58, 2011
s. 36	am. No. 33, 1976; No. 126, 1991; No. 58, 2011
s. 37	am. No. 96, 1975; No. 1, 1997; No. 58, 2011; No 164, 2015
Part VI	
Division 1 heading	am. No. 185, 1992
Division 1	
s. 38	am. No. 185, 1992; No. 187, 1997
s. 39	am. No. 135, 1979; No. 126, 1991; No. 185, 1992
s. 40	rep. No. 161, 1977
	ad. No. 126, 1991
	am. No. 185, 1992; No. 48, 1998; No. 44, 1999
s. 41	rs. No. 161, 1977; No. 185, 1992
	am. No. 187, 1997; No. 58, 2011
s. 41A	ad. No. 21, 1991
	am. No. 185, 1992; No. 187, 1997; No. 58, 2011
Division 2	
s. 42	am. No. 135, 1979; No. 164, 1984; No. 21, 1991
s. 43	am. No. 135, 1979; No. 164, 1984; No. 75, 1990; No. 21, 1991; No. 187, 1997; No. 58, 2011
Division 2A	
Division 2A	ad No 161, 1977
s 43A	ad No 161, 1977

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Endnote 4—Amendment history

Provision affected	How affected
	am No 185, 1992; No 58, 2011
	ed C44
s 44	rs No 161, 1977
	rep No 185, 1992
	ad No 165, 2007
	am No 58, 2011
	ed C44
Division 3	
s. 45	am. No. 58, 2011
s. 46	rs. No. 33, 1976
	am. No. 126, 1991
s. 47	am. No. 135, 1979; No. 126, 1991; No. 58, 2011
s. 48	am. No. 161, 1977; No. 133, 1979; No. 126, 1991; No. 187, 1997; No. 58, 2011; No 89, 2013
s. 48A	ad. No. 126, 1991
	am. No. 187, 1997; No. 58, 2011
s. 49	am. No. 164, 1984; No. 65, 1987; No. 58, 2011
Part VIA	
Part VIA	ad. No. 58, 2004
Division 1	
s 49A	ad No 58, 2004
	am No 165, 2007; No 130, 2018; No 112, 2020
Division 2	
s 49B	ad No 58, 2004
	am No 58, 2011
s 49C	ad No 58, 2004
	am No 58, 2011
Division 3	
s. 49D	ad. No. 58, 2004
	am. No. 134, 2008
s. 49E	ad. No. 58, 2004

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Endnote 4—Amendment history

Provision affected	How affected
	am. No. 165, 2007
Division 4	
s. 49F	ad. No. 58, 2004
	am. No. 121, 2005
Part VIB	
Part VIB	ad No 89, 2013
s 49K	ad No 89, 2013
s 49L	ad No 89, 2013
s 49M	ad No 89, 2013
s 49N	ad No 89, 2013
s 49P	ad No 89, 2013
s 49Q	ad No 89, 2013
	am No 120, 2015
Part VII	
s. 50	am. No. 65, 1987
s. 51	am. No. 164, 1984; No. 58, 2011
s. 52	am. No. 65, 1987
s. 53	am. No. 161, 1977; No. 164, 1984; No. 58, 2011
s. 54	am. No. 65, 1987
s. 55	am. No. 161, 1977; No. 164, 1984; No. 58, 2011
Part VIII	
s. 56	am. No. 58, 2011
s. 57	am. No. 58, 2011
s 58	rep No 120, 2015
s. 59	am. No. 161, 1977
s. 61	rs. No. 33, 1976
	am. No. 58, 2011
s. 61A	ad. No. 126, 1991
	am. No. 58, 2011
s 61B	ad No 135, 1991
	am No 92, 1992; No 10, 2001; No 58, 2011

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Endnote 4—Amendment history

Provision affected	How affected
	rep No 120, 2015
s 61C	ad No 135, 1991
	rep No 120, 2015
s 61D	ad No 135, 1991
	rep No 120, 2015
s 62	am No 33, 1976; No 135, 1979; No 144, 1981; No 104, 1988; No 126, 1991; No 58, 2011; No 120, 2015
s 63	am No 164, 1984; No 58, 2011; No 120, 2015
s 64	am No 161, 1977; No 164, 1984; No 58, 2011; No 120, 2015
Part IX	
Division 1	
s. 66	am. No. 59, 1974; No. 164, 1984; No. 5, 1995; No 31, 2014
s. 67	am. No. 58, 2011
Division 2	
s. 68	am. No. 33, 1976; No. 164, 1984; No. 5, 1995
s. 69	am. No. 164, 1984; No. 58, 2011
Division 3	
s. 70	am. No. 59, 1974; No. 164, 1984; No 31, 2014
s. 71	am. No. 33, 1976; No. 92, 1981; No. 164, 1984; No. 104, 1988
s. 72	am. No. 36, 1978; No. 164, 1984; No. 5, 2011
s. 73	am. No. 36, 1978; No. 164, 1984; No. 5, 2011
s. 74	am. No. 187, 1997; No. 58, 2011
s. 75	am. No. 164, 1984; No. 187, 1997; No. 134, 2008; No. 58, 2011
s. 76	am. No. 33, 1976; No. 164, 1984; No. 58, 2011
s. 78	am. No. 164, 1984; No. 65, 1987; No. 58, 2011
s. 79	am. No. 164, 1984; No. 58, 2011
s. 80	am. No. 164, 1984; No. 58, 2011
s. 82	am. No. 58, 2011
s. 83	am. No. 135, 1991
Division 4	
s. 84	am. No. 36, 1978; No. 164, 1984; No. 5, 1995; Nos. 5 and 58, 2011

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Provision affected	How affected
Part X	
s. 85	am. No. 161, 1977; No. 164, 1984; No. 65, 1987; No. 58, 2011
s. 86	am. No. 164, 1984
s. 87	am. No. 164, 1984; No. 58, 2011
s. 87A	ad. No. 161, 1977
	am. No. 164, 1984; No. 58, 2011
s. 88	am. No. 164, 1984
s. 89	am. No. 161, 1977; No. 164, 1984; No. 58, 2011
s. 90	am. No. 161, 1977; No. 164, 1984; No. 58, 2011
s. 91	am. No. 164, 1984; No. 65, 1987; No. 58, 2011
s. 92	am. No. 164, 1984 (as am. by No. 65, 1985); No. 58, 2011
s. 93	am. No. 164, 1984; No. 58, 2011
s. 94	am. No. 164, 1984
s. 95	am. No. 164, 1984
Part XA	
Part XA	ad. No. 13, 1977
Division 1	
Division 1	ad No 22, 2014
s 98AA	ad No 22, 2014
s. 98A	ad. No. 13, 1977
	am. No. 161, 1977; No. 164, 1984; No. 65, 1987; No. 148, 2001; No. 165, 2007; No 22, 2014
s 98AB	ad No 22, 2014
s 98AC	ad No 22, 2014
Division 2	
Division 2	ad No 22, 2014
s 98AD	ad No 22, 2014
s 98B	ad No 13, 1977
	am No 161, 1977; No 135, 1979; No 164, 1984; No 65, 1987; No 21, 1991; No 148, 2001; No 165, 2007; No 134, 2008; No 58, 2011; No 22, 2014; No 5, 2015

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Provision affected	How affected
s 98C	ad No 13, 1977
	am No 135, 1991; No 148, 2001; No 120, 2015
s. 98D	ad. No. 13, 1977
	rs. No. 161, 1977
	am. No. 148, 2001; No. 165, 2007; No. 134, 2008
s. 98E	ad. No. 13, 1977
	am. No. 148, 2001
s. 98F	ad. No. 13, 1977
	am. No. 93, 1986; No 126, 1991; No. 148, 2001
s. 98G	ad. No. 13, 1977
	am. No. 135, 1979; No. 93, 1986; No. 148, 2001
Division 3	
Division 3	ad No 22, 2014
s. 98GA	ad. No. 93, 1986
	rep. No. 148, 2001
	ad No 22, 2014
s. 98GB	ad. No. 125, 1989
	rep. No. 148, 2001
	ad No 22, 2014
s 98GC	ad No 22, 2014
s 98GD	ad No 22, 2014
s 98GE	ad No 22, 2014
s 98GF	ad No 22, 2014
Part XB	
Part XB	ad. No. 144, 1981
s. 98H	ad. No. 144, 1981
s. 98J	ad. No. 144, 1981
	am. No. 134, 2008
s. 98K	ad. No. 144, 1981
s. 98L	ad. No. 144, 1981

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Endnote 4—Amendment history

Provision affected	How affected
Part XI	
Part XI heading	rs. No. 58, 2011
Part XI	rs. No. 33, 1976
Division 1	
Division 1 heading	ad. No. 58, 2011
s. 99	rs. No. 33, 1976
	am. No. 58, 2011
Division 2	
Division 2	ad No 58, 2011
s 100	rep No 33, 1976
	ad No 58, 2011
s 101	rep No 33, 1976
	ad No 58, 2011
s 102	rep No 33, 1976
	ad No 58, 2011
	am No 120, 2015
s 103	rep No 33, 1976
	ad No 58, 2011
s 104	rep No 33, 1976
	ad No 58, 2011
s 105	rep No 33, 1976
	ad No 58, 2011
s 106	rep No 33, 1976
	ad No 58, 2011
	am No 120, 2015
Division 3	
Division 3	ad. No. 58, 2011
s. 107	rep. No. 33, 1976
	ad. No. 58, 2011
ss. 108–123	rep. No. 33, 1976

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Endnote 4—Amendment history

Provision affected	How affected
Part XII	
s. 124	rep. No. 33, 1976
	ad. No. 187, 1997
	am. No. 58, 2011; No 89, 2013
s. 124A	ad. No. 187, 1997
	am. No. 58, 2011
s 124B	ad No 82, 2012
	am No 62, 2014; No 65, 2015
s 124C	ad No 82, 2012
	am No 62, 2014; No 65, 2015
s 124D	ad No 82, 2012
	am No 62, 2014
	rs No 65, 2015
s. 126	am. No. 104, 1988; No. 58, 2011
s. 127	am. No. 164, 1984; No. 104, 1988; No. 141, 2001; No. 58, 2011; No 4, 2016; No 61, 2016
s. 128	am. No. 135, 1979; No. 58, 2011
s. 128A	ad. No. 104, 1988
	am. No. 58, 2011
s. 130	am. No. 164, 1984; No. 104, 1988; No. 141, 2001; No. 58, 2011; No 4, 2016; No 61, 2016
s. 130A	ad. No. 161, 1977
s. 130B	ad. No. 187, 1997
	am. No. 58, 2011
s 131	am No 33, 1976; No 164, 1984; No 146, 1999; No 10, 2015; No 61, 2016
Part XIII	
Part XIII	ad No 135, 1991
s 132	ad No 135, 1991
s 133	ad No 135, 1991
s 134	ad No 135, 1991
s 135	ad No 135, 1991

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Provision affected	How affected
	am No 120, 2015
s 136	ad No 135, 1991
s 137	ad No 135, 1991
s 138	ad No 135, 1991
Schedule 2	
Schedule 2	am. No. 96, 1975; No. 161, 1977
Schedule 3	
Schedule 3	am. No. 161, 1977; No. 135, 1979

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Australian Government
Defence

Ministerial Background Brief

MB26-000192

FOR: Minister for Defence Personnel

INFO: Deputy Prime Minister

CC: SEC, CDF, VCDF, ASSOCSEC, DEPSEC GOV, FASMECC, CPERS

BACKGROUND BRIEF – ADF SUPERANNUATION – OPTIONAL PARAGRAPHS FOR MO USE

Key Issues:

Following the Finance and Public Administration References Committee Inquiry into the operation and appropriateness of the superannuation and pension schemes for current and former members of the ADF, the Australian Defence Force Retirees Association (ADFRA), published a member update about the Defence Forces Retirement and Death Benefits (DFRDB) and superannuation arrangements for all ADF personnel (Attachment A). It has resulted in increased correspondence to ministerial offices.

Defence has prepared some words for interim use, while the Government response to the committee report is prepared and approved, to assist advisors with responses to correspondence. Following consultation with your office, the prepared paragraphs are enclosed for your consideration (Attachment B).

Media Considerations:

Defence understands that ADFRA have launched a campaign to their membership base through an online update. Additionally, other veteran groups continue to raise concerns about longstanding issues and perceived inequities relating to the ADF superannuation schemes. Defence anticipates that some media interest may develop after tabling of the Government response to the Inquiry, as it relates to veteran benefits.

Minister Comments:

Cleared by:
Ms Justine Greig PSM
Deputy Secretary Defence People
Defence People Group (DPG)
s47E(c)
18 May 2026

Primary Contact Officer:
Mr Ky Blackman
First Assistant Secretary
People Policy and Development Division, DPG
s47E(c)

Secondary Contact Officer:
Brigadier Kirk Lloyd OAM
Director General
People Policy and Employment Conditions, DPG
s47E(c)

Sensitivity: Yes.

1. Committee recommendations 1 and 2 (outlined below) will directly impact DFRDB pensioners, a cohort that have campaigned for changes to the scheme for a number of years. Defence expects that these members will be sensitive to the Government response and subsequent outcomes.
2. Committee recommendation 3 relates to legislative definitions that determine eligibility for reversionary superannuation death benefits, and the impact of service-related mental illness, and domestic and family violence, on an applicant spouse for reversionary death benefits. This is a highly sensitive topic that has been raised by multiple veteran advocacy groups and individuals who consider the current rules restrictive.
3. Noting historical sensitivities, Defence expects continued advocacy on these matters until the Government tables its response to the Inquiry, at which time Defence anticipates a substantial increase in advocacy and correspondence.

Financial Impacts: No.

Systems/legislation/deregulation: No.

Consultation: No.

Attachments:

Attachment A	Australian Defence Force Retirees Association – DFRDB Update – April 2026.
Attachment B	Proposed Interim words for correspondence relating to Senate Inquiry responses (pre tabling of Government response).
Attachment C	The Senate Finance and Public Administration References Committee report – Operation and appropriateness of the superannuation and pension schemes for current and former members of the ADF.

Background:

4. On 19 March 2026, the Senate's Finance and Public Administration References Committee tabled its report on the Inquiry into the operation and appropriateness of the superannuation and pension schemes for current and former members of the ADF (Attachment C). The committee made four recommendations that require a response from the Government. The four recommendations are:
    a. Recommendation 1 – The committee recommends the Australian Government consider whether the current settings of Defence Force Retirement and Death Benefits pensions are fair and equitable for all members.
    b. Recommendation 2 – The committee recommends the Australian Government consider reviewing indexation methodology for all defined benefit military pension schemes, with a view to achieving consistency and equity.
    c. Recommendation 3 – The committee recommends that the Australian Government consider whether current definitions are adequate, particularly those of 'spouse' and 'mutually dependent', to accommodate couples living apart due to experience of PTSD, other service-related mental illnesses, and domestic and family violence.
    d. Recommendation 4 – The committee recommends that the Australian Government consider allowing Military Superannuation and Benefits Scheme members to roll over their Employee Benefit to another superannuation fund of their choice.

5. Defence is preparing a draft Government response (GR26-000002) to the committee's final report for your consideration.

Australian Defence Force Retirees Association – April 2026 update

6. ADFRA is a not-for-profit organisation established in Victoria to act on behalf of defence force retirees, represent their interests in the ADF superannuation schemes, and monitor any proposed amendments to the scheme legislation and administrative procedures.

7. Some veteran groups, as well as individual veterans, continue to campaign on three matters relating to the DFRDB scheme:

    a. misleading information regarding the effect of commutation on retirement pensions;

    b. indexation methodology; and

    c. the use of set life expectancy.

    These campaigns led to an investigation by the Commonwealth Ombudsman in 2019 and a Senate committee inquiry in 2021. These matters were also raised in the recent Inquiry.

8. Defence notes that individual members of the DFRDB scheme, as well as members of ADFRA, actively participated in the Inquiry, and ADFRA made a written submission. The committee considered all of the written submissions and evidence presented at the public hearing, before finalising their report and recommendations.

9. Following the committee's report on 19 March 2026, ADFRA launched a new campaign to highlight their longstanding concerns about the perceived inequities in the DFRDB scheme and the Military Superannuation and Benefits Scheme (MSBS). The campaign also advocates for broader reforms to all ADF superannuation schemes to address a perceived systemic failure.

10. As a result of ADFRA's April 2026 update, veterans have been corresponding with various ministers, senators and members of Parliament about matters raised in the ADFRA update, in addition to matters relating to the Senate committee's Inquiry.

11. Defence has prepared some words for interim use, while the Government response to the Senate committee report is prepared and approved. The optional paragraphs cover matters relating to the committee Inquiry and other common superannuation enquiries.



Australian Defence Force Retirees Association Inc.
No. A0108026R
We represent the interests of Defence Force Retirees regarding their Superannuation
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DFRDB UPDATE – APRIL 2026

A Critical Moment for ADF Superannuation Justice

We have reached a decisive point. After years of respectful engagement, neither major party has acted on ADFRA's key reforms, and they are unlikely to do so unless compelled.

This is no longer just a DFRDB issue. It is a whole-of-service superannuation failure affecting every ADF scheme since 1948. From post-war arrangements through DFRDB (1973-1991), MSBS (1991-2016), and ADF Super (2016-present), members have consistently raised concerns about fairness, equity, and the failure to recognise the unique nature of military service.

The 2026 Senate Inquiry confirmed these long-standing concerns, highlighting:

- Ongoing inequity in DFRDB and MSBS pension indexation
- Structural unfairness in DFRDB commutation
- Complexity and perceived inadequacy of MSBS benefits, especially for medically discharged members
- Continuing concerns that even ADF Super does not fully compensate for unlimited liability

Across all schemes and generations, veterans and families gave consistent evidence: the system has evolved, but the fundamental injustice has not been resolved.

The political landscape has shifted. Margins are thin, minor parties are exerting pressure, and this is the most favourable point in the electoral cycle we have seen in years. Waiting longer will not deliver results.

ADFRA does not tell anyone how to vote. However, unless meaningful reforms, particularly addressing DFRDB injustices, are implemented before the next Federal election, many members and beneficiaries should choose to support candidates other than those of the major parties. This is an individual decision, and members should ensure their vote is cast formally in accordance with electoral law. Long-standing party loyalties need not be abandoned; if a party acts, members can continue to support it with pride. But action must come first.

ADF superannuation schemes were never merely employment benefits. They represent a solemn debt of honour, a reciprocal social contract, articulated as far back as the Jess Committee, owed to those who accepted unlimited liability in defence of the nation.

That contract has not been honoured.

Parliament must now address not only DFRDB inequities, but the broader systemic failure across all ADF superannuation schemes.

Please share the link to this The Legislated Erosion of ADF Superannuation Entitlements video with MPs, Senators, community groups, and networks. This remains our most effective strategy, and this electoral cycle is our window of opportunity.

Across every generation of service, the message is clear:

The debt of honour must be repaid. The reforms must be implemented and now is the time to act.

Kind regards,

Jim Hislop OAM

President

OFFICIAL

ATTACHMENT B

Interim words for Ministerial Office (MO) use for Senate Inquiry responses - pre tabling of the Government response.

Background

Following the April update distributed by the Australian Defence Force Retirees Association (ADFRA) an influx of correspondence is being received from members and veterans about the superannuation schemes for ADF personnel. In particular, pensioners and members of the Defence Force Retirement and Death Benefits (DFRDB) scheme are corresponding about the ADFRA update, in addition to associated individual complaints. Defence has prepared standard words for interim use, while the Government Response to the Senate Inquiry is being prepared, to assist in the management of increased correspondence.

Some of the enquiries are being received through a local member of parliament, while some are sent directly from veterans. To date, the correspondence is either being sent with a standard question or complaint relating to a common topic, or just the ADFRA update is being sent on its own. Where queries fall into one of the common topics, the below standard wording may be utilised.

If correspondence is received that relates to something outside the below common topics, or crosses over several topics, it will be required to be answered by the Directorate of Superannuation and Projects (DSP) team.

Interim words for MO use

Senate Inquiry with/without Australian Defence Force Retirees Association update – April 2026 attached

For use where correspondence:

- mentions the Senate Inquiry and/or its recommendations;
- refers to the ADFRA update 2026; or
- discusses a superannuation matter that was considered by the Senate committee.

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The Senate

Finance and Public Administration References Committee

Operation and appropriateness of the superannuation and pension schemes for current and former members of the Australian Defence Force (ADF)

March 2026

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Abbreviations

AAT	Administrative Appeals Tribunal
ADF	Australian Defence Force
ADF Cover	Australian Defence Force Cover Scheme
ADF Super	Australian Defence Force Superannuation Scheme
ADFRA	Australian Defence Force Retirees Association
APRA	Australian Prudential Regulation Authority
ART	Administrative Review Tribunal
ASIC	Australian Securities and Investments Commission
AWE	Average Weekly Earnings
CDDA Scheme	Scheme for Compensation for Detriment caused by Defective Administration
committee	Senate Finance and Public Administration References Committee
CPI	Consumer Price Index
CSC	Commonwealth Superannuation Corporation
DFRB	Defence Forces Retirement Benefits Scheme
DFRDB	Defence Force Retirement and Death Benefits Scheme
DFWA	Defence Force Welfare Association
DVA	Department of Veterans' Affairs
FADT Committee	Senate Foreign Affairs, Defence and Trade References Committee
Jess Committee	Joint Select Committee on Defence Forces Retirement Benefits Legislation
MSBS	Military Superannuation and Benefits Scheme
VFAC	Veteran Family Advocate Commissioner

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List of recommendations

Recommendation 1

2.98 The committee recommends that the Australian Government consider whether the current settings of Defence Force Retirement and Death Benefits pensions are fair and equitable for all members.

Recommendation 2

3.35 The committee recommends the Australian Government consider reviewing indexation methodology for all defined benefit military pension schemes, with a view to achieving consistency and equity.

Recommendation 3

4.123 The committee recommends that the Australian Government consider whether current definitions are adequate, particularly those of 'spouse' and 'mutually dependent', to accommodate couples living apart due to experience of PTSD, other service-related mental illnesses, and domestic and family violence.

Recommendation 4

4.127 The committee recommends that the Australian Government consider allowing Military Superannuation and Benefits Scheme members to roll over their Employee Benefit to another superannuation fund of their choice.

Chapter 1
Introduction

Referral

1.1 In the 47th Parliament, the Senate referred an inquiry into the operation and appropriateness of the superannuation and pensions schemes for current and former members of the Australian Defence Force (ADF) to the Finance and Public Administration References Committee (the committee) for report by 5 August 2025.[1]

1.2 In the 48th Parliament, the Senate agreed that the inquiry be re-adopted for inquiry and report by 30 October 2025 with its terms of reference unchanged.[2]

1.3 The terms of reference are to inquire into the operation and appropriateness of the superannuation and pensions schemes for current and former members of the ADF, with particular reference to:

(a) whether the legislative framework governing superannuation and pension schemes for current and former members of the ADF is fit for purpose;
(b) whether the Military Superannuation and Benefits Scheme (MSBS) enables veterans to preserve savings to deliver income for a dignified retirement in an equitable and sustainable way;
(c) the structure and governance of the Commonwealth Superannuation Corporation (CSC), including an examination of its services to current and former members of the ADF and the identification of strategies to address complaints and improve service delivery;
(d) whether CSC account holders have the same rights and protections as other Australians in relation to their superannuation, including the ability to withdraw funds, receive appropriate returns, change superannuation providers and receive transparent information about return on investments;
(e) mechanisms for veterans to have their discharge reclassified from administrative to medical, particularly in cases involving psychological injuries, and whether current appeal processes and discretion practices by the Department of Defence and the CSC adequately protect veterans' entitlements and recognition of service-related mental health issues;
(f) the operation and effectiveness of the MSBS, Defence Force Retirement and Death Benefits Scheme, Defence Forces Retirement and Benefits Scheme, Australian Defence Force Superannuation Scheme and Australian Defence

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1 *Journals of the Senate*, No. 151, 11 February 2025, pp. 4795–4796.

2 *Journals of the Senate*, No. 9, 26 August 2025, p. 295.

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Force Cover Scheme and whether these schemes are operating in the best interests of current and former members of the ADF;

(g) targeted initiatives and education for current and former members of the ADF to preserve superannuation savings, improve understanding of superannuation and increase participation in these schemes; and

(h) any other related matters.[3]

1.4 In re-referring the inquiry, the Senate resolved that the committee have the power to consider and use the correspondence and evidence received for the inquiry as part of the 47th Parliament.[4]

1.5 On 27 October 2025, the Senate agreed to extend the presentation of the final report to 12 December 2025.[5]

1.6 On 30 October 2025, the Senate agreed to a further extension of the final report to 19 March 2026.[6]

Background

1.7 Superannuation and pension schemes for current and former members of the ADF have undergone many iterations since the introduction of the Defence Forces Retirement Benefits (DFRB) scheme in 1948. This section outlines the purpose and intent of the schemes and provides an overview of the issues raised both in this inquiry and previous reviews.

1.8 As with their civilian equivalents, military pension and superannuation schemes aim to support individuals financially in retirement.

1.9 However, military pension and superannuation schemes also aim to take into consideration the 'unique nature of military service'.[7] This includes a significant risk of death and disability, the difficulties ADF members face when transitioning to civilian life, and the likelihood that career ADF members will retire earlier than is standard practice in the rest of the Australian workforce.[8]

1.10 There have been five different Australian military pension and superannuation schemes since 1948:

- the Defence Forces Retirement Benefits Scheme (DFRB);

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3 *Journals of the Senate*, No. 9, 26 August 2025, p. 295.

4 *Journals of the Senate*, No. 9, 26 August 2025, p. 295.

5 *Journals of the Senate*, No. 16, 27 October, p. 516.

6 *Journals of the Senate*, No. 19, 30 October, p. 620.

7 Department of Defence, *Report of the Review of Military Superannuation Arrangements*, December 2007, p. 4; Department of Defence, *Submission 5 (47th Parliament)*, p. 6.

8 Department of Defence, *Report of the Review of Military Superannuation Arrangements*, December 2007, p. 4; Department of Defence, *Submission 5 (47th Parliament)*, p. 6.

- the Defence Force Retirement and Death Benefits Scheme (DFRDB);
- the Military Superannuation and Benefits Scheme (MSBS);
- the Australian Defence Force Superannuation Scheme (ADF Super); and
- the Australian Defence Force Cover Scheme (ADF Cover).

1.11 These five schemes have been a mixture of:

- defined benefit schemes, where retirement pay is calculated based on predetermined formulas;
- accumulation schemes, where retirement pay is based on employee and employer contributions and interest earned from the investment of these contributions; and
- hybrid schemes, which include both defined benefit and accumulation aspects.

Defence Forces Retirement Benefits Scheme (DFRB)

1.12 The DFRB scheme was established in 1948 by the *Defence Forces Retirement Benefits Act 1948*. It is a defined benefit scheme that provides a pension calculated based on rank and length of service to members who retired after reaching retirement age.[9]

1.13 The DFRB included provisions for commutation, which allowed retiring members, at the discretion of the DFRB Board, to be paid up to one third of their pension entitlement as a lump sum up front.[10]

1.14 On 2 September 1970, the Joint Select Committee on Defence Forces Retirement Benefits Legislation (the Jess Committee) was established 'to inquire into and report upon the [DFRB] legislation …'.[11] Its final report in May 1972 highlighted concern among parliamentarians regarding:

> … the very high contribution rates that were being required of certain pre-1959 entrants to the scheme, the delays in completion of the statutory actuarial reviews and the ever growing complexity of the legislation.[12]

1.15 The Jess Committee made 20 recommendations, including:

- the establishment of a new military superannuation scheme to replace the DFRB;
- that the new scheme be administered by the Department of Defence, with the Minister for Defence as the responsible Minister;

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9 Department of Defence, *Submission 5 (47th Parliament)*, p. 6.

10 Joint Select Committee on Defence Forces Retirement Benefits Legislation, *Report*, 18 May 1972, p. 30. The Joint Committee was chaired by Mr John Jess CBE MP and is generally referred to as the Jess Committee.

11 Joint Committee on DFRB Legislation, *Report*, 18 May 1972, p. 6.

12 Joint Committee on DFRB Legislation, *Report*, 18 May 1972, p. 7.

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- that all ADF members on continuous full time duty for 12 months or more be eligible and required to join the new scheme;
- that all DFRB members be transferred to the new scheme;
- that the Commonwealth guarantee the benefits provided and meet all costs not covered by members' contributions;
- that the assets of the DFRB Fund be transferred to the Consolidated Revenue Fund.[13]

1.16 The DFRB was closed to new contributors on 30 September 1972. Members contributing at the time of the DFRB's closure were automatically transferred to the newly established DFRDB scheme. As at 31 December 2024, there were still 1334 pensioners receiving benefits under the DFRB.[14]

Defence Force Retirement and Death Benefits Scheme (DFRDB)

1.17 The DFRDB was established by the *Defence Force Retirement and Benefits Act 1973* (DFRDB Act) and commenced on 1 October 1972.[15] The new DFRDB scheme incorporated most of the 20 recommendations made by the Jess Committee.[16]

1.18 The DFRDB is a defined benefit superannuation scheme that provides benefits to eligible members after 20 years of service irrespective of whether they have reached retirement age, or after 15 years of service if they have reached the retirement age for their rank.[17] The benefit is based on a percentage of the member's final salary. The percentage increases for every year of service after the age of eligibility, reaching a maximum after 40 years of service. For example, members who retire after 20 years of service are eligible for a benefit of 35 per cent of their final salary, while those retiring after 40 years are eligible for 76.5 per cent.[18] Benefits are paid for the lifetime of the member. The DFRDB also has death and invalidity benefits built into the scheme.[19]

1.19 Like its predecessor, the DFRDB includes provisions for commutation, but with different arrangements to the DFRB scheme. The DFRDB allows retiring members to commute up to five times their annual pension entitlement and does

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13 Joint Committee on DFRB Legislation, *Report*, 18 May 1972, pp. 1–5.

14 Commonwealth Superannuation Corporation (CSC), *Submission 4 (47th Parliament)*, [p. 2].

15 The DFRDB legislation received Royal Assent on 19 June 1973 with provisions to commence retrospectively from 1 October 1972.

16 Department of Defence, *Submission 5 (47th Parliament)*, p. 6.

17 Department of Defence, *Submission 5 (47th Parliament)*, p. 2.

18 Department of Defence, Defence Force Retirement and Death Benefits (DFRDB) scheme,

19 Department of Defence, *Submission 5 (47th Parliament)*, p. 2.

not require them to seek approval to take up this option.[20] DFRDB members who commute part of their pension have their annual pension thereafter permanently reduced by an amount calculated according to a formula set out in the DFRDB Act.[21]

1.20 In May 1989, the Australian Government announced a review of the DFRDB. The review identified significant issues with the scheme that could not be rectified through legislative amendment, and so recommended that the DFRDB be closed and replaced by a new scheme.[22]

1.21 The DFRDB closed to new members on 30 September 1991. As at 31 December 2024, the DFRDB had 441 contributing members and 48 861 pensioners that were still under the scheme.[23]

Military Superannuation and Benefits Scheme (MSBS)

1.22 The MSBS was established on 1 October 1991 to replace the DFRDB.[24] DFRDB members had the option to transfer to the MSBS until 30 September 1992.

1.23 The MSBS is a hybrid superannuation scheme combining accumulation from member contributions and defined benefits from employer contributions.[25] Employer contributions are determined when the member leaves the ADF and are calculated based on a percentage of the member's salary and eligible period of accrued service.[26] The MSBS also has death and invalidity benefits built into the scheme.

1.24 On 27 February 2007, the Australian Government announced an independent review of military superannuation.[27] The review found that 'while the MSBS compares reasonably well with most overseas military schemes and with other Australian schemes for "uniformed bodies", it still falls well short of best practice contemporary superannuation'.[28]

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20 The original maximum commutation amount for DFRDB members was four times the members' annual pension entitlement. From June 1983, this was gradually increased over a 20-year period to five times the members' annual pension entitlement.

21 *Defence Force Retirement and Death Benefits Act 1973,* ss. 24(3) and Schedule 3.

22 Department of Defence, *Submission 5 (47th Parliament)*, p. 7.

23 CSC, *Submission 4 (47th Parliament)*, [p. 2].

24 Department of Defence, *Submission 5 (47th Parliament)*, p. 7.

25 CSC, *Submission 4 (47th Parliament)*, [p. 3].

26 Department of Defence, *Submission 5 (47th Parliament)*, p. 2

27 Department of Defence, *Report of the Review of Military Superannuation Arrangements*, December 2007, p. iv; Department of Defence, *Submission 5 (47th Parliament)*, p. 7.

28 Department of Defence, *Report of the Review of Military Superannuation Arrangements*, December 2007, p. ix.

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1.25 The review recommended the establishment of a new 'taxed, funded, defined contribution scheme' comprising:

- an accumulation retirement plan based on generous employer contributions and voluntary personal contributions; and
- death and disability benefits.[29]

1.26 The MSBS closed to new members on 30 June 2016. As at 31 December 2024, the MSBS had 149 021 members, 33 527 pensioners and $14.65 billion in funds under management.[30]

Australian Defence Force Superannuation and Cover Schemes (ADF Super and ADF Cover)

1.27 ADF Super and ADF Cover commenced concurrently on 1 July 2016 to replace the MSBS.[31]

1.28 ADF Super is an accumulation plan that is currently the default fund for new members of the ADF if they do not elect a different superannuation fund or have an existing fund.[32] ADF Super members have the option to move between superannuation funds.[33]

1.29 ADF Super has an employer contribution of 16.4 per cent, exceeding the mandated Superannuation Guarantee, which is 12 per cent as at 1 July 2025.[34]

1.30 MSBS members that are currently serving have the option to move from the MSBS to ADF Super or a fund of their choice, but cannot switch back to the MSBS if they elect to change funds.[35] MSBS members that elect to change superannuation funds receive financial disclaimers highlighting the consequences of the decision and are directed to contact CSC to discuss their individual circumstances.[36]

1.31 As at 31 December 2024, ADF Super has 39 058 members and $2.45 billion funds under management.[37]

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29 Department of Defence, *Report of the Review of Military Superannuation Arrangements*, December 2007, p. ix.

30 CSC, *Submission 4 (47th Parliament)*, [p. 1].

31 Department of Defence, *Submission 5 (47th Parliament)*, p. 7.

32 Department of Defence, *Submission 5 (47th Parliament)*, p. 1.

33 Department of Defence, *Submission 5 (47th Parliament)*, p. 3.

34 Department of Defence, *Submission 5 (47th Parliament)*, p. 7.

35 Department of Defence, *Submission 5 (47th Parliament)*, pp. 5–7.

36 Department of Defence, *Submission 5 (47th Parliament)*, p. 5.

37 CSC, *Submission 4 (47th Parliament)*, [p. 2].

1.32 ADF Cover provides death and invalidity benefits to ADF members under the age of 60 that are not already covered by the MSBS or DFRDB schemes, irrespective of whether they are an ADF Super member. ADF Cover provides a defined benefit calculated based on the provisions of the *Australian Defence Force Cover Act 2015*.[38]

1.33 As at 31 December 2024, there were 2506 ADF Cover pension recipients.[39]

Governance of military superannuation and pension schemes

1.34 The Department of Defence (Defence) and the Commonwealth Superannuation Corporation (CSC) share responsibility for the administration of military superannuation and pension schemes. Policy responsibility rests with Defence, whereas CSC's role is 'essentially limited to administering the superannuation schemes as set out in the Acts (and associated regulations and rules) as applicable to those schemes'.[40]

1.35 Defence and CSC have a Memorandum of Understanding in place that sets out the service standards Defence expects of CSC in providing funding for CSC to administer the schemes.[41]

1.36 The MSBS and ADF Super are regulated by the Australian Securities and Investments Commission (ASIC) and Australian Prudential Regulation Authority (APRA) in the same way as other member contribution schemes. By contrast, the DFRB, DFRDB, and ADF Cover are exempt public sector superannuation schemes that are regulated and supervised by the Commonwealth Government, in the same way as other public sector defined benefit schemes.[42] CSC is the trustee and administrator for the regulated schemes, and the administrator for the exempt schemes.[43]

1.37 The Department of Veterans' Affairs (DVA) does not administer superannuation or pension schemes. However, the payments members receive from military superannuation and pension schemes can impact the other forms of income support DVA provides to veterans, such as incapacity payments or the Special Rate Disability Pension.[44]

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38 CSC, *Submission 4 (47th Parliament)*, [p. 2].

39 CSC, *Submission 4 (47th Parliament)*, [p. 2].

40 CSC, *Submission 4 (47th Parliament)*, [p. 1].

41 CSC, *Submission 4 (47th Parliament)*, [pp. 3–4]; Department of Defence, *Submission 5 (47th Parliament)*, pp. 3–4.

42 CSC, *Submission 4 (47th Parliament)*, [p. 1]; Australian Prudential Regulation Authority, *Submission 53*, pp. 1–3.

43 CSC, *Submission 4 (47th Parliament)*, [p. 1].

44 Department of Veterans' Affairs, *Submission 7 (47th Parliament)*, p. 7.

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Previous reviews and inquiries

1.38 Military superannuation and pension schemes have consistently been touched upon in reviews and inquiries regarding:

- military superannuation and pension schemes specifically;
- superannuation or pension schemes more broadly; and
- issues relating to the ADF and veterans.

1.39 Since the introduction of the DFRB scheme, the following reviews and inquiries have focused on or discussed military superannuation and pension schemes:

- the 1972 Joint Select Committee on Defence Forces Retirement Benefits Legislation (the Jess Committee);
- the 1973 inquiry into superannuation pension updating (the Pollard inquiry);
- the 1974 review of the Treasurer's proposals for a new superannuation scheme for Australian Government Employees (the Melville and Pollard Review);
- the 1990 Report of the DFRDB scheme review committee (the Cole Review);
- the 2001 Senate Select Committee on Superannuation and Financial Services;
- the 2002 Senate Select Committee on Superannuation;
- the 2007 Review into Military Superannuation Arrangements (the Podger Review);
- the 2008 Review of Pension Indexation Arrangements in Australian Government Civilian and Military Superannuation Schemes (the Matthews Review);
- the 2011 Review of Military Compensation Arrangements;
- the 2019 Commonwealth Ombudsman investigation into the administration of the DFRDB scheme;
- the 2021 Senate Foreign Affairs, Defence and Trade References Committee inquiry into the accuracy of information provided to DFRDB members;
- the 2023 Australian Government Actuary review of long-term costs of military superannuation schemes; and
- the 2024 Royal Commission into Defence and Veteran Suicide.

1.40 The two most recent reviews specifically relevant to this report are the Commonwealth Ombudsman's (the Ombudsman) 2019 investigation and the Senate Foreign Affairs, Defence and Trade References Committee's (FADT committee) 2021 inquiry, both of which focused on the DFRDB scheme.

Investigation by the Commonwealth Ombudsman

1.41 On 5 April 2019 the Minister for Veterans' Affairs and Defence Personnel wrote to the Ombudsman asking that an inquiry into the DFRDB scheme be undertaken. After considering the request, on 10 April 2019, the Ombudsman

wrote to the minister and advised that an investigation would be commenced under the own motion powers in the *Ombudsman Act 1976*.[45]

1.42 The scope of the Ombudsman's investigation was limited to:

> … the administration of the DFRDB Scheme, and particularly the issue of commutation. The primary focus of the investigation [was] the accuracy of the information provided to DFRDB members.[46]

1.43 The Ombudsman found 'historical deficiencies by Defence which [warranted] remedial action'.[47] These deficiencies included incorrect information being provided to DFRDB members about their retirement benefits, which misled many DRFDB members to believe that the reduction in their retirement pay due to commutation would cease once they reached a legislated life expectancy age.[48]

1.44 The Ombudsman stated that, while Defence's actions amounted to defective administration, modelling showed that commutation is generally to the benefit of DFRDB members compared to the alternative of not commuting.[49]

1.45 Consequently, the Ombudsman concluded that a separate compensation scheme for individuals who commuted would not be appropriate, even if incorrect or insufficient information provided caused an individual to commute where they otherwise would not have.[50]

1.46 While the Ombudsman did not find any errors by CSC, the report did identify 'actions that may further improve communication about the long term effects of commutation retirement pay'.[51]

1.47 The Ombudsman made three recommendations:

- that the Secretary of Defence and Chief of Defence Force should issue an unreserved apology to DFRDB members;
- that CSC improve its commutation election forms and standard letters to clearly explain that commutation will result in a permanent reduction to retirement pay; and

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45 Commonwealth Ombudsman, *Investigation into the administration of the Defence Force Retirement and Death Benefits (DFRDB) Scheme* (Investigation into the DFRDB Scheme), Report No. 06 of 2019, December 2019, p. 1.

46 Commonwealth Ombudsman, Investigation into the DFRDB Scheme, December 2019, p. 1.

47 Commonwealth Ombudsman, Investigation into the DFRDB Scheme, December 2019, p. 54.

48 Commonwealth Ombudsman, Investigation into the DFRDB Scheme, December 2019, p. 54.

49 Commonwealth Ombudsman, Investigation into the DFRDB Scheme, December 2019, p. 54.

50 Commonwealth Ombudsman, Investigation into the DFRDB Scheme, December 2019, p. 54.

51 Commonwealth Ombudsman, Investigation into the DFRDB Scheme, December 2019, p. 54.

- that CSC amend its DFRDB About Your Scheme and Retirement Benefits publications to clearly explain the possibility of longer-term indexation related consequences of commutation.[52]

1.48 On 3 December 2019, the Secretary of Defence and Chief of Defence Force apologised to DFRDB members 'for providing incorrect advice to some DFRDB members and for the confusion and emotional impact that it may have caused'.[53]

1.49 CSC accepted the Ombudsman's recommendations.[54]

1.50 In response to the Ombudsman's report, the Australian Government stated that it had no plans to make changes to the DFRDB scheme.[55]

1.51 In October 2022 the Ombudsman indicated that it considered the report's recommendations to have been implemented.[56]

Senate Foreign Affairs, Defence and Trade References Committee inquiry

1.52 On 2 July 2021, the FADT committee tabled its report for an inquiry into the accuracy of information provided to DFRDB members.[57]

1.53 The FADT committee's report focused on:

- information provided to DFRDB members in relation to commutation;
- issues with the scheme's design; and
- suggested changes to the scheme and potential costs of such changes.[58]

1.54 The FADT committee concurred with the findings of the Ombudsman that:

- Defence had provided incorrect information regarding the DFRDB scheme to many, but not all, DFRDB members;
- the information provided by the DFRDB Authority and CSC was at all times correct, but not sufficiently clear to correct misunderstandings caused by incorrect information provided by Defence;
- the vast majority of DFRDB members would have chosen to commute even if they had known about the reduction in retirement pay; and

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52 Commonwealth Ombudsman, Investigation into the DFRDB Scheme, December 2019, p. 54–56.

53 Commonwealth Ombudsman, Investigation into the DFRDB Scheme, December 2019, p. 67.

54 Commonwealth Ombudsman, Investigation into the DFRDB Scheme, December 2019, p. 69.

55 The Hon Darren Chester MP, Minister for Veterans' Affairs and Minister for Defence Personnel, 'Statement – Independent inquiry report into DFRDB scheme', *Media Release*, 11 December 2019.

56 Commonwealth Ombudsman, *Did They Do What They Said They Would? Volume 2*, October 2022, pp. 33–34.

57 *Journals of the Senate*, No. 107, 3 August 2021, p. 3808.

58 Senate Foreign Affairs, Defence and Trade References Committee (FADT committee), *Accuracy of information provided to Defence Force Retirement and Death Benefits (DFRDB) members*, July 2021, p. 9.

- some DFRDB members suffered a perceived, rather than actual, financial detriment.[59]

1.55 The FADT committee also highlighted the Ombudsman's acknowledgement that there may be some instances where DFRDB members experienced financial loss due to erroneous or incomplete advice from Defence, and noted that no claims through the Scheme for Compensation for Detriment caused by Defective Administration (CDDA scheme) by DFRDB members had been successful.[60]

1.56 It made two recommendations:

- that the Australian Government consider ways to improve members' understanding of the DFRDB and other military superannuation schemes; and
- that the Australian Government consider:
  - more assistance for DFRDB members to make claims under the CDDA scheme and appeal any adverse decisions;
  - a separate reparation payments scheme for DFRDB members who are unsuccessful under the CDDA scheme to recognise the government's moral obligation to address any confusion and distress caused by defective administration; and
  - possibilities for compensation for successful and unsuccessful CDDA scheme claims and appeals.[61]

1.57 The Australian Government supported the recommendation to improve members' understanding of military superannuation schemes and partially supported the recommendation regarding CDDA scheme claims.[62]

1.58 The government did not support a separate reparation payments scheme for DFRDB members whose claims under the CDDA scheme are unsuccessful, arguing that it would create perverse outcomes for different groups of DFRDB members.[63]

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59 FADT committee, *Accuracy of information provided to DFRDB members*, July 2021, pp. 71–73.

60 The Scheme for Compensation for Detriment caused by Defective Administration provides a mechanism for non-corporate Commonwealth entities to compensate people who have experienced detriment as a result of the entity's defective administration; FADT committee, *Accuracy of information provided to DFRDB members*, July 2021, p. 73.

61 FADT committee, *Accuracy of information provided to DFRDB members*, July 2021, p. 73–76.

62 Australian Government Response to the Senate Foreign Affairs, Defence and Trade References Committee: *Inquiry into the accuracy of information provided to Defence Force Retirement and Death Benefits (DFRDB) members*, tabled 2 December 2021, pp. 1–2.

63 Australian Government Response to the Senate Foreign Affairs, Defence and Trade References Committee: *Inquiry into the accuracy of information provided to Defence Force Retirement and Death Benefits (DFRDB) members*, tabled 2 December 2021, p. 2.

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1.59 It did support other recommendations regarding the CDDA scheme, but stated that:

> … both the Commonwealth Ombudsman and the Committee report indicate that it is unlikely that a member has suffered a financial detriment and therefore the likelihood of any member being successful appears to be limited … There is a balance to be struck … between giving [claimants] the assistance they need to put their best case forward, and also managing their expectations. This is necessary to ensure that claimants are not given unrealistic expectations about their prospects for success.[64]

1.60 In relation to the design of the DFRDB scheme more generally, the FADT committee emphasised that any changes flagged by the committee would require legislation to be amended.[65]

1.61 The FADT committee agreed with the Ombudsman's view that changes to the DFRDB scheme may cause unfairness to members who decided not to commute or to other current and former ADF members, such as those who chose to transfer from the DFRDB scheme to the MSBS scheme.[66]

Conduct of the inquiry

1.62 In the 47th Parliament, the committee advertised the inquiry on its website and wrote to organisations and individuals inviting submissions by 5 August 2025. The committee received and published 17 submissions.

1.63 In the 48th Parliament, the committee advertised the re-referred inquiry on its website and invited submissions by 18 September 2025. The committee received and published a further 80 submissions.

1.64 Submissions received in the 47th and 48th Parliaments are listed at Appendix 1.[67]

1.65 The committee held one public hearing in Canberra, Australian Capital Territory, on 19 February 2026.

1.66 A list of witnesses who appeared at the hearing is at Appendix 2.

Structure of this report

1.67 The report comprises four chapters, as follows:

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64 Australian Government Response to the Senate Foreign Affairs, Defence and Trade References Committee: *Inquiry into the accuracy of information provided to Defence Force Retirement and Death Benefits (DFRDB) members*, tabled 2 December 2021, pp. 2–3.

65 FADT committee, *Accuracy of information provided to DFRDB members*, July 2021, p. 75.

66 FADT committee, *Accuracy of information provided to DFRDB members*, July 2021, p. 75.

67 Submissions published during the 47th Parliament and 48th Parliament can be viewed on the committee website.

- Chapter 1 introduces the inquiry, outlines its administration and conduct, and provides a background on the topic of military superannuation and pension schemes;
- Chapter 2 focuses on the issue of partial commutation of DFRDB pensions and other related matters;
- Chapter 3 explores indexation of defined benefit pensions, including:
  - the DFRB scheme;
  - the DFRDB scheme; and
  - the defined benefit component of the MSBS scheme; and
- Chapter 4 discusses other key issues raised.

Acknowledgments

1.68 The committee thanks all individuals and organisations that contributed to the inquiry by making submissions and giving evidence at the public hearing. In particular, the committee would like to acknowledge the contributions of those individuals who shared their experiences. The committee appreciates the time and effort people have taken to share their stories, which are often very personal.

Note on references

1.69 As submissions to this inquiry were received across the 47th and 48th Parliaments, submissions received in the 47th Parliament are noted as such in footnotes. Those received in the 48th Parliament note the submission number only.

1.70 All references to webpages cited in footnotes are current as at the time of tabling.

Chapter 2
Commutation and related matters

2.1 This chapter explores the issue of commutation and other related matters, including the characteristics of the commutation system, findings and recommendations of previous inquiries into commutation, and current concerns regarding commutation as indicated in evidence received by the committee.

2.2 It first briefly outlines the nature of commutation provisions in the Defence Forces Retirement Benefits (DFRB) scheme and the Defence Force Retirement and Death Benefits (DFRDB) scheme. It then sets out evidence received by the committee in this inquiry, including regarding:

- permanently reduced pensions for DFRDB members that chose commutation;
- provision of misleading information to DFRDB members on the effects of commutation;
- the Scheme for Compensation for Detriment caused by Defective Administration; and
- remedial actions proposed by submitters and witnesses.

What is commutation?

2.3 As discussed in chapter 1, commutation is a feature of some Australian military superannuation schemes that allows retiring members to be paid part of their pension entitlement as a lump sum up front in exchange for reduced retirement pay.

2.4 Commutation was part of two now closed military superannuation schemes: the DFRB scheme and the DFRDB scheme. These schemes closed for new entrants on 30 September 1972 and 30 September 1991 respectively.[1]

2.5 According to the Commonwealth Superannuation Corporation (CSC), as at 31 December 2024, approximately 50 000 individuals currently receive retirement benefits under the two schemes, and 441 contributing members remain under the DFRDB scheme.[2]

Commutation under the Defence Forces Retirement Benefits scheme

2.6 The DFRB scheme allowed retiring members, at the discretion of the DFRB Board, to be paid up to one third of their pension entitlement as a lump sum up front in exchange for a reduced retirement pay.

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1 Commonwealth Superannuation Corporation (CSC), *Submission 4 (47th Parliament)*, [p. 2].

2 CSC, *Submission 4 (47th Parliament)*, [p. 2].

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2.7 The original intention of commutation was to assist veterans with resettlement and transition to civilian life.[3] Consequently, the DFRB Board would only approve commutation for specific purposes, such as the purchase of a house. The DFRB Board also had discretion not to allow commutation if a medical examination indicated a person was unlikely to reach life expectancy.[4]

Commutation under the Defence Force Retirement and Death Benefits scheme

2.8 The DFRDB scheme allows retiring members to commute up to five times their annual pension entitlement without requiring approval to do so.[5] DFRDB members who choose to commute have their annual pension thereafter permanently reduced by an amount calculated according to a formula set out in the *Defence Force Retirement and Death Benefits Act 1973* (DFRDB Act).[6]

2.9 While the DFRDB scheme closed to new members on 30 September 1991, members who chose to remain in the DFRDB scheme rather than transfer to the newly established Military Superannuation Benefits Scheme (MSBS) retain the option of commutation upon retirement if they have served the minimum service period.

Previous reviews and inquiries

2.10 As this report has previously outlined, commutation under the DFRDB scheme has been the subject of two recent reviews: a 2019 investigation by the Commonwealth Ombudsman (the Ombudsman) and a 2021 inquiry by the Senate Foreign Affairs, Defence and Trade References Committee (FADT committee).[7]

Evidence received on commutation

2.11 Submissions to this inquiry overwhelmingly described commutation as an ongoing issue affecting veterans that has not been adequately resolved following the Ombudsman's investigation and FADT committee's inquiry.

2.12 Three key themes relating to commutation raised in submissions were:

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3 Commonwealth Ombudsman, Investigation into the administration of the Defence Force Retirement and Death Benefits (DFRDB) Scheme (Investigation into the DFRDB Scheme), *Report No. 06 of 2019*, December 2019, p. 5.

4 Commonwealth Ombudsman, Investigation into the DFRDB Scheme, December 2019, p. 5.

5 The original maximum commutation amount for DFRDB members was four times the members' annual pension entitlement. From June 1983, this was gradually increased over a 20-year period to five times the members' annual pension entitlement.

6 *Defence Force Retirement and Death Benefits Act 1973*, ss. 24(3) and Schedule 3.

7 Commonwealth Ombudsman, Investigation into the DFRDB Scheme, December 2019; Senate Foreign Affairs, Defence and Trade References Committee (FADT committee), *Accuracy of information provided to Defence Force Retirement and Death Benefits (DFRDB) members*, July 2021.

- the permanent reduction in retirement pay;
- a lack of successful claims under the CDDA scheme; and
- calls for remedial action to be taken by government.

Permanently reduced pension

2.13 The permanently reduced pension for DFRDB members that elected to commute was the most cited commutation-related concern in submissions.

2.14 The committee received numerous submissions from veterans outlining the financial and emotional hardship and difficulties they have faced due to their reduced pensions.

2.15 For example, Mr Peter Grothen explained that 'for those who commuted, the financial impact compounds year after year', particularly due to the effects of inflation and difficulties associated with ageing.[8]

2.16 Mr Geoff Trowbridge noted that residual disadvantage often disproportionately affects former enlisted members:

> Those most adversely affected are the lower, non-commissioned ranks who were serving in the field, out of reach of any information provided and least capable of articulating their case for reparation. Most non-commissioned ranks were therefore situationally and informationally disadvantaged and left in a position of financial vulnerability. The lower the member's rank on retirement, the greater is their dependency on their commutation benefits.[9]

2.17 Several submitters also highlighted the earlier onset of health issues faced by veterans as a factor that compounds the impact of permanently reduced retirement pay.[10]

2.18 Submissions also detailed the specific aspects of the DFRDB scheme and its commutation provisions that have exacerbated these difficulties, including:

- provision of inaccurate information relating to commutation;
- use of outdated life expectancy figures in the commutation formula; and
- legislative interpretation in relation to commutation.

2.19 The following section will discuss these matters in turn.

Provision of misleading information

2.20 Many submitters expressed to the committee that they were not adequately informed by the relevant authorities their pension would be permanently reduced. Instead, submitters repeatedly argued that members were led to

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8 Mr Peter Grothen, *Submission 3*, [p. 2–3].

9 Mr Geoff Trowbridge, *Submission 48*, [p. 2].

10 For example, see Mr Gordon Wright, *Submission 15 (47th Parliament)*; Mr Michael Brown, *Submission 24*; and Mr Robert May, *Submission 33*.

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believe their pension would be fully restored once they reached their life expectancy age as set out in the DFRDB Act.

2.21 The Australian Defence Force Retirees Association (ADFRA) told the committee that inaccurate information about DFRDB commutation had been provided over many years:

> For decades, the truth about the DFRDB Scheme has been minimised, distorted and dismissed. Members were promised one thing, delivered another and misled about the difference. That is not perception; it is a documented fact. The Jess committee's intent was clear: a lifetime retirement benefit with real value maintained, commutation, an advanced lump sum with a proportionate offset based on life expectancy and a widow's annuity fixed at five-eighths of retired pay, discounting commutation. That was the deal. But it is not what the DFRDB Act delivered.[11]

2.22 Evidence provided to the committee repeatedly identified Defence, the DFRDB Authority, and CSC as having given incorrect or misleading information on the effects of commutation.[12]

2.23 The DFRDB Commutation Campaign contended that the DFRDB Authority did not advise that commutation resulted in a permanent pension reduction:

> … until c1993, and was never stated verbatim, in any DFRDB generated brochure, or known presentation made to any resettlement seminar or information presentation for DFRDB Contributors.[13]

2.24 Similarly, the Defence Force Welfare Association (DFWA) claimed that:

> There is ample evidence that in the same period CSC official publications, in information brochures designed for Members, provided vague and easily misunderstood information that could lead DFRDB Members that commutation was a loan.[14]

2.25 Mr Clive Dennett was one of many veterans that described the information they had been provided about commutation. He submitted:

> The only access I had to the DFRDB scheme, other than paying 5.5% of my income, was, as I approached my resignation, a document issued by the Department of Defence. This document clearly stated that my commutation payment would be recovered over the time period between my resignation date and my Notional Life Expectancy Date.[15]

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11 Mr Jim Hislop, President, Australian Defence Force Retirees Association, *Committee Hansard*, 19 February 2026, p. 7.

12 The DFRDB Authority was the statutory authority responsible for managing and administering the DFRDB scheme prior to Commonwealth Superannuation Corporation assuming responsibility in 2011.

13 DFRDB Commutation Campaign, *Submission 2 (47th Parliament)*, [p. 5].

14 Defence Force Welfare Association, *Submission 16 (47th Parliament)*, [p. 39].

15 Mr Clive Dennett, *Submission 26*, [p. 1].

2.26 Others also suggested incorrect information was provided to ADF members at resettlement seminars.[16]

2.27 Mr John Pollock described his experience of attending a resettlement seminar:

> Prior to discharge I attended a detailed resettlement seminar run by both Defence and DVA personnel. They advised attendees of their rights and benefits on discharge. They provided a handout which advised the most beneficial time to take your discharge for members. It comprised of a table where you selected your current age and length of service at that time. It then showed the best year to take your discharge. I met the criteria for my proposed discharge date, aged 45 and 25 years' service. They also explained the requirements for commuting part of your pension. Eg you have to pay back the advance of your DFRDB by your notional life expectancy, in my case 72 … At no stage during my service and resettlement seminars were we ever given paperwork stating that commutation repayments were for life.[17]

2.28 Similarly, Mr Greg Hynds stated:

> At the time of transition, I attended a Resettlement Seminar where the message was clear, consistent, and strongly encouraged: elect to commute part of your pension. This advice was echoed by my Unit Resettlement Officer. At no point was I advised—explicitly or otherwise—of the long-term financial impact of this decision. Contrary to my understanding, the reduction to my pension was not proportionate or temporary—it was permanent.[18]

2.29 This largely reflects the Ombudsman's conclusion that:

> Many DFRDB members, likely numbering in the thousands, were misled to believe that the commutation related reduction to their retirement pay would cease upon reaching life expectancy factor age.[19]

2.30 However, the Ombudsman specifically reached a finding of defective administration only in relation to Defence, and not in relation to the DFRDB Authority and CSC as the misleading information was found only in Defence publications.[20]

2.31 Some submitters indicated they would have made a different decision, if they had fully understood the permanent effects of commutation.

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16 For example, see Mr Craig Thomas, *Submission 5*; Mr Charles Mollison, *Submission 7*; Mr Brian Collins, *Submission 9*; Peter Martin, *Submission 14*; Mr Mario Simic, *Submission 30*; Mr Warren Schilling, *Submission 45*.

17 Mr John Pollock, *Submission 27*, [p. 1].

18 Mr Greg Hynds, *Submission 40*, [p. 1].

19 Commonwealth Ombudsman, Investigation into the DFRDB Scheme, December 2019, p. 54.

20 Commonwealth Ombudsman, Investigation into the DFRDB Scheme, December 2019, pp. 33 and 54–55.

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2.32 Mr Grothen described the experience of choosing to commute based on information from CSC as being 'duped' and stated that the benefit of full knowledge 'would likely have led to a different decision'.[21]

2.33 Similarly, Mr Peter Martin stated:

> Had I been informed of these conditions applied by the DFRDB Authority to the Lump Sum Benefit, I would probably not have applied for the commutation.[22]

2.34 Mr Gregory Decker, who chose to remain in the DFRDB scheme and elected to commute rather than transfer to the MSBS when it was established in 1991, explained:

> Now some 25 years later … I remain on the original reduce[d] calculated amount. Knowing this now I would never have elected DFRDB and or commutation, I would have elected MSBS even though little was known about it.[23]

2.35 In relation to commutation rates, the Ombudsman noted that while the number of DFRDB members choosing to commute dropped slightly in recent years, particularly since 2001, commutation rates have remained at or above 85 per cent.[24]

2.36 The Ombudsman also highlighted that even when commutation rates did decrease substantially in a single year in 2004, 86 per cent of eligible members still decided to commute. This was despite an Administrative Appeals Tribunal decision in 2001 that made it clear a reduction of pension entitlements is permanent following commutation, and there being explicit mention of this in a June 2004 retirement benefits information sheet.[25]

2.37 The Ombudsman concluded:

> In our view, it is likely many submitters would have commuted, even if they had received correct information about its permanent effect on retirement pay. However, there may be some submitters who, having less immediate need of a lump sum, may have otherwise decided not to commute their retirement pay.[26]

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21 Mr Peter Grothen, *Submission 3*, [p. 2].

22 Mr Peter Martin, *Submission 14*, [p. 2].

23 Mr Gregory Decker, *Submission 63*, p. 4.

24 Commonwealth Ombudsman, Investigation into the DFRDB Scheme, December 2019, p. 14.

25 Commonwealth Ombudsman, Investigation into the DFRDB Scheme, December 2019, p. 14–15.

26 Commonwealth Ombudsman, Investigation into the DFRDB Scheme, December 2019, p. 34.

Expectation of life factor

2.38 Many submissions to the inquiry highlighted the expectation of life factor used in the DFRDB Act's commutation formula as one of the key legislative issues affecting veterans who chose to commute.

2.39 The expectation of life factor is outlined in Schedule 3 of the DFRDB Act. It is used to calculate the amount by which a commuting individual's annual pension is permanently reduced based on their age when they choose to commute and their gender.[27]

2.40 The Commonwealth Ombudsman explained that, in simplest terms, the formula is as follows:

> Reduction = amount commuted ÷ expectation of life factor.[28]

2.41 The expectation of life figures used are based on the Australian Bureau of Statistics' 1960–1962 life expectancy table and have remained consistent since the DFRDB Act was first passed.[29]

2.42 Many submitters expressed that when choosing to commute, they believed the commutation lump sum was essentially a loan to be repaid through a reduced pension that would be fully repaid when they reached their expectation of life age.[30]

2.43 Mr Charles Mollison explained:

> I accepted the offer of a lump sum and the reduction in subsequent payments confident in the belief that, when the lump sum was repaid, my fortnightly payments would be restored to the proper level.[31]

2.44 Mr Andrew Macfarlane argued that, as the pension reduction is instead permanent, this in essence means 'a member who commutes can end up repaying more than the original lump sum, effectively adding interest'.[32]

2.45 Mr David Stacy characterised commuting veterans who exceed their life expectancy as being 'in effect … penalised for reaching a ripe old age'.[33]

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27 *Defence Force Retirement and Death Benefits Act 1973*, para. 24(3)(b) and Schedule 3.

28 Commonwealth Ombudsman, Investigation into the DFRDB Scheme, December 2019, p. 51.

29 Commonwealth Ombudsman, Investigation into the DFRDB Scheme, December 2019, p. 51.

30 See, for example, Mr Tom Williams, *Submission 11*; Mr Victor Edwards, *Submission 29*; and Mr Richard Usher OAM, *Submission 34*.

31 Mr Charles Mollison, *Submission 7*, [p. 1].

32 Mr Andrew Macfarlane, *Submission 4*, [p. 1].

33 Mr David Stacy, *Submission 13*, [p. 1].

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2.46 The DFWA contended that 'this means that the Commonwealth unjustly benefits because "repayments" of its commutation advance by DFRDB pensioners are exceeded significantly'.[34]

2.47 Submitters observed that this issue is exacerbated by the use of figures based on 1960–1962 life expectancy, as life expectancy has increased considerably since 1962, and a higher expectation of life factor would result in a decreased annual pension reduction.[35]

2.48 ADFRA stated that 'the outdated *Expectation of Life Factors* in *Schedule 3* maximize the reduction and produce different outcomes for members of different ages on retirement'.[36]

2.49 The DFWA highlighted that:

> For 40 years before the DFRDB Act in 1973, there was minimal increase [in life expectancy], in fact there was a decrease from 1962 to 1972. For the 40 years after 1972, there was a large increase. This large increase was not known and could not have been anticipated by Parliament or drafters of the Act.[37]

2.50 The DFWA added:

> If the government knew that similar differences would emerge with time, it is reasonable … to assume that parliament would have provided a mechanism for incorporating the differences.[38]

2.51 Some submitters explained that they had already exceeded their expectation of life factor and consequently may continue living on a reduced pension well into their later years.

2.52 For example, Mr Doug Conn stated:

> 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. In 2021 I reached my life expectancy. The table utilised are inappropriate. For example, the latest Australian Bureau of Statistics tables suggest I could live for a further 9 years beyond the DFRDB life expectancy estimation.[39]

2.53 Mr Trowbridge highlighted that:

> Approximately 80% of members who commuted have outlived their 1960-1962 life expectancy by an average of 10 years, making the ongoing

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34 Defence Force Welfare Association, *Submission 16 (47th Parliament)*, [p. 43].

35 Defence Force Welfare Association, *Submission 16 (47th Parliament)*, [p. 43].

36 Australian Defence Force Retirees Association, *Submission 1 (47th Parliament)*, p. 6.

37 Defence Force Welfare Association, *Submission 16 (47th Parliament)*, [p. 42].

38 Defence Force Welfare Association, *Submission 16 (47th Parliament)*, [p. 42].

39 Mr Doug Conn, *Submission 31*, p. 3.

> reduction of their benefits after receiving a commute lump sum, a totally disproportionate exchange.[40]

2.54 This was reflected by another submitter who stated:

> I paid off my commutation debt in (about) July 2013 and yet I am still receiving my DFRDB pension at the reduced rate as though I still owed the Commonwealth money – which I do not. The notional life expectancy tables used by the DFRDB Authority were grossly outdated (even in 1986) and, in any event, I am now 12 years past my expected death and expect that I shall live for a considerable number of years more.[41]

2.55 The Ombudsman noted that changes to the expectation of life factor was an option 'open to the government and parliament of the day' and that the lack of provisions for tables that automatically update over time 'suggests that the scheme drafters … preferred a static commutation factor'.[42]

2.56 The DFWA considered the Ombudsman's view to be 'unrealistic' as life expectancy had not changed considerably in the decades prior to the DFRDB Act being drafted, meaning there was little justification at the time for using variable life expectancy tables.[43]

Legislative interpretation

2.57 Some submissions argued that the interpretation of the DFRDB Act's text to require a permanent reduction in retirement pay has been misinterpreted, or that this interpretation goes against the Act's original legislative intent.

2.58 Paragraph 24(3)(b) of the DFRDB Act specifies that the reduction in retirement pay applies 'on and after the day on which the election takes effect'.[44]

2.59 Mr Ron Haack argued that 'interpreting *on and after* as meaning forever is patently absurd in the context of a retirement benefit scheme', as no other scheme 'requires participants to continue to repay an advance once that advance has been fully acquitted'. Mr Haack suggested that parliamentary debate on the DFRDB legislation indicated that commutation was, in effect, 'a loan of future benefit entitlement to be repaid over the life expectancy of the recipient without interest'.[45]

2.60 Conversely, the Ombudsman noted that:

> The words 'on and after' are used in legislation to indicate that a legislated outcome is to commence and continue. If the words 'on or after' are used

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40 Mr Geoff Trowbridge, *Submission 48*, [p. 3].

41 Name withheld, *Submission 55*, [p. 2].

42 Commonwealth Ombudsman, Investigation into the DFRDB Scheme, December 2019, p. 52.

43 Defence Force Welfare Association, *Submission 16 (47th Parliament)*, [p. 44].

44 *Defence Force Retirement and Death Benefits Act 1973*, para. 24(3)(b).

45 Mr Ron Haack, *Submission 39*, p. 3 (emphasis added).

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> without being qualified by a fixed time frame or end date the legislated outcome will continue forever, unless another legislated outcome displaces it.[46]

2.61 On this point, the Ombudsman concluded:

> … the legal meaning is plain and not capable of any other interpretation … The DFRDB Act, as passed by parliament, requires a permanent reduction.[47]

2.62 Similarly, in the 2001 case of *Reynolds and Defence Force Retirement and Death Benefits Authority*, the Administrative Appeals Tribunal found 'neither ambiguity nor obscurity' in the provision.[48]

2.63 Furthermore, in *McKenzie vs Commonwealth Superannuation Corporation*, the Federal Court found that 'the plain text of s 24(3)(b) is clear and unambiguous' and requires a permanent reduction.[49]

2.64 The DFRDB Commutation Campaign noted that commutation is not defined in the DFRDB Act.[50]

2.65 The Ombudsman did not view this as a concern as 'not all terms used in legislation need to be specifically defined'.[51]

2.66 The Ombudsman added that:

> The DFRDB Act's commutation provisions are not ambiguous from a legal point of view, even though its meaning may not be immediately apparent to a lay person. A definition of the word commutation is not required, because the DFRDB Act comprehensively sets out the steps involved in commutation, including eligibility, calculating the commutation and permanently reducing retirement pay using the formula in the statute.[52]

2.67 Some submissions to the inquiry contended that parliamentarians at the time did not fully understand the legislation they were voting on. For example, ADFRA alleged that parliamentarians were 'deceived' and 'misled' by Government Ministers in relation to the DFRDB Act and its subsequent amendment in 1977. ADFRA observed that the corresponding Bills lacked explanatory memoranda and deviated from the recommendations of the Joint

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46 Commonwealth Ombudsman, Investigation into the DFRDB Scheme, December 2019, p. 11.

47 Commonwealth Ombudsman, Investigation into the DFRDB Scheme, December 2019, p. 12.

48 Commonwealth Ombudsman, Investigation into the DFRDB Scheme, December 2019, p. 12.

49 *McKenzie vs Commonwealth Superannuation Corporation* (2023) FCA 396, [42]–[43].

50 DFRDB Commutation Campaign, *Submission 2 (47th Parliament)*, [p. 1]; DFRDB Commutation Campaign, *Supplementary to submission 21*, [p. 2].

51 Commonwealth Ombudsman, Investigation into the DFRDB Scheme, December 2019, p. 12.

52 Commonwealth Ombudsman, Investigation into the DFRDB Scheme, December 2019, p. 13.

Committee report, which recommended that retirement pay for commuting members be 'proportionately reduced'.[53]

2.68 ADFRA highlighted second reading speeches from parliamentarians expressing dissatisfaction in relation to the short amount of time for consideration and scrutiny of the original DFRDB bill.[54]

2.69 ADFRA told the committee that when the DFRDB Act was made, it 'diverged substantially in at least two respects from the fundamental Jess committee recommendations'. The first of these was a recommendation for a proportionate, rather than a permanent, reduction in the pension rate for those who chose commutation. The second was a recommendation that pensions be indexed to average weekly earnings, rather than CPI, to prevent erosion of pension value over time. Indexation of defined benefit pensions is discussed in detail in chapter 3.[55]

2.70 Regarding the possibility that parliament did not fully understand the bills it passed, the Ombudsman stated that 'what individual parliamentarians understood is not relevant. The DFRDB Act, as passed by parliament, requires a permanent reduction'.[56]

Scheme for Compensation for Detriment caused by Defective Administration

2.71 Several submissions highlighted a lack of successful claims under the Scheme for Compensation for Detriment caused by Defective Administration (CDDA scheme).

2.72 The CDDA scheme provides a mechanism for non-corporate Commonwealth entities to compensate people who have experienced detriment as a result of that entity's defective administration.[57] The non-corporate Commonwealth entity that is the subject of a CDDA scheme claim is responsible for considering and making a decision on that claim.

2.73 Examples of defective administration include, but are not limited to:

- non-compliance with existing administrative procedures;
- failure to institute appropriate administrative procedures;
- failure to give proper advice that was within the entity's power to give;

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53 Australian Defence Force Retirees Association, *Submission 1 (47th Parliament)*, p. 13.

54 Australian Defence Force Retirees Association, *Submission 1 (47th Parliament)*, pp. 15–16.

55 Mr Clinton McKenzie, Research Team Member, Australian Defence Force Retirees Association, *Committee Hansard*, 19 February 2026, p. 8.

56 Commonwealth Ombudsman, Investigation into the DFRDB Scheme, December 2019, p. 12.

57 Department of Finance, *Scheme for Compensation for Detriment caused by Defective Administration (CDDA Scheme)*, 13 May 2021.

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- failure to give proper advice that the entity was reasonably capable of obtaining; and
- giving advice that was, in all circumstances, incorrect or ambiguous.[58]

2.74 The applicant must also demonstrate the direct loss or detriment they have suffered due to the defective administration.

2.75 The FADT committee report in 2021 noted that no claims under the CDDA to that point had been successful, and that 'more support may be required to assist DFRDB members to access the CDDA scheme and appeal any adverse decisions'.[59]

2.76 The committee recommended:

> … that the Australian Government consider more assistance for DFRDB members to make claims under the CDDA scheme and appeal any adverse decisions or a separate reparation payments scheme for DFRDB members who are unsuccessful under the CDDA scheme to recognise the government's moral obligation to address any confusion and distress caused by defective administration. Where a CDDA claim was successful, compensation could include any professional costs expended in preparation of the claim, and legal and other professional costs if a claimant successfully appealed an adverse finding. Further, where the claimant's CDDA appeal was unsuccessful, the Commonwealth should consider not applying for costs to be awarded against the claimant.[60]

2.77 The Australian Government supported the range of recommendations relating to the CDDA scheme, but noted that:

> … both the Commonwealth Ombudsman and the Committee report indicate that it is unlikely a member has suffered a financial detriment and therefore the likelihood of any member being successful appears to be limited.[61]

2.78 Submissions to the inquiry indicate that DFRDB members have continued to be unsuccessful in their claims under the DFRDB scheme.

2.79 The DFWA stated that 'none of the 30–40 veterans who pursued a claim via the CDDA process has been successful'.[62] The DFWA also noted veterans'

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58 Department of Finance, *Scheme for Compensation for Detriment caused by Defective Administration (CDDA Scheme)*, 13 May 2021.

59 Senate Foreign Affairs, Defence and Trade References Committee (FADT committee), *Accuracy of information provided to Defence Force Retirement and Death Benefits (DFRDB) members*, July 2021, p. 73.

60 FADT committee, *Accuracy of information provided to DFRDB members*, July 2021, p. 74.

61 Australian Government Response to the Senate Foreign Affairs, Defence and Trade References Committee: *Inquiry into the accuracy of information provided to Defence Force Retirement and Death Benefits (DFRDB) members*, tabled 2 December 2021, p. 3.

62 Defence Force Welfare Association, *Submission 16*, p. 39.

dissatisfaction with the 'offering of the CDDA bureaucratic process to claim any financial redress'.[63]

2.80 Mr Gary Lang criticised the CDDA scheme's requirement to demonstrate financial detriment, noting this often requires comparison of financial disadvantage between those who did and who did not commute:

> Complainants are required to provide evidence that they are financially worse off. This does not factor in any of the human factors about why members chose to commute. Not to make money but to provide homes for their families as they transitioned to civilian life. We all understood that we need to pay back the commutation but were not expecting to have that continue past the calculated and promulgated life expectancy dates clearly outlined on our retirement paperwork.[64]

2.81 According to Mr Herb Ellerbock, the CDDA remains inaccessible to DFRDB members due to:

- burdensome evidentiary requirements placed on individual claimants;
- lack of independent review mechanisms; and
- excessive delays, as evidenced in my CDDA application, where the reviewed decision of denial was upheld by the original decision maker after 255 days.[65]

Remedial action sought

2.82 Evidence received by the committee outlined various forms of remedial action that could potentially resolve the various issues relating to commutation.

Change to permanent pension reduction

2.83 Submissions concerning commutation overwhelmingly favoured changes to the permanent pension reduction associated with commutation.[66]

2.84 Nearly all of these submissions advocated for pensions to be fully restored once an individual who chose to commute has reached their expectation of life factor.[67]

2.85 For example, Mr Bruce Macfarlane told the committee that:

> … the purchasing power of my DFRDB pension has reduced by almost 50 per cent since my retirement. I strongly implore you to consider changes to legislation that will amend the DFRDB Act to cease the reduction of benefits when members who commuted reach their schedule 3 life expectancy, and

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63 Defence Force Welfare Association, *Submission 16*, p. 39.

64 Mr Gary Lang, *Submission 28*, [p. 4].

65 Mr Herb Ellerbock, *Submission 57*, p. 2.

66 Australian Defence Force Retirees Association, *Submission 1 (47th Parliament)*, p. 21.

67 See, for example, Mr Robert May, *Submission 33*, [p. 15]; Mr Richard Usher OAM, *Submission 34*, [p. 2]; and Mr Geoff Trowbridge, *Submission 48*, [p. 1].

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> restore members' current rate of benefits to where they would be if their benefits had been fully indexed in accordance with movements in the average weekly earnings from 1976 until 1 July 2014.[68]

Updates to expectation of life factor

2.86 Many submissions expressed a desire for the expectation of life factors used to calculate the reduction to a commuting individual's pension to be updated to reflect life expectancy in recent decades.

2.87 The DFWA proposed that:

- the life expectancy of retirees at date of commutation should be used;
- the retirement pay of current retirees who commuted should be updated to reflect this change; and
- lump sum back payments should be made to correct underpayment for all living retirees.[69]

2.88 The DFWA argued that a change to use current life expectancy would be 'cost-neutral to the Commonwealth if correct tables are used' as:

> … half the population die before reaching the average age, and half the population die after the average life expectancy age. For the DFRDB retirees, those who live past the average LE age, effectively subsidise those who die before that age.[70]

Committee view and recommendations

2.89 The committee notes the substantial number of individuals and organisations that showed an interest in this inquiry, and thanks them for submissions and evidence provided at the public hearing.

2.90 The committee appreciates evidence provided on commutation, particularly by the individuals that took the time to share the effects of commutation on the retirement incomes of former service men and women.

2.91 The committee acknowledges the views expressed in evidence that many DFRDB members believe that the government should take action to remedy what they have described as inequities within the scheme.

2.92 In considering this matter, the committee has also drawn on and considered previous work undertaken on commutation by the Commonwealth Ombudsman in 2019, and the report of the Senate FADT Committee in 2021.[71]

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68 Mr Bruce Macfarlane, Private capacity, *Committee Hansard*, 19 February 2026, p. 38.

69 Defence Force Welfare Association, *Submission 16 (47th Parliament)*, [pp. 44–45].

70 Defence Force Welfare Association, *Submission 16 (47th Parliament)*, [p. 39].

71 Commonwealth Ombudsman, *Investigation into the administration of the Defence Force Retirement and Death Benefits (DFRDB) Scheme*, Report No. 06 of 2019, December 2019; Senate Foreign Affairs, Defence and Trade References Committee, *Accuracy of information provided to Defence Force*

2.93 Regarding work undertaken by the Commonwealth Ombudsman, the committee notes the conclusion that even though the scheme was 'administered in accordance with the law', some members 'were provided with misleading, and even incorrect advice about their rate of retirement pay by Defence'.[72]

2.94 The committee notes the government agreed and has complied with all recommendations of the Ombudsman's report, including for:

> Recommendation 1
>
> 1.1 The Secretary of Defence and Chief of Defence Force should issue an apology for the incorrect advice provided to some DFRDB members about the long term effects of commutation on retirement pay, and for the distress it caused.
>
> 1.2 The apology should be published on the Defence and CSC websites and be available to DFRDB members on request to Defence.[73]

2.95 The Ombudsman also did not identify any cases that would warrant compensation under the CCDA scheme, or where compensation would be appropriate.

2.96 The committee also has given consideration to the agreement of the Senate Foreign Affairs Defence and Trade References Committee with the Ombudsman's view that changes to the DFRDB scheme may cause unfairness to members who decided not to commute or to other current and former ADF members, such as those who chose to transfer from the DFRDB scheme to the MSBS scheme.

2.97 The committee recognises that many DFRDB members still consider the government should undertake remedial action to address perceived inequities. However, the committee concurs with the Ombudsman and FADT Committee conclusions that remediation would potentially create other unfair outcomes for those that did not commute or only partially commuted.

Recommendation 1

2.98 The committee recommends that the Australian Government consider whether the current settings of Defence Force Retirement and Death Benefits pensions are fair and equitable for all members.

Retirement and Death Benefits (DFRDB) members, July 2021. See chapter 1 and earlier in this chapter for more information on these inquiries.

72 Commonwealth Ombudsman, *Investigation into the administration of the Defence Force Retirement and Death Benefits (DFRDB) Scheme*, Report No. 06 of 2019, December 2019, p. 54.

73 Commonwealth Ombudsman, *Investigation into the administration of the Defence Force Retirement and Death Benefits (DFRDB) Scheme*, Report No. 06 of 2019, December 2019, p. 54.

Chapter 3
Indexation and related matters

3.1 This chapter will consider evidence received on issues related to indexation. The evidence in submissions and at the public hearing repeatedly noted that defined benefit pensions under the Defence Forces Retirement Benefits (DFRB) scheme, the Defence Force Retirement and Death Benefits (DFRDB) scheme, the Military Superannuation Benefits Scheme (MSBS) and the ADF Cover scheme have all been affected by being linked to the Consumer Price Index (CPI).

3.2 By contrast, indexation of the Age Pension and some other income support payments incorporate indexation according to Average Weekly Earnings (AWE).

3.3 This chapter will look at the following matters raised in evidence, including:

- the effects of CPI indexation;
- indexation of some, but not all, DFRB and DFRDB pensions to AWE;
- the absence of provision for retrospective compensation to DFRB and DFRDB members for the period in which their pensions were indexed only to CPI;
- indexation of only a portion of DFRDB pensions, even where members chose not to commute part of their pensions;
- inequities experienced by members whose pensions remain indexed to CPI.

Effects of CPI indexation

3.4 Submitters specifically cited the use of CPI as the basis for indexation, rather than AWE, as a key factor in eroding veterans' standard of living in retirement.

3.5 For example, Mr Arran Bartholomeusz outlined the disadvantage of CPI-based indexation:

> CPI adjustments often fail to keep pace with the actual cost of living, leading to a gradual erosion of the purchasing power of veterans' benefits over time. This disparity may result in a less dignified retirement for ADF members, undermining the intent of preserving savings for a secure future.[1]

3.6 Mr Geoff Trowbridge stated that CPI failed to maintain parity with AWE from 1991, and by 2013 the value of DFRDB benefits was eroded by 27 per cent.[2]

3.7 The Defence Force Welfare Association (DFWA) argued that:

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1 Mr Arran Bartholomeusz, *Submission 9 (47th Parliament)*, [p. 1].

2 Mr Geoff Trowbridge, *Submission 48*, [p. 4].

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> While CPI was appropriate when it was one of the major tools for wage determination, it has changed and now the CPI no longer reflects costs of living.[3]

3.8 The DFWA also highlighted that indexation for some other income support payments takes into account other cost of living measures in addition to CPI to better preserve purchasing power.[4]

3.9 The Australian Defence Force Retirees Association (ADFRA) compared CPI adjustments to the higher returns from accumulation superannuation funds. ADFRA highlighted that the 7-year rate of return for two other public sector superannuation schemes, the Commonwealth Superannuation Scheme and Public Sector Superannuation Scheme, exceeded 8 per cent per annum, compared to 2.1 per cent per annum for CPI over the same period.[5]

3.10 Regarding indexation for the MSBS specifically, Honorary Professor Andrew Podger AO, who chaired the 2007 Review into Military Superannuation Arrangements, noted that the 2007 review did not recommend any change to indexation of MSBS pensions due to 'the generosity of the MSBS arrangements for converting lump sums into indexed pensions'.[6]

3.11 Professor Podger also argued that 'the case for indexation of DFRDB and MSBS pensions to be based on wages rather than prices is … very weak'. He cited recent findings published by the Grattan Institute that consumption levels fall slightly over retirement years, whereas 'the age pension ensures that the social safety net still increases along with community incomes'.[7]

3.12 ADFRA explained the ongoing negative impact of reduced pensions on DFRDB recipients:

> DFRDB members made compulsory, uninvested contributions from their modest military salary and served in conditions that no public servant or parliamentarian is asked to endure, yet their retirement benefits have been eroded for decades by decisions they were never told about. These harms are not historical. They are current and affect thousands of veterans, many of whom are elderly and are struggling.[8]

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3 Defence Force Welfare Association, *Submission 16 (47th Parliament)*, [p. 47].

4 Defence Force Welfare Association, *Submission 16 (47th Parliament)*, [p. 47].

5 Australian Defence Force Retirees Association, *Submission 1 (47th Parliament)*, p. 10.

6 Honorary Professor Andrew Podger AO, *Submission 41*, p. 2.

7 Honorary Professor Andrew Podger AO, *Submission 41*, p. 2.

8 Mr Jim Hislop OAM, President, Australian Defence Force Retirees Association, *Committee Hansard*, 19 February 2026, p. 7.

Indexation of the Defence Forces Retirement Benefits scheme and Defence Force Retirement and Death Benefits scheme

3.13 During the operation of the DFRB and the early years of the DFRDB, pensions were not regularly indexed. Pensions were increased from time to time according to government decisions. DFRDB pension increases were authorised by separate annual Acts between 1 October 1972 and mid-1976. The indexation basis was the lesser of 1.4 times the increase in the CPI, or increases in male AWE.[9]

3.14 In 1977 the DFRDB Act was amended by the *Defence Force (Retirement and Death Benefits Amendments) Act 1977*, which inserted Part XA into the DFRDB Act. This change allowed the pension to be indexed from 1 July 1976. As a result, pensions were increased if there was an upward movement in the CPI. Pensions were not decreased if there was a downward movement in the CPI.[10]

3.15 Indexation arrangements for DFRB and DFRDB members aged over 55 were amended in 2014 by the *Defence Force Retirement Benefits Legislation Amendment (Fair Indexation) Act 2014* (Fair Indexation Act), which added Division 3 of Part XA of the DFRDB Act to ensure indexation arrangements for these members operate in a similar manner to the age pension.[11]

3.16 For DFRB and DFRDB members who are over 55, the relevant indexation rate is the higher of CPI and the Pension and Beneficiary Living Cost Index. The increase must also be sufficient to ensure a hypothetical 'indicative' pension does not fall below 27.7 per cent of Male Total AWE.[12]

3.17 While submitters welcomed this amendment, many were not satisfied with the extent of the change due to:

- the change only applying to pensioners aged 55 and over;
- changes not being retrospective; and
- indexation only applying on the commutable amount of one's retirement pay.

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9 See *Defence Forces Retirement Benefits (Pension Increases) Act 1973*, s. 4(2), and *Defence Force Retirement and Death Benefits (Pension Increases) Act 1976*, s. 6-7, for increases between 1973–74 and 1975–76.

10 Commonwealth Ombudsman, *Investigation into the administration of the Defence Force Retirement and Death Benefits (DFRDB) Scheme*, Report No. 06 of 2019, December 2019, pp. 44–45.

11 *Defence Force Retirement Benefits Legislation Amendment (Fair Indexation) Act 2014*, Schedule 1.

12 Commonwealth Ombudsman, *Investigation into the administration of the Defence Force Retirement and Death Benefits (DFRDB) Scheme*, Report No. 06 of 2019, December 2019, p. 45.

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Retrospectivity

3.18 Many submitters expressed disappointment that the Fair Indexation Act amendments were not retrospective, meaning that the many years their pension was indexed based on CPI remains unrectified.

3.19 The DFWA described the indexation amendment as 'only a partial fix for DFRDB' that did not consider 'the erosion of base purchasing power over the previous decades for all schemes'.[13]

3.20 Both the DFWA and ADFRA noted that the Jess Committee that originally recommended the establishment of the DFRDB scheme had opposed the use of CPI for indexation.[14]

3.21 ADFRA submitted that it is seeking restoration of DFRDB members' pension benefits to where they would be if they had been indexed according to AWE from 1976 to 1 July 2014, rather than CPI.[15]

3.22 This request was echoed by a number of individuals who made submissions to the inquiry.[16]

3.23 For example, Mr Russell Linwood observed that, between 1977 and 2014, DFRDB pensions had not kept pace with the cost of living, and that retrospective amendments would restore dignity to affected members. Mr Linwood observed that such amendments would:

> … go a long way to restoring what veterans had been promised as a reward for longer service, but have not received in practice. Instead, we receive an inequitable and eroding income, a situation our public service counterparts do not suffer.
>
> Common sense says that the system is not working to the benefit of we veterans; precisely why the fund was set up as it was in the first place. Instead, it benefits Treasury to the detriment of the veterans. This is un-Australian, especially where ADF members have no say in such matters, and as retirees we do not get listened to.[17]

Indexation for DFRDB members who did not commute

3.24 The committee also received evidence that indexation arrangements are inequitable for DFRDB members who elected not to commute, and that this has remained the case following the Fair Indexation Act.

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13 Defence Force Welfare Association, *Submission 16 (47th Parliament)*, [p. 49].

14 Australian Defence Force Retirees Association, *Submission 1 (47th Parliament)*, p. 10; Defence Force Welfare Association, *Submission 16 (47th Parliament)*, [p. 49].

15 Australian Defence Force Retirees Association, *Submission 1 (47th Parliament)*, p. 21.

16 Major (Rtd) Robert Fitzgerald, *Submission 11*; Mr Andrew Macfarlane, *Submission 4*; Mr Herb Ellerbock, *Submission 57*.

17 Mr Russell Linwood, *Submission 25*, p. 3.

3.25 It is apparent that some members chose to commute the full amount of four times their retirement pay, but others chose to commute only part of this amount. Another cohort chose not to commute any part of their pension.

3.26 However, under the DFRDB Act, regardless of the member's choice on commutation, indexation is only applied to the amount the member would have received if they had commuted four times their annual retirement pay.[18]

3.27 ADFRA described this as indexation applying only to a 'notional rate' of DFRDB pensions, which varies according to the age of retirement, rather than to 100 per cent of the benefit:

> What is the significance of it? What it actually means is that, if someone didn't commute, then their retirement pay would not be fully indexed. They'd only apply CPI to the amount that would have been leftover had the member commuted four times [their annual pension amount].[19]

3.28 Evidence to the committee suggested that it was inequitable to those DFRDB members who chose not to commute for indexation to apply only to part of their pension. Mr Clinton McKenzie argued that the difference in the amount subject to indexation 'has a profoundly negative financial consequence, exacerbated by the foreseeable (and foreseen by the Jess Committee) eroding effect of the indexation having been linked to the CPI rather than AWE'.[20]

3.29 The DFRDB Commutation Campaign alleged that DFRDB members were not advised of the indexation arrangements for non-commuting members.[21]

Indexation for pensioners under 55 and all MSBS and ADF Cover pensioners

3.30 The DFWA argued that the Fair Indexation Act did not go far enough and created inequity between DFRB and DFRDB pensioners over 55 and all those whose pensions continue to be indexed based on CPI.[22]

3.31 The DFWA observed that a number of groups were 'left behind' by the Fair Indexation Act, including DFRDB pension recipients under 55, all MSBS and ADF Cover pension recipients, and recipients of reversionary pensions.[23]

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18 Commonwealth Ombudsman, *Investigation into the administration of the Defence Force Retirement and Death Benefits (DFRDB) Scheme*, Report No. 06 of 2019, December 2019, p. 45–46.

19 Mr Clinton McKenzie, Research Team Member, Australian Defence Force Retirees Association, *Committee Hansard*, 19 February 2026, p. 9.

20 Mr Clinton McKenzie, *Submission 52*, [p. 5].

21 DFRDB Commutation Campaign, *Supplementary to submission 21*, [p. 3].

22 Defence Force Welfare Association, *Submission 16 (47th Parliament)*, [p. 48].

23 Defence Force Welfare Association, *Submission 68*, [p. 46].

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3.32 Some submitters questioned the restriction of the amendment to those aged over 55, when no age restriction existed in the original legislation.[24]

Committee view and recommendations

3.33 Many submissions and witnesses drew attention to the issue of indexation. Many stated that the real value of their military pension had been eroded by indexation based solely upon the CPI.

3.34 The committee observes that indexation arrangements for DFRB and DFRDB members aged over 55 were amended in 2014 to ensure indexation arrangements for these members operated in a similar manner to the age pension. However, these indexation arrangements do not apply uniformly across recipients of military pensions, and there is some merit in consistency in this area.

Recommendation 2

3.35 The committee recommends the Australian Government consider reviewing indexation methodology for all defined benefit military pension schemes, with a view to achieving consistency and equity.

[24] Mr Gordon Wright, *Submission 15 (47th Parliament)*; Mr Andrew Macfarlane, *Submission 4*.

Chapter 4
Other issues

4.1 This chapter discusses other key issues raised in the inquiry, including:

- issues relating to retrospective invalidity applications;
- complexity of the military superannuation system;
- definitional issues affecting reversionary pensions; and
- consolidation of military superannuation funds.

Retrospective invalidity

4.2 Some submitters raised issues regarding the reclassification of veterans' discharges from administrative to medical, also known as retrospective invalidity. Retrospective invalidity assessment is the process of assessing a member's circumstances to determine whether grounds existed on which the member could have been medically transitioned from the ADF. This assessment is based on the medical conditions of the member present at the date of transition from the ADF.[1]

4.3 There are three classes of medical invalidity under the current framework:

- Class A means the person is severely impacted by their impairments and would be significantly restricted in their capacity to undertake relevant civilian employment. Class A is allocated where there is an incapacity to undertake civilian employment of 60 per cent or more. Class A provides a full Invalidity Benefit payment.
- Class B means the person has capacity for some relevant civilian work, but would suffer moderate incapacity. Class B is allocated where there is an incapacity to undertake civilian employment of 30–59 per cent. Class B provides a partial Invalidity Benefit payment.
- Class C means the person has been deemed as not fit for ADF duty, but has the capacity to work within relevant civilian employment with minimal restriction. Class C is allocated where there is an incapacity to undertake civilian employment kinds of 0–30 per cent. There is no Invalidity Benefit payable following a Class C determination.[2]

4.4 Former members of the permanent ADF (or those on a period of continuous full-time service immediately prior to separating) who separated on

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1 Commonwealth Superannuation Corporation, Defined benefit member guide to ADF Medical Transition and Retrospective Invalidity.

2 Commonwealth Superannuation Corporation, Member guide to ADF Medical Transition and Retrospective Invalidity.

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non-medical grounds may seek to have their separation treated as if they were medically separated, in relation to superannuation benefits.[3]

4.5 According to Defence:

> For DFRDB (and DFRB) members, Defence must first approve that a medical separation could have been considered, at the time the member separated from the ADF, for the purpose of superannuation. Differing rules apply for MSBS and ADF Cover, where a CSC delegate is the decision maker for retrospective invalidity.[4]

4.6 CSC further explained nuances between retrospective invalidity claims across different military superannuation schemes:

- For DFRDB members to be considered for retrospective invalidity, they must apply to the Department of Defence. Only if CSC receives correspondence from Defence confirming that the member should have been discharged on medical grounds can it apply the retrospective change to the member's benefit.
- Where an MSBS member has been discharged for reasons other than invalidity, they may apply directly to CSC to be treated as though they had retired on the grounds of invalidity, however can only do so if they have retained a preserved MSBS employer benefit. (Therefore, if they have taken an early release of superannuation they may not have a preserved benefit and will thus be prohibited from applying for a retrospective invalidity benefit).
- An ADF Cover member may also apply directly to CSC to be treated as though they had retired on grounds of invalidity, without the requirement to have retained a preserved employer benefit.[5]

4.7 Issues raised concerning retrospective invalidity included:

- the complexity of the process;
- long wait times for outcomes;
- inadequate avenues of appeals;
- consideration of psychological injuries; and
- the impact of the entire process on veterans' wellbeing.

Complexity and timeliness

4.8 Many submitters highlighted the complexity of the process when seeking reclassification of discharge, difficulties navigating the system's bureaucracy, and the length of time need to complete the process.

4.9 RSL Australia stated that 'while access to retrospective classification has improved, the process remains fraught with complexity' due to the complicated

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3 Department of Defence, *Submission 5 (47th Parliament)*, p. 6.

4 Department of Defence, *Submission 5 (47th Parliament)*, p. 6.

5 Commonwealth Superannuation Corporation, *Submission 4 (47th Parliament)*, [p. 5].

and unclear classification system, inconsistent right of review between classifications, and inconsistent decision making by CSC.[6]

4.10 The DFWA described the process as 'probably the most complex area in the administration of veteran entitlements, due to offsetting between Department of Veterans' Affairs (DVA) Incapacity Payments and CSC payments'.[7]

4.11 The DFWA also outlined the amount of time and effort required to make a claim:

> A retrospective medical discharge claim involves trawling back though medical records back to before discharge to the current day, leading up to a decision. If claim is successful, it then involves reviewing the historical records of CSC and DVA payments made, withholding tax, and veteran tax - dating back to the date of discharge. Some of the records have been archived. Some earlier ones are still held on paper or scanned, requiring manual searching. This process is lengthy and its outcome uncertain and creates more stress. DFWA has supported veterans where the retrospective claims went back as far as the 1970s and required about 2 years for a decision.[8]

4.12 This was illustrated in a submission by Mr Mike Smith, who set out his experience applying for reclassification of discharge from administrative to medical:

> With detailed records and reports from the relevant specialist, an application was submitted to the Department of Defence in 2023. As at July 2025, my application hadn't been addressed and there is no indication when that might occur. Should my mode be altered to medical discharge, the application then needs to go through the CSC processes.[9]

4.13 DVA explained that even when retrospective invalidity is granted, veterans may still endure a protracted wait to receive updated superannuation benefits due to recalculation of past entitlements and taxation which can take several years.[10]

4.14 For example, Super Info submitted that processing times for retrospective invalidity cases had increased from around three months in 2018 to over two years in some cases from 2023 onwards, involving veterans with injuries from active duty in the Middle East from 2005 to 2024. Super Info indicated that CSC employees had attributed this to:

- delays in obtaining medical files from the Department of Defence and answers from Defence People Group about whether the former ADF member could reasonably have been retired on medical grounds; and

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6 RSL Australia, *Submission 14 (47th Parliament)*, p. 13.

7 Defence Force Welfare Association, *Submission 16 (47th Parliament)*, [p. 63].

8 Defence Force Welfare Association, *Submission 16 (47th Parliament)*, [p. 66].

9 Mr Mike Smith, *Submission 49*, [p. 3].

10 Department of Veterans' Affairs, *Submission 7 (47th Parliament)*, p. 5.

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- service standards set by the Department of Defence, which provide 18 months for CSC to process retrospective invalidity claims for members of the MSBS and DFRDB.[11]

4.15 CSC told the committee that, since 2018, it had experienced a significant year-on-year increase in claims, especially in retrospective claims, with the total number of claims increasing from 288 in 2018 to 1117 in the 2024–25 financial year, leading to delays in processing claims.[12]

4.16 CSC also outlined a review of resources and processes that it undertook with Defence in early 2024. As a result of that review, Defence allocated CSC an additional budget of $600 000, enabling it to increase its number of claims managers from 46 in 2018, to 51 at the time of writing.[13]

4.17 CSC indicated that the additional staffing has helped it to clear 97 per cent of the 1398 claims that were over 18 months old at the time of the review, with 44 claims remaining outstanding, typically where the CSC was waiting on more information to be provided. CSC also told the committee that it has closed an additional 1672 retrospective invalidity cases since 2024.[14]

4.18 The Repatriation Commission conceded that veterans applying for retrospective invalidity 'often experience confusing processes, delays, and unexpected financial implications'.[15]

4.19 To address this, the Repatriation Commission articulated the need for greater coordination between DVA, CSC, the Australian Taxation Office, Defence, and the Department of Social Services 'to streamline this process and ensure accurate and timely outcomes'.[16]

4.20 Similarly, the Veteran Family Advocate Commissioner (VFAC) noted that the reclassification of discharge process 'is fragmented across Defence, CSC and DVA' with 'no single decision point or reconciled outcome'.[17]

4.21 The VFAC argued for the establishment of:

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11 Super Info, *Submission 69*, p. 2.

12 Mr Adam Nettheim, Chief Customer Officer, Commonwealth Superannuation Corporation, *Committee Hansard*, 19 February 2026, p. 45.

13 Mr Adam Nettheim, Chief Customer Officer, Commonwealth Superannuation Corporation, *Committee Hansard*, 19 February 2026, pp. 45–46.

14 Mr Adam Nettheim, Chief Customer Officer, Commonwealth Superannuation Corporation, Committee Hansard, 19 February 2026, pp. 45–46.

15 The Repatriation Commission, *Submission 8 (47th Parliament)*, [p. 2].

16 The Repatriation Commission, *Submission 8 (47th Parliament)*, [p. 2].

17 Veteran Family Advocate Commissioner, *Submission 46*, [p. 3].

> … a single 'tell me once' pathway with firm timelines for initial decisions and internal review; on approval, backdate entitlements and pause debt recovery while decisions are pending; issue one consolidated outcome letter showing the net position across Defence, CSC, DVA and the ATO.[18]

4.22 Defence submitted that:

> Defence, through the MoU and reporting framework with CSC, have sought to have more visibility and understanding of the current status of the cases relating to retrospective medical separation with an aim to support positive change and experience for the member.[19]

Avenues for appeal

4.23 In addition to issues navigating the system, submitters raised concerns regarding the appeals process for retrospective invalidity claims.

4.24 The DFWA argued that the legislated one month to appeal decisions made by CSC is inadequate as:

> For the veteran, it is not routine, it involves a deal of specialist knowledge, gets confused with DVA medical assessment process, and is stressful. A veteran given an initial classification of Class C will likely become very anxious and will take time to understand and consider what action to take and how to appeal a challenge. Given the previous stress, many just want no more to do with it, let alone to be pressured to make a rushed decision – so just walk away from it.[20]

4.25 The DFWA instead favoured an appeal time that is 'formally extended to 6 months but still [retains the] ability to give leave to appeal after that time where extenuating circumstances exist'.[21]

4.26 Advocates Online told the committee about several problems with the application and appeal processes for retrospective invalidity, including short timeframes for responding to draft decisions, the infrequency with which the CSC Reconsiderations Committee considers appeals and the absence of medical or legal personnel:

> We get a draft decision. Sometimes, that's the first time we will know what's going on in the delegate's mind. We then have 14 or 21 days to come back and say whether we agree or disagree or give them more evidence. Once the decision is made, we can appeal. We have to notify Reconsiderations of the intention to appeal within 30 days. We do that immediately, and then we've got really as much time as we like to make the submission. But the committee sits only every couple of months, and it's a committee of six Defence Force people: three current serving and three former serving. So at

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18 Veteran Family Advocate Commissioner, *Submission 46*, [p. 2].

19 Department of Defence, *Submission 5 (47th Parliament)*, p. 7.

20 Defence Force Welfare Association, *Submission 16 (47th Parliament)*, [p. 67].

21 Defence Force Welfare Association, *Submission 16 (47th Parliament)*, [p. 67].

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> no stage through this process is there a medical person or a legal person on the appeals thing.[22]

4.27 Mr David Burrows highlighted further barriers that can potentially affect DFRB and DFRDB members which prevent them from appealing retrospective invalidity decisions made by Defence.

4.28 Mr Burrows highlighted several Administrative Appeals Tribunal (AAT) cases where the AAT advised applicants that its jurisdiction for merits reviews does not apply to decisions made by Defence. By contrast, retrospective discharge applications by MSBS members are made directly to CSC, whose decisions can be appealed to the Administrative Review Tribunal (ART).[23]

4.29 Mr Burrows submitted that:

> … the problem is the Defence procedure of not passing unsupported applications to the CSC to allow an appealable substantive decision by CSC as the primary decision maker and discretionary power holder.[24]

4.30 Mr Mark Croxford, another DFRDB member who could not appeal a retrospective invalidity decision made by Defence, argued that 'this process effectively grants Defence a gatekeeping role'.[25]

4.31 In response to questions on notice, the CSC provided the committee with information regarding appeals of decisions made by the Reconsideration Committee. In the 2024–2025 financial year there were:

- 3783 decisions made by CSC delegates relating to invalidity (including initial invalidity, retrospective invalidity and invalidity classification reviews);
- 231 internal appeals were received by the Reconsideration Committees relating to invalidity (a 6.1 per cent internal appeal rate); and
- 25 matters relating to invalidity were appealed externally to AFCA or ART (an external appeal rate of 0.6 per cent).[26]

4.32 In the 2024–2025 financial year CSC had 20 external appeals closed by AFCA and the ART. Of these matters:

- nine were withdrawn by members after CSC provided responses;
- seven were closed by AFCA after CSC provided responses;

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22 Ms Kelliegh Jackson, Chief Executive Officer, Advocates Online, *Committee Hansard*, 19 February 2026, p. 18.

23 Mr David Burrows, *Submission 12 (47th Parliament)*, p. 1. On 14 October 2024 the AAT was abolished and replaced with the Administrative Review Tribunal.

24 Mr David Burrows, *Submission 12 (47th Parliament)*, p. 1.

25 Mr Mark Croxford, *Submission 60*, [p. 3].

26 Mr Adam Nettheim, Chief Customer Officer, CSC, answers to questions on notice, 19 February 2026 (received 5 March 2026).

- three ART matters were finalised after CSC received further evidence supporting the members application and agreed that the member was therefore entitled to a benefit; and
- one matter went to final determination and found in CSC's favour.[27]

4.33 Regarding the success rate of appeals, the CSC submitted:

- Reconsideration success rate – for the 2024-2025 financial year, 50 per cent of the invalidity matters internally appealed to the Reconsideration Committee resulted in a change to the percentage of Invalidity.
- External appeal success rate – for the 2024-2025 financial year there were no successful external appeal decisions.
- However, on the basis of new medical evidence received during an external appeal CSC conceded three matters.[28]

Consideration of psychological injuries

4.34 Some submitters highlighted the difficulties they have experienced applying for reclassification of discharge in relation to psychological injuries and mental illness.

4.35 These submitters particularly cited lack of historical documentation of their psychological injures as a hindrance when applying to have their discharge reclassified on medical grounds.

4.36 Advocates Online told the committee that military personnel are generally reluctant to disclose mental health issues during their service, and that often the psychological impacts of service do not manifest until years later:

> If we look at the evidence around the disclosure of mental health injuries, veterans are generally not disclosing. Quite often a person won't know they've got a psychological injury, and it won't be known for potentially two to five years or more after service. That does not mean their condition is not manifest, and 'manifest' means causing them restriction in life or employment.[29]

4.37 Advocates Online also suggested that CSC assessments often overlooked evidence of long-term impacts:

> When we go and get a psychiatric assessment and the psychiatrist is willing to refer back to the date of discharge, that is being entirely, in some cases, discounted. That's where we're being asked for more contemporaneous evidence: where's the evidence that suggests this person was suffering a

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27 Mr Adam Nettheim, Chief Customer Officer, CSC, answers to questions on notice, 19 February 2026 (received 5 March 2026).

28 Mr Adam Nettheim, Chief Customer Officer, CSC, answers to questions on notice, 19 February 2026 (received 5 March 2026).

29 Ms Kelliegh Jackson, Chief Executive Officer, Advocates Online, *Committee Hansard*, 19 February 2026, p. 19.

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> psychological injury? … But that evidence is being ignored, and I'm not really sure how the CSC delegates can introduce this need for contemporaneous evidence when the longitudinal evidence, when you put all of the pieces of the puzzle together—dysfunction in the family; DVA claims and assessments, which are rigorous, independent medical assessments; family dysfunction; and multiple jobs—with a psychiatrist's report on top saying, 'Oh, yes, they were unwell, and I can see the factors of dysfunction,' is being ignored, discounted or downplayed.[30]

4.38 Mr Croxford stated that his claim was rejected, despite DVA having classified him as Totally and Permanently Incapacitated, due to conditions that had been diagnosed by a psychiatrist and accepted by DVA as service-related.[31] He explained that Defence did not support his application 'because there was no record of mental health illness at the time of separation'.[32]

4.39 Mr Croxford criticised this reason for rejecting retrospective invalidity claims, highlighting that 'in earlier decades, stigma and career concerns frequently prevented reporting of psychological injury'.[33]

4.40 Similarly, Mr Nathan Castle explained that his retrospective invalidity application to CSC only received a Class C classification on the rationale that his current injuries were not sufficiently reflected in his historical medical documentation.[34]

4.41 Mr Castle highlighted a finding of the Royal Commission into Defence and Veteran Suicide (the Royal Commission) that 'many ADF members underreported or withheld medical concerns out of fear of being labelled weak, malingering or unfit for duty'.[35] He argued that:

> This culture of silence and stigma has been deeply entrenched within Defence and continues to harm veterans long after their service ends. In effect, the very culture that discouraged me from seeking help is now being used to deny me fair recognition of my injuries and entitlements.[36]

4.42 Mr Castle also raised concern that not all supporting information is reviewed in retrospective invalidity applications. Mr Castle stated that his Open Arms file was not reviewed by CSC, and explained that the possibility that application

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30 Ms Kelliegh Jackson, Chief Executive Officer, Advocates Online, *Committee Hansard*, 19 February 2026, p. 19.

31 Mr Mark Croxford, *Submission 60*, [p. 3].

32 Mr Mark Croxford, *Submission 60*, [p. 1].

33 Mr Mark Croxford, *Submission 60*, [p. 5].

34 Mr Nathan Castle, *Submission 65*, [p. 1].

35 Mr Nathan Castle, *Submission 65*, [p. 1].

36 Mr Nathan Castle, *Submission 65*, [p. 1].

materials prepared by veterans are not reviewed 'conveys a sense that veteran welfare is secondary to administrative expedience'.[37]

4.43 The Royal Australian and New Zealand College of Psychiatrists (RANZCP) also highlighted limitations regarding consideration of mental illness in retrospective invalidity claims where a veteran may have been administratively discharged due to behaviour caused by mental illness.[38]

4.44 RANZCP welcomed commitments from the Chief of the Defence Force and Australian Government in response to the Royal Commission to consider the impacts of mental health on a member's conduct before recommending administrative discharge.[39]

4.45 However, RANZCP noted that these commitments have no retrospective effects, and expressed its support for 'accessible processes to reclassify administrative discharges as medical'.[40]

Impact on veterans

4.46 The DFWA explained why the process of seeking retrospective invalidity is a challenge for veterans:

> Veterans medically discharged are the cohort most vulnerable to mental health issues and suicidality. A large proportion of those seeking retrospective medical discharge may be at greater risk, as their condition has been suppressed, denied and hidden for years and probably untreated. Actually, the process of deciding and initiating is usually very hesitant, weighed with uncertainty about the outcome in an already uncertain future and creates a lot of anxiety.[41]

4.47 This was echoed by RANZCP, who highlighted that:

> … '[a] growing body of research has documented the ways that compensation systems themselves can promote worse health outcomes, especially for people with mental health problems' in part because 'mental injuries are frequently made worse by the prolonged contest to obtain compensation.' For veterans with PTSD, repeatedly recounting traumatic events in new contexts can be harmful. But across all conditions, claimants who report higher levels of stress in engaging with compensation schemes are likely to have significantly higher levels of disability, anxiety, and depression.[42]

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37 Mr Nathan Castle, *Submission 65*, [p. 2].

38 Royal Australian and New Zealand College of Psychiatrists, *Submission 3 (47th Parliament)*, p. 3.

39 Royal Australian and New Zealand College of Psychiatrists, *Submission 3 (47th Parliament)*, p. 3.

40 Royal Australian and New Zealand College of Psychiatrists, *Submission 3 (47th Parliament)*, p. 3.

41 Defence Force Welfare Association, *Submission 16 (47th Parliament)*, [p. 63].

42 Royal Australian and New Zealand College of Psychiatrists, *Submission 3 (47th Parliament)*, p. 4.

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4.48 RANZCP further submitted:

> Discharge, especially when it is involuntary for medical, administrative or disciplinary reasons, involves loss of self-identity through loss of purpose and meaning, but also implicitly involves a loss of function and status/rank, and hence, the loss of positive self-worth and self-identity.
>
> Being involuntarily discharged can seem a form of institutional betrayal which damages this belief.[43]

4.49 Super Info highlighted that this culture among ADF personnel was especially prevalent among the special forces community, who were more likely to voluntarily discharge rather than to accept a separation on medical grounds.[44]

4.50 Super Info added that deciding to separate voluntarily, rather than accept a medical discharge, could leave veterans without immediate support from superannuation and veteran entitlements. This could force them to take up employment to support their families, which could potentially exacerbate medical issues and hamper full recovery.[45]

4.51 Furthermore, Super Info indicated that extensive delays in processing of retrospective invalidity benefits increases the need for employment to meet immediate living expenses, which can then be used by the CSC to reduce incapacity assessments.[46]

4.52 RANZCP added:

> Veterans often emphasise the importance to their sense of self of having their discharge reclassified. However, retrospective reclassification can lead to increased tax and the recovery of any compensation already paid by DVA for the same condition. This can even create debts to DVA, making an otherwise beneficial outcome (the retrospective reclassification of discharge) financially harmful.[47]

4.53 Consequently, RANZCP argued that 'allowing an application for retrospective reclassification to be made separately to an application for financial entitlements should be considered'.[48]

4.54 RANZCP also noted:

> Unlike a veteran receiving benefits from DVA, there is no provision for the Commonwealth to require or fund rehabilitation programmes through the CSC when appropriate. Even when there are no physical injuries,

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43 Royal Australian and New Zealand College of Psychiatrists, *Submission 3 (47th Parliament)*, p. 4.

44 Super Info, *Submission 69*, p. 2.

45 Super Info, *Submission 69*, p. 3.

46 Super Info, *Submission 69*, p. 3.

47 Royal Australian and New Zealand College of Psychiatrists, *Submission 3 (47th Parliament)*, p. 4.

48 Royal Australian and New Zealand College of Psychiatrists, *Submission 3 (47th Parliament)*, p. 4.

> longitudinal studies show that some veterans can and do recover from probable mental health disorders over time, while treatment and rehabilitation increases wellbeing in others.[49]

4.55 RANZCP recommendations to promote better rehabilitation support for veterans receiving invalidity pensions included:

- encouragement of access to treatment through means beyond White Card entitlements;[50]
- access to rehabilitation services as part of CSC pensions to encourage a return to the workforce;
- an invalidity classification model with finer gradation to encourage rehabilitation; and
- a wellbeing-focused approach to the mandatory review of invalidity classifications to encourage engagement with treatment, rather than emphasising compensation alone.[51]

4.56 RSL Australia also advocated for a greater focus on rehabilitation among veterans receiving invalidity payments:

> … Class A and Class Military Superannuation currently has no link to rehabilitation. Once a medically transitioning member is accepted for payment of Class A or Class B superannuation, there is no provision for them to access supported rehabilitation programs. A member who does not seek support (or is not eligible for support) from DVA, 'falls through the cracks' and further rehabilitation options are negligible. Because the CSC rarely reviews invalidity payments, veterans have the security of a payment for life and their medical and psychological issues remain identified via the superannuation assessment process but never addressed. RSLA has previously recommended that access to rehabilitation in all of its forms should be a priority for medically transitioning veterans.[52]

Complexity of the military superannuation system

4.57 The complexity of the military superannuation system and the difficulties this creates for veterans in their attempts to understand and navigate the application and evaluation process was raised by several submissions to the inquiry.

4.58 In particular, submissions raised concerns regarding:

- the interaction between military superannuation and other veterans' payments;
- a need for improved education and guidance; and

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49 Royal Australian and New Zealand College of Psychiatrists, *Submission 3 (47th Parliament)*, p. 5.

50 The Veteran White Card is a treatment card for veterans for accepted service-related injuries or conditions. Medical treatment is usually free if providers accept the White Card. See, for example, Department of Veterans' Affairs, Veteran White Card.

51 Royal Australian and New Zealand College of Psychiatrists, *Submission 3 (47th Parliament)*, p. 5.

52 RSL Australia, *Submission 14 (47th Parliament)*, p. 14.

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- a lack of coordination between agencies.

Interaction with other veterans' payments

4.59 RSL Australia highlighted the offsetting of superannuation benefits against compensation payments made by DVA as a significant issue.

4.60 According to RSL Australia, the added administration and complexity of offsetting can affect a veterans' understanding of their financial stability and ability to plan their finances after leaving the ADF.[53]

4.61 RSL Australia highlighted the Royal Commission's finding regarding the stress and confusion caused by the interaction between DVA entitlements and military superannuation. It agreed with the recommendation for simplification of legislative and administrative arrangements in this area.[54]

4.62 The Repatriation Commission described offsetting arrangements as 'often confusing and emotionally difficult for veterans'. Noting that many veterans perceive offsetting policies as punitive, the Repatriation Commission expressed the need for better communication of the rationale behind these policies, while simultaneously remaining empathetic and understanding of veterans' concerns.[55]

Need for improved education and guidance

4.63 In addition to a simplified system, RSL Australia advocated in favour of improved education and greater collaboration between government agencies to improve current ADF members and veterans' financial literacy and understanding of the military superannuation system more broadly.[56]

4.64 The Repatriation Commission expressed the need for 'improved and ongoing education regarding offsetting mechanisms', including 'transparent, consistent communication from the point of enlistment through transition' to civilian life.[57]

4.65 Similarly, the VFAC argued in favour of improved guidance to veterans on the impact their superannuation decisions will have on other DVA payments to limit the number of veterans who make irreversible choices without understanding the consequences.[58]

4.66 To do so, the VFAC suggested that the CSC should:

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53 RSL Australia, *Submission 14 (47th Parliament)*, p. 15.

54 RSL Australia, *Submission 14 (47th Parliament)*, p. 15.

55 The Repatriation Commission, *Submission 8 (47th Parliament)*, [p. 2].

56 RSL Australia, *Submission 14 (47th Parliament)*, p. 16.

57 The Repatriation Commission, *Submission 8 (47th Parliament)*, [p. 2].

58 Veteran Family Advocate Commissioner, *Submission 46*, [p. 3].

- include standard, plain-English paragraphs in all CSC decision and offer letters explaining DVA impacts, offsets and where to obtain independent advice;
- provide a short cooling-off period and funded access to independent advice before any irrevocable election; and
- publish a CSC–DVA journey map with three or four clear scenarios most families face.[59]

4.67 The DFWA stated that potential improvements to training and education should focus firstly on websites and publications, as these may be a veteran's first authoritative source on a particular subject. Consequently, the DFWA emphasised the importance of ensuring general advice provided to veterans is 'correct, clear and current'.[60]

Coordination between agencies

4.68 Lack of coordination between agencies was also cited as an impediment to veterans' ability to understand and navigate the military superannuation system.

4.69 The DFWA described the current framework as creating 'legislation silos' in which different agencies that are required to interact instead largely work within the confines of their own legislation and funding. It submitted that this means that there is 'often no agency responsible for delivery of the best outcome for the [veteran and their family]'.[61]

4.70 The DFWA also noted that any support to help veterans navigate the system between different agencies has largely come from ex-service organisations such as RSL Queensland. It proposed that an ex-service organisation peak body as proposed by the Royal Commission could provide consistent and meaningful cross-agency support for veterans.[62]

4.71 The Repatriation Commission stated that 'veterans should not bear the burden of navigating separate and inconsistent systems' and emphasised the need for greater collaboration across DVA, CSC, the ATO, and DSS to 'prevent delays, discrepancies and unnecessary financial stress'.[63]

4.72 The Repatriation Commission expressed support for the Productivity Commission and Professor Podger's recommendations for a single agency to administer disability compensation, superannuation and incapacity payments

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59 Veteran Family Advocate Commissioner, *Submission 46*, [p. 3].

60 Defence Force Welfare Association, *Submission 16 (47th Parliament)*, [pp. 81–82].

61 Defence Force Welfare Association, *Submission 16 (47th Parliament)*, [p. 16].

62 Defence Force Welfare Association, *Submission 16 (47th Parliament)*, [pp. 66–67].

63 The Repatriation Commission, *Submission 8 (47th Parliament)*, [p. 2].

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to 'simplify processes, reduce distress and delays, and enhance transparency and trust for veterans'.[64]

4.73 The Department of Veterans' Affairs established a Taskforce on Wellbeing agency and peak body in March 2025 to work with the veteran community co-design a new agency focused on veteran and family wellbeing and establish a national peak body for ex-service organisations.[65]

4.74 The new wellbeing agency is to open on 1 July 2026. The purpose of the agency is to create a more connected system of support for serving ADF members by taking responsibility for transition supports that are currently shared between the Departments of Defence and Veterans' Affairs. The agency will coordinate relevant Defence, DVA and community programs, services and supports for veterans and families, with a focus on early intervention and prevention during transition from the ADF to civilian life.[66]

Implementation of the Douglas decision

4.75 Several submitters raised concerns regarding coordination between CSC and the ATO in applying legislative changes in relation to the full Federal Court decision in *Commissioner of Taxation v Douglas* (the Douglas decision).[67]

4.76 In the Douglas decision, the Federal Court found that some DFRDB and MSBS invalidity pensions starting on or after 20 September 2007 are superannuation lump sums rather than superannuation income streams and should be taxed accordingly.[68]

4.77 In 2024, the *Social Services and Other Legislation Amendment (Military Invalidity Payments Means Testing) Act 2024* was passed by the Parliament to ensure these pensions retain their tax-free component when assessed by Centrelink for the purposes of the *Social Security Act 1991*.[69]

4.78 The DFWA told the committee that inconsistent taxation treatment of invalidity benefits can have profound effects on the financial wellbeing of veterans and their families:

> The tax regime—it all goes back to the Douglas decision, which was the taxation of invalidity benefits from DFRDB and MSBS. The legality—this is complex tax law. Basically, all of those invalidity benefits are capable of

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64 The Repatriation Commission, *Submission 8 (47th Parliament)*, p. 2.

65 Department of Veterans' Affairs, Taskforce on Wellbeing agency and Peak Body.

66 The Hon. Matt Keogh MP, Minister for Veterans' Affairs, 'New wellbeing agency to open 1 July 2026', *Media Release*, 18 December 2025.

67 *Commissioner of Taxation v Douglas* [2020] FCAFC 220.

68 Mr Jason Andersen, *Submission 64*, p. 2.

69 Mr Jason Andersen, *Submission 64*, p. 2.

> being reviewed. What that means is that they can be decreased; they can go to zero. One of the veterans involved in that had had eight reviews of his pension, and he went from an A to a B to a C—which is nothing; it's virtually ceased—and then back up to a B. … That was over a period of about four years. So it is not a lifetime pension. You try and go and get a mortgage and they say, 'What's your income? Oh, an invalidity benefit? That's not lifetime.' The mortgage lenders get a bit twitchy about things not being lifetime pensions … Under tax law, if it's not a lifetime pension and not an income stream, it is a lump sum. The payments are actually a series of lump sums, and lump sums coming from a defined benefit scheme have a significant tax advantage over an income stream. They're taxed totally differently.[70]

4.79 Mr Jason Andersen's submission alleges that neither Centrelink or CSC are correctly implementing the 2024 legislative changes, resulting in pensions being assessed as fully taxable and in turn affecting support payments and creating debts for impacted individuals.[71]

4.80 According to Mr Andersen, Centrelink cites CSC's reporting of veterans' income as the issue, while CSC states it cannot update its reporting until Centrelink issues new guidance.[72]

4.81 Mr Andersen also explained that the lack of clear policy guidance has resulted in inconsistent ART decisions in relation to the issue in different states.[73]

Reversionary pensions – definitions of 'spouse' and 'dependant'

4.82 Some submissions raised concerns regarding the provision of reversionary pensions to the families of deceased veterans, and how definitions in superannuation legislation can prevent some families from meeting legal dependency requirements. This particularly relates to definitions of 'spouse' and 'dependant'.

4.83 Under the Superannuation Act, a person may be taken to be a spouse who survives a deceased person if:

> (a) the person had previously had a marital or couple relationship with the deceased person; and
> (b) the person did not, at the time of the death, have a marital or couple relationship with the deceased person but was legally married to the deceased person; and

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70 Mr John Lowis, President, Defence Force Welfare Association (Queensland Branch), *Committee Hansard*, 19 February 2026, p. 29.

71 Mr Jason Andersen, *Submission 64*, pp. 3, 9.

72 Mr Jason Andersen, *Submission 64*, p. 3.

73 Mr Jason Andersen, *Submission 64*, p. 6.

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(a) in CSC's opinion, the person was wholly or substantially dependent upon the deceased person at the time of death.[74]

4.84 Legacy Australia's (Legacy) submission focused specifically on the definitions of 'marital or couple relationship' and 'spouse who survives a deceased person' under the *Superannuation Act 1976* (the Superannuation Act).[75] Legacy argued that these definitions negatively impact spouses who have physically separated due to severe mental illness, alcoholism, substance abuse, and domestic violence.[76]

4.85 Similarly, the Australian Financial Complaints Authority (AFCA) raised concerns regarding similar provisions in the *Military Superannuation Benefits Act 1991*, which apply to the Military Superannuation Benefits Scheme.

4.86 AFCA described the MSBS provisions for reversionary pensions as 'complex' and 'unlike equivalent provisions AFCA has seen in the trust deeds for other funds'.[77]

4.87 AFCA explained:

> This complexity, and the unusual definition of the term 'spouse', [has] led to circumstances where a surviving spouse who no longer lived with the deceased prior to their death due to serious family violence has been ineligible to receive their spouse's death benefit.[78]

4.88 AFCA described one complaint considered by an AFCA panel against CSC as the MSBS trustee in which:

> The complainant explained that she and the deceased had stopped living together because the deceased, who had a lengthy career in the military, was suffering from Post Traumatic Stress Disorder (PTSD) and alcohol abuse disorder. The complainant and the children in the household were subject to significant domestic violence at the hands of the deceased throughout the couple's relationship, which it was accepted was a result of the deceased's PTSD.
>
> The AFCA Panel that considered this complaint found, however, that in all the circumstances there was no longer a marital or couple relationship, and that the complainant was not wholly or substantially dependent on the deceased when he died. This meant that the complainant did not meet the

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74 *Superannuation Act 1976*, s. 8B.

75 The definitions of 'marital couple' and 'spouse' are identical in the *Superannuation Act 1976*, s. 8A and 8B and the *Defence Force Retirement and Death Benefits Act 1973*, s. 6A and 6B.

76 Legacy Australia, *Submission 44*, p. 2.

77 Australian Financial Complaints Authority, *Submission 6 (47th Parliament)*, p. 7.

78 Australian Financial Complaints Authority, *Submission 6 (47th Parliament)*, p. 7.

> definition of 'spouse' in the trust deed and was not eligible to receive any part of the deceased's death benefit.[79]

Dependency

4.89 Legacy specifically pointed to the requirement to prove dependency upon the deceased person to CSC and highlighted the case of one widow who had a continuing relationship with a veteran but had physically separated due to the veteran's mental illness, which had led to the issuance of a Protection Order under the ACT Domestic Violence Act.[80]

4.90 CSC rejected the widow's application for a reversionary pension and advised:

> Also, for the purposes of superannuation law, a physically separated couple must nevertheless remain in an ongoing relationship, and mere emotional dependency is insufficient; there must be financial dependency … Furthermore, when considering the illness itself, even if it is the alleged cause of the separation, the relationship must otherwise still be maintained. If there is no ongoing relationship, the deeming provisions in the Act do not apply.[81]

4.91 Mrs Patricia Cook told the committee that the CSC had refused her application for her husband's reversionary pension when he died in 2019. Mr Cook suffered PTSD as a result of his service in Vietnam. As a result, he often self-medicated with alcohol and acted violently. He therefore had to live separately from his family for their safety. Mrs Cook told the committee that, despite living apart, she and her husband maintained contact regarding their children's education assisted each other financially, and saw each other socially and at work.[82]

4.92 Mr Ian Wills explained that it was well established that military service can cause psychiatric illness in some individuals, placing strains on domestic relationships that mean that families need to adapt to the circumstances. Mr Wills stated that:

> Mrs Cook and her family maintained a strong relationship with her husband, despite these service related circumstances. She provided financial support to him and took responsibility following his death, but she was deemed not to be financially dependent upon Mr Cook—correctly but unfairly. Her application for their contributory superannuation benefit was repeatedly denied, despite the Superannuation Act making provision for absence due to illness or infirmity. Unfortunately, in recent years, CSC has followed a strict interpretation of the act that families must be financially dependent on the member.[83]

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79 Australian Financial Complaints Authority, *Submission 6 (47th Parliament)*, pp. 7–8.

80 Legacy Australia, *Submission 44*, p. 3.

81 Legacy Australia, *Submission 44*, p. 3.

82 Mrs Patricia Cook, Private capacity, *Committee Hansard*, 19 February 2026, p. 32.

83 Mr Ian Wills, Legatee, Legacy Club of Canberra, *Committee Hansard*, 19 February 2026, p. 33.

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4.93 Legacy also noted that section 8A(5) of the Superannuation Act makes provision for physical and mental illness, as it states:

> (5) For the purposes of this section, a person is taken to be living with another person if CSC is satisfied that the person would have been living with that other person except for a period of:
>
> (a) temporary absence; or
> (b) absence because of the person's illness or infirmity.[84]

4.94 Legacy contended that the interpretation of 'dependence' as requiring financial dependence, and understanding of mental illness in the consideration of applications is inappropriate as:

> … the Act was introduced at a time when family structures were quite different to today, where both partners now commonly engage in the workforce. The 'dependency' concept today is not as clearcut and at the time, the present-day acceptance of mental health as a specific illness had not been developed to the extent prevailing now, nearly 50 years later.[85]

4.95 Legacy noted that 'it is understood that in other contexts, such as inheritance law, cases have held that dependence can be an emotional concept'.[86] Legacy also argued:

> Fundamental to this issue is that this interpretation of the Act is discriminatory. It discriminates against the families of Commonwealth employees who suffer from mental illness resulting from their employment. Other legislation exists to protect employees from unfair discrimination.[87]

4.96 The DFWA also advocated for change, stating:

> It is the DFWA view that families in these circumstances were possibly not foreseen or considered when the [*Superannuation Industry (Supervision) Act 1993*] was introduced. The community is now much more aware of mental health issues and the link to domestic violence than they were 20 years ago when the Acts came into being.[88]

4.97 The DFWA also argued that 'if Family Law action had been initiated, but not settled, before the Veteran's death, then that should be strong evidence of dependency'.[89]

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84 *Superannuation Act 1976*, s. 8A(5).

85 Legacy Australia, *Submission 44*, p. 2.

86 Legacy Australia, *Submission 44*, p. 4.

87 Legacy Australia, *Submission 44*, p. 4.

88 Defence Force Welfare Association, *Submission 16 (47th Parliament)*, [p. 76].

89 Defence Force Welfare Association, *Submission 16 (47th Parliament)*, [p. 76].

4.98 The VFAC highlighted that 'DVA can recognise a separated partner in [family and domestic violence] contexts where CSC may not, producing divergent outcomes and potential clawbacks'.[90]

4.99 The VFAC advocated for the alignment of CSC and DVA 'by adopting a presumption in favour of survivors with safe, low-risk evidence options and clear timeframes'. [91]

Consolidation of military superannuation funds

4.100 Several submissions outlined the inability of members of now-closed superannuation schemes to move or consolidate their military superannuation, leaving some members in a financially disadvantageous position.

4.101 This issue was specifically raised in relation to the MSBS, a hybrid superannuation scheme encompassing employee contributions and defined benefits paid by the employer.

4.102 The DFWA explained:

> The Employee and Employer Benefits of MSBS is locked into the CPI:
>
> (a) Only on discharge, can a veteran access the Employee Benefit and roll it over into another Super Fund of choice.
> (b) The Employer Benefit is locked into MSBS until age 55 years, earning CPI.[92]

4.103 Defence explained the MSBS as:

> … a hybrid scheme, providing both an accumulation and defined benefit. An MSBS benefit can include three components; member benefit, ancillary benefit and employer benefit. Both the member benefit and ancillary benefit components are accumulation benefits and are fully portable. The employer benefit component is a defined benefit, and has restricted portability. For example, a member of MSBS who separates from the ADF prior to age 55, must preserve their employer benefit in the scheme. They may however choose to rollover their accumulation benefit.[93]

4.104 Defence added:

> While preserved MSBS members are unable to transfer their employer benefit to another superannuation fund, they are able to convert their employer benefit into a life time indexed pension, or elect to transfer this amount as a lump sum value to another complying superannuation fund, after reaching 55 years of age.[94]

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90 Veteran Family Advocate Commissioner, *Submission 46*, [p. 2].

91 Veteran Family Advocate Commissioner, *Submission 46*, [p. 1].

92 Defence Force Welfare Association, *Submission 16 (47th Parliament)*, [p. 19].

93 Department of Defence, *Submission 5 (47th Parliament)*, p. 5.

94 Department of Defence, *Submission 5 (47th Parliament)*, p. 5.

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4.105 The DFWA argued that this is inequitable compared to other superannuation funds, which allow employees to 'roll over' their superannuation to different funds.[95]

4.106 Mr Bartholomeusz submitted that:

> This restriction can hinder efficient fund management and potentially reduce the overall benefits by limiting members' investment options and returns.[96]

4.107 One submitter outlined their experience attempting to transfer their MSBS superannuation upon discharge:

> I initially enquired about removing the entirety of my super out of MSBS upon separation from the Army in 2013 and was told I could only take my contributions and not the full amount. I decided to leave everything in one place to allow it to keep compounding, though it finally got to me too much that I was no longer allowed to contribute and keep growing my contributions that I decided to roll my contributions out into my personal super in 2021. Something I regret to this day, that I didn't remove it earlier.[97]

4.108 The submitter expressed their frustration that their pension would increase, at most, by only 3 per cent per year until they turned 55. It would only be at that point that they would be entitled to roll over the entirety of their entitlements into a fund where they could choose their investment strategy and anticipate much greater returns. They told the committee that the inability to move their funds any earlier would have a huge effect on their retirement and their wellbeing.[98]

Committee view and recommendations

4.109 Once again, the committee thanks individuals and organisations for making valuable contributions to this inquiry. In particular, the committee recognises all that shared their personal stories in submissions and at the hearing.

Retrospective invalidity

4.110 The committee acknowledges the breadth of evidence indicating that current application and evaluation processes regarding retrospective invalidity are complex.

4.111 The committee also notes evidence regarding a military culture of unwillingness to disclose injury or mental illness, and the effect that this culture has on decisions to transition to civilian life.

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95 Defence Force Welfare Association, *Submission 16 (47th Parliament)*, [p. 19].

96 Mr Arran Bartholomeusz, *Submission 9 (47th Parliament)*, [p. 1].

97 Name withheld, *Submission 66*, p. 1.

98 Name withheld, *Submission 66*, p. 1.

4.112 The committee understands that PTSD and other service-related mental illnesses may make it more difficult for veterans to navigate the application and evaluation process for retrospective invalidity.

4.113 The committee notes that a new wellbeing agency, developed through consultation and co-design with veterans, families, ex-service organisations and service providers, is to open 1 July 2026.

4.114 The committee looks forward to seeing how this agency is implemented and work with veterans to improve outcomes.

Complexity of the military superannuation system

4.115 The committee acknowledges evidence that shows navigating the military superannuation system is complex. Members and veterans are required to interact with the Departments of Defence and Veterans' Affairs, as well as the Commonwealth Superannuation Corporation. Evidence to the committee indicated that this complexity can produce frustration for veterans and their families.

4.116 As noted above, a new wellbeing agency is to open on 1 July 2026. The agency will be responsible for reducing complexity by helping veterans and their families find the information they need, and provide support for veterans as they transition out of the ADF into civilian life.

4.117 Again, the committee will maintain an interest in how this agency is implemented the performance of new agency in reducing complexity and improving connectivity of supports for members, veterans and families.

Reversionary pensions

4.118 The committee acknowledges evidence regarding the provisions of Superannuation Act, especially subsection 8A(5), which allows for temporary separation due to illness including that current definitions may not adequately reflect the complexity of many situations veterans and their families are faced with.

4.119 The committee acknowledges the prevalence of PTSD among veterans, and its effects on their families, including received evidence that the families of veterans who experience PTSD and other service-related mental illness often undergo significant trauma due to domestic and family violence. As a result of their illness, many veterans are no longer able to live with their families.

4.120 The committee also heard that this trauma is significantly exacerbated when surviving spouses are deemed ineligible for reversionary pensions because they were not living with the member when the member died.

4.121 Evidence to the committee indicated that living apart does not necessarily mean that people are not mutually dependent.

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4.122 The committee notes evidence regarding the provisions of the Superannuation Act, especially subsection 8A(5), which provides that couples who are temporarily separated due to illness may still be considered mutually dependent.

Recommendation 3

4.123 The committee recommends that the Australian Government consider whether current definitions are adequate, particularly those of 'spouse' and 'mutually dependent', to accommodate couples living apart due to experience of PTSD, other service-related mental illnesses, and domestic and family violence.

Consolidation of military superannuation funds

4.124 The committee notes the distinctive nature of the Military Superannuation and Benefits Scheme as a hybrid superannuation scheme encompassing employee contributions and defined benefits paid by the employer.

4.125 Evidence to the committee indicated that there is frustration that both employee contributions and defined benefits are indexed to CPI. Only when members leave the ADF can they access the Employee Benefit and roll it over into another superannuation fund of their choice. Additionally, the Employer Benefit is locked into MSBS until age 55 years. Submitters indicated that they would prefer to have the ability to move at least the Employee Benefit into another superannuation fund at any time, with a view to achieving returns in excess of the CPI.

4.126 Noting these concerns raised by submissions, the committee considers that the Australian Government could consider whether it might be appropriate to amend the MSBS, to allow members more flexibility to choose their superannuation fund.

Recommendation 4

4.127 The committee recommends that the Australian Government consider allowing Military Superannuation and Benefits Scheme members to roll over their Employee Benefit to another superannuation fund of their choice.

Senator Dave Sharma
Chair

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Additional comments from Senator Jacqui Lambie

Introduction

1.1 Military superannuation and pension schemes for current and former members of the Australian Defence Force (ADF) are a reflection of the Commonwealth's recognition of their military service. They are intended to recognise the distinctive nature of military careers which involve prolonged separation from family, limitations on personal freedoms, and physical and psychological demands associated with defence service. The schemes are designed to provide retirement income to support members' transition from military to civilian life and ensure that those who serve can retire with financial security.

1.2 There have been concerns raised over decades about the operation, fairness and transparency of military superannuation and pension schemes, particularly the Defence Force Retirement and Death Benefits (DFRDB) scheme and the Military Superannuation and Benefits Scheme (MSBS). While these schemes provided retirement benefits to many former ADF members, parts of their legislative design and administration continue to generate significant frustration for veterans and organisations that represent them.

1.3 This inquiry was established based on my engagement with many veterans and organisations, including a high volume of correspondence received by my office regarding the operation of those military superannuation and pension schemes. A common theme has been the emotional toll associated with seeking recognition and fairness as many veterans spend their later years trying to resolve disputes about their entitlements.

1.4 In response to these concerns, on 11 February 2025 I proposed this inquiry to the Senate, and with bipartisan support, it was referred to the Senate Finance and Public Administration References Committee (committee).

1.5 The DFRDB scheme was established under the *Defence Force Retirement and Death Benefits Act 1973* (DFRDB Act) following recommendations of the Joint Select Committee on Defence Forces Retirement Benefits Legislation, known as the Jess Committee.[1] Under the DFRDB scheme, retirement pensions are calculated based on years of service with members contributing a portion of their salary towards their retirement benefit.

1.6 These additional comments intend to highlight key issues raised during the committee's inquiry and outline recommendations intended to improve the operation and appropriateness of the military superannuation and pension schemes for veterans in line with its policy intent. The main issues involve commutation, indexation, complexity of legislative frameworks, educational

[1] Joint Committee on Defence Forces Retirement Benefits Legislation, *Report*, May 1972, pp. 1–5.

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campaigns, dependants and resources for the Commonwealth Superannuation Corporation. While some of these matters have been examined in previous inquiries, many veterans argue that the underlying concerns remain unresolved, leading to ongoing frustration and calls for meaningful review and legislative reform.

1.7 I would like to thank the committee for its work in conducting this inquiry and for extending its reporting timeframe to facilitate my participation. I also want to acknowledge and thank the many veterans and organisations that provided submissions. These insights into lived experiences are essential to ensuring that future reforms reflect the realities faced by members of the defence and veteran community.

Commutation arrangements

1.8 A significant issue raised during the inquiry is the operation of commutation arrangements under the DFRDB scheme. Commutation allows eligible members to convert a portion of their defined benefit pension into a lump sum payment at the time of retirement. Members who have completed twenty years of service may elect to commute up to five years of their retirement into a lump sum. This option was actively promoted and widely taken up by retiring members, with reports suggesting that approximately 85 per cent of DFRDB participants elected to commute a portion of their pension.[2]

1.9 The policy rationale for commutation was outlined in the Jess Committee review, which recognised that many ADF members retire relatively young compared with the civilian workforce and often face significant financial pressures during the transition to civilian life. These pressures may include purchasing a home, supporting children through education, relocating or undertaking further training to obtain civilian employment.[3] As such, access to a lump sum payment was intended to provide flexibility and financial support during the transition period from military to civilian life.

1.10 There has been significant concern about how these arrangements operate in practice. Under the DFRDB Act, the reduction applies to members' pension following commutation and is calculated using a formula based on life expectancy assumptions contained in Schedule 3. The lump sum received by the member is divided by their expected remaining lifetime at the time of retirement to determine the amount by which the pension will be reduced.

1.11 Members who elect to commute a portion of their pension receive a permanently reduced retirement income for the remainder of their lives. Importantly, the reduction does not cease once the amount equivalent to the lump sum has been

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2 Commonwealth Ombudsman, *Defence Force Retirement and Death Benefits (DFRDB)*, December 2019, p. 14.

3 Joint Committee on Defence Forces Retirement Benefits Legislation, *Report*, May 1972, p. 17.

repaid through reduced pension payments. Instead, the reduced pension continues indefinitely for the remainder of the veteran's life. For members who live beyond the life expectancy used in the calculation, the cumulative reduction in the pension exceeds the value of the lump sum originally received.

1.12 Many DFRDB recipients have described their understanding of commutation at the time of retirement as being akin to a temporary advance on their pension. Under this interpretation, the lump sum would effectively be repaid over time through reduced pension payments after which the pension would return to its full level. However, under the current legislative framework, the pension reduction remains in place for life.

1.13 Veteran organisations have argued that the permanent nature of this reduction was not clearly communicated to members when they made decisions about retirement.[4] Evidence provided to the inquiry suggests that government pamphlets and presentations emphasised the benefits of receiving a lump sum payment but did not clearly explain the long-term consequences of the pension reduction.[5] These concerns have contributed to a perception among veterans that the exchange of a fixed lump sum for a lifetime reduction in retirement pay represents a disproportionate trade-off, particularly when combined with the life expectancy assumptions that reflect demographic conditions from several decades ago.[6]

1.14 The interpretation of legislation has been confirmed in *McKenzie v Commonwealth Superannuation Corporation* [2023] FCA 396 where the Federal Court ruled that electing to commute military pensions results in permanent reduction in retirement pay. Justice Perry found that paragraph 24(3)(B) of the DFDB Act contains no temporal limitation and rejected the argument that the reduction ceases once a member reaches their statistical life expectancy.[7] I do not fault Justice Perry's judgement because it is correct in law. However, what is clear is that the legislation does not reflect the messaging that was delivered to service personnel at the time.

1.15 The information provided to members regarding commutation has also been examined in previous inquiries. In 2019, the Commonwealth Ombudsman conducted an investigation into the administration of the DFRDB Scheme and

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4 Australian Defence Force Retirees, Association Inc, *Submission 1 (47th Parliament)*, p. 1; DFRDB Commutation Campaign, *Submission 2 (47th Parliament)*, p. 8; and Defence Force Welfare Association *Submission 16 (47th Parliament)*, (Annex), p. 1.

5 Mr Clinton McKenzie, Research Team Member, Australian Defence Force Retirees Association, *Committee Hansard*, 19 February 2026, pp. 8–9; Mr Herb Ellerbock, *The Gross Reduction of Benefits*, February 2017, p. 10; DFRDB Commutation Campaign, *Submission 2 (47th Parliament)*, p. 2; Peter Grothen, Submission 3, p. 2; and Mr Geoff Trowbridge, *Submission 48*, p. 3.

6 Mr Herb Ellerbock, *The Gross Reduction of Benefits*, February 2017, p. v.

7 *McKenzie v Commonwealth Superannuation Corporation [2023] FCA 396* [66].

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determined that ADF members had been provided misleading or incorrect information which amounted to defective administration. The Ombudsman required the Department of Defence and the Chief of Defence Force to formally acknowledge these errors and issue an apology to affected members.[8] The Ombudsman also reported that commutation is generally to the benefit of DFRDB members, a position which has been strongly refuted by many veterans and related organisations.[9]

1.16 Unfortunately, these investigations did not result in broader remedial measures. Many veterans believe that the outcomes produced by the commutation provisions do not align with contemporary expectations of fairness in retirement income systems. In circumstances where large numbers of former service personnel feel they have been disadvantaged or inadequately informed, there is a strong public interest to ensure that these measures are carefully reconsidered. I would also make the point that if a private company was found to have engaged in similar conduct, considered to be false and misleading conduct under the *Competition and Consumer Act 2010*, they would most likely be subject to substantial penalties and required to make remedies and that would be irrespective of any claims their customers did not actually suffer because of that conduct. The same standard should apply to government agencies.

Recommendation 1

1.17 The Australian Government undertake a targeted review of the commutation provisions contained in the *Defence Force Retirement and Death Benefits Act 1973* to rectify the deficiencies and ensure it aligns with the messaging provided to service personnel at the time of its introduction.

Recommendation 2

1.18 Where evidence demonstrates that defective administration materially influenced retirement decisions resulting in financial detriment, the Australian Government provide appropriate remedial actions for affected DFRDB members, including Act of Grace payments or other compensation measures.

Use of outdated life expectancy factors

1.19 A related issue is the life expectancy tables used to calculate the reduction to pension associated with commutation under the DFRDB scheme.

1.20 The DFRDB Act incorporates life expectancy tables from the Australian Bureau of Statistics data from 1960-1962 which were embedded in the legislation when

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8 Commonwealth Ombudsman, *Defence Force Retirement and Death Benefits (DFRDB)*, December 2019, p. 54.

9 Commonwealth Ombudsman, Investigation into the DFRDB Scheme, December 2019, p. 54.

the scheme was introduced in 1973.[10] These tables continue to be used to determine the reduction applied to a member's pension following the commutation of part of their retirement benefit.

1.21 As life expectancy has increased since the early 1960s, many DFRDB retirees now live beyond the life expectancy predictions used to calculate the reduction to their pension. Approximately 80 percent of members who decided to commute have lived beyond the 1960–62 life expectancy assumptions by an average of 10 years.[11] The effect of this arrangement is that the pension reduction applied following commutation continues for the remainder of the member's life, including beyond the period originally anticipated when the scheme was designed. For some veterans, this has contributed to the view that the lifetime reduction in retirement income may be disproportionate to the lump sum received at retirement.

1.22 The use of life expectancy factors from the 1960s has remained a point of concern for many veterans. Given the passage of time and evolving nature of retirement income systems, there is merit in reviewing whether the current legislative assumptions remain appropriate.

Recommendation 3

1.23 The Australian Government update the life expectancy tables relied on by the *Defence Force Retirement and Death Benefits Act 1973*.

Indexation

1.24 The purpose of indexation is to preserve the real value of retirement benefits overtime and help ensure long-term financial security for the retiree. As such, the method of indexation plays an important role to maintain purchasing power and support a dignified standard of living in retirement.

1.25 Historically, DFRDB pensions have been indexed primarily based on the Consumer Price Index (CPI). While CPI is designed to measure changes in the cost of goods and services, various submitters argue that CPI alone does not adequately reflect broader changes in community living standards.[12] Where wage growth exceeds inflation, reliance solely on CPI may lead to a gradual decline in the relative value of pensions compared with community earnings.

1.26 The Jess Committee originally recommended that military pensions should be adjusted in a manner consistent with average weekly earnings which is not

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10 Australian Defence Force Retirees Association Inc, *Submission 1 (47th Parliament)*, p. 6.

11 Mr Geoff Trowbridge, *Submission 48,* p. 3.

12 Defence Force Welfare Association, *Submission 16 47th Parliament)*, p. 16; Mr Gary Lang, *Submission 28*, p. 4; and Mr Geoff Trowbridge, *Submission 48*, p. 4.

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reflected in the current DFRDB framework.[13] While the impact remains subject to debate, stakeholders argue that the difference between CPI-based indexation and wage-based benchmarks over time may represent a substantial reduction in the overall value of pension entitlements.[14]

1.27 The government introduced reforms in 2014 that aimed at improving indexation arrangements for certain military pensions. Under these changes, pensions for members aged 55 years and over are indexed using a more favourable formula which incorporates the higher of CPI or the Pensioner and Beneficiary Living Cost Index.[15] These reforms represent a positive step towards improving the fairness of indexation arrangements for military pension recipients. However, evidence provided to this inquiry indicate that concerns regarding the long-term erosion of pension value remain prevalent within the veteran community which continue to call for a more favourable indexation formula to apply across the full value of defined benefits.

1.28 Ensuring that military pensions maintain their relative value is an important component of providing fair and dignified retirement outcomes for ADF members. The evidence presented to this inquiry suggests that, despite previous inquiries and reforms, there remains ongoing debate about whether the current indexation framework fully reflects contemporary expectations of fairness, transparency and adequacy in the retirement income systems.

Recommendation 4

1.29 The Australian Government commission an independent review of military pension indexation arrangements to determine if reliance on Consumer Price Index-based indexation remains appropriate and whether alternative benchmarks, such as wage growth measures, should be utilised instead to ensure equitable retirement outcomes.

Education campaigns and financial literacy

1.30 The complexity of military superannuation schemes presents significant challenges for current and former ADF members, particularly in understanding and planning their long-term financial futures. Multiple military superannuation schemes have operated concurrently, each with different eligibility requirements, contribution structures and benefit calculations.[16] Members who served during transitional periods can find themselves eligible for multiple schemes, and subsequently required to elect which scheme they

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13 Joint Committee on Defence Forces Retirement Benefits Legislation, *Report*, May 1972, pp. 1 and 32.

14 Mr Herb Ellerbock, *The Gross Reduction of Benefits*, February 2017, p. iv.

15 See *Defence Force Retirement Benefits Legislation Amendment (Fair Indexation) Act 2014*.

16 RSL Australia, *Submission 14 (47th Parliament)*, p. 15.

want to subscribe to, and has been shown the advice they are provided is not independent and possibly incorrect. A situation which would likely result in the loss of an Australian Financial Services Licence (AFSL) for a person providing financial advice to the general public.

1.31 Additionally, the overlap between superannuation, taxation and veterans' compensation legislation can create additional administrative and financial uncertainty for veterans attempting to plan for retirement. There are also problematic offset arrangements under the *Military Rehabilitation and Compensation Act 2003* which provides that certain disability payments may be reduced where a veteran receives income from Commonwealth Superannuation Corporation.[17]

1.32 Delivering financial education to ADF members faces a number of challenges. Members are often young and in the early stages of their careers and the operational demands of military service, including frequent relocations, intensive training and deployments, can limit opportunities to engage with financial education programs.[18] While information about military superannuation schemes is available, it can be difficult to locate, interpret and apply in practice, particularly where multiple agencies carry responsibility for different aspects of veterans' financial entitlements. I acknowledge that the CSC has implemented some educational initiatives, their submission advised in 2024 they had conducted 3272 one-on-one consultations and other briefings that were attended by an additional 8172 personnel, for perspective as at 30 June 2024 there was a total of 57 226 permanent members of the ADF.[19]

1.33 Improving financial literacy and the accessibility of information could play an important role in enabling ADF members to make informed decisions about their long-term financial security.

Recommendation 5

1.34 The Australian Government implement a coordinated whole of government education and awareness strategy to provide former and current ADF members with accessible information about military superannuation and pension arrangements.

Recommendation 6

1.35 The Australian Government should strengthen coordination between the Department of Defence, the Department of Veterans' Affairs and the

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17 RSL Australia, *Submission 14 (47th Parliament)*, p. 8.

18 Mr Andrew Podger, *Report of the Review into Military Superannuation Arrangements*, 2007, p. vi.

19 Department of Defence, *Annual Report 2023–24*, p. ii.

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Commonwealth Superannuation Corporation to ensure that information provided to members is consistent, accessible and easy to understand.

Recommendation 7

1.36 The Department of Defence provide professional financial advice to all ADF members at key career points such as recruitment, mid-career service and transition to civilian life to ensure an accurate understanding of applicable military superannuation or pension schemes.

Transparency and legislative complexity

1.37 There have been concerns about the complexity of the legislative framework governing military superannuation schemes. The technical nature of the legislation has made it difficult for members to clearly understand their entitlements and long-term implications of financial decisions.[20]

1.38 Specifically, this complexity has contributed to confusion among some members about the operation of provisions relating to commutation, indexation and reversionary benefits. The inquiry heard that, at the time the legislation was originally introduced, the level of explanatory material available did not fully outline the consequences of some of the provisions and there was limited parliamentary scrutiny and insufficient consultation.[21] In response, a number of submissions noted that aspects of the legislative framework are complex and difficult to interpret without specialist knowledge.[22]

1.39 It should also be noted that previous reviews have acknowledged this complexity. For example, the Commonwealth Ombudsman observed that misinformation and confusion regarding certain provisions contributed to 'disappointment, distress, anger and frustrated expectations for many DFRDB members'.[23] As such, ensuring that superannuation arrangements are transparent, accessible and clearly communicated will enable ADF members to make informed decisions about their futures.

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20 Australian Defence Force Retirees Association, *Submission 1 (47th Parliament)*, p. 12; RSL Australia, *Submission 14 (47th Parliament)*, pp. 15 and 19; Mr Russel Linwood ASM, *Submission 14*, p. 1; and Mr Ron Haack, *Submission 39*, p. 1.

21 On explanatory material, see Australian Defence Force Retirees Association, *Submission 1 (47th Parliament)*, pp. 13–14; Mr Andrew Macfarlane, *Submission 4*, p. 2; Mr Mike Hughes, *Submission 50*, p. 1; and Mr Gregory Decker, *Submission 63*, p. 13. On limited parliamentary scrutiny and insufficient consultation, see Australian Defence Force Retirees Association, *Submission 1 (47th Parliament)*, pp. 15–16.

22 Defence Force Welfare Association, *Submission 16 (47th Parliament)*, Annex F, p. 5.

23 Commonwealth Ombudsman, *Defence Force Retirement and Death Benefits (DFRDB)*, December 2019, p. 54.

Legislative overreach

1.40 An area not considered in detail during the inquiry was the operation of section 37 of the DFRDB Act which effectively provides Defence with a veto power over whether applications for retrospective medical discharge are referred to the Commonwealth Superannuation Corporation.[24] This gatekeeping mechanism has been criticised as adversarial by preventing independent determination of claims and restricting access to a merits review.[25]

1.41 Whilst it is improving, the culture within Defence discourages the reporting and documentation of psychological injuries. As a result, many veterans experience a problem where conditions formally accepted by the Department of Veterans' Affairs as service-related are not afforded equivalent recognition in superannuation and discharge classification frameworks. This denies veterans from retrospective medical classifications and related entitlements.

1.42 In addition, the Notional Retiring Age reductions impose financial penalties based on outdated assumptions with provisions that disproportionately impact members who completed qualifying service but separated before their conditions were formally recognised.[26]

1.43 Taken together, these issues demonstrate that the current legislative and administrative framework is not fit for purpose and require targeted reform to restore fairness, consistency and accountability.

Recommendation 8

1.44 The Australian Government review section 37 of the *Defence Force Retirement and Death Benefits Act 1973* for relevance and necessity, with the aim of ensuring all applications are referred to the Commonwealth Superannuation Corporation for independent assessment, without requiring the opinion of the Chief of the Defence Force.

Widows, widowers and dependants

1.45 The legislative framework governing military superannuation and pension schemes appears to have unintended consequences for widows, widowers and other dependants of former ADF members. Under the DFRDB scheme, reversionary pensions are typically calculated as a proportion of a member's retirement pay and are intended to provide ongoing financial support following the death of the member. However, the value of these pensions can be affected by earlier decisions and settings within the scheme.

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24 Mr Mark Croxford, *Submission 60*, p. 6.

25 Mr Mark Croxford, *Submission 60*, p. 3.

26 Mr Mark Croxford, *Submission 60*, pp. 2–3.

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1.46 For example, the interaction of commutation and indexation arrangements may reduce the base value of a member's pension which in turn affects the level of reversionary benefits. Where a member's pension has been reduced through commutation, or where components are not fully indexed over time, these reductions flow through to the surviving spouse's entitlements. As a result, some dependents may receive a pension that reflects a diminished or partially indexed benefit, potentially leading to a gradual decline in its real value over time.[27]

1.47 Concerns were also raised regarding the application of eligibility criteria for reversionary pensions, particularly the requirement to demonstrate financial dependency under the *Superannuation Act 1976*. Evidence presented to the inquiry highlights cases where surviving spouses were denied access to reversionary benefits despite long-term marital relationship, on the basis that they were not financially dependent at the time of the member's death. This position reflects an outdated understanding of family and financial arrangements and does not align with contemporary social norms.[28] The committee heard that veterans experiencing post-traumatic stress disorder or other service-related mental illnesses may live separately from their partners due to that illness or family safety concerns. Under the current framework, in such cases the surviving spouse is excluded from reversionary pensions despite there having been an ongoing mutual dependence.[29]

Recommendation 9

1.48 The Australian Government revise reversionary pension arrangements across military superannuation and pension schemes to ensure that surviving spouses and dependants retain eligibility when they are living apart from a member due to illness or safety concerns.

Staffing and resources for the Commonwealth Superannuation Corporation

1.49 Evidence provided to the Committee indicates that the Commonwealth Superannuation Corporation (CSC) is experiencing significant resourcing pressures due to a sharp increase in invalidity and retrospective claims. The CSC reported that retrospective claims have risen from 288 in 2018, to 1117 in 2025, an almost four-fold increase, and the invalidity claims have remained stable.[30] Over the same period, the number of claim managers increased marginally from

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27 Australian Defence Force Retirees Association, *Submission 1 (47th Parliament)*, p. 14.

28 Mrs Patricia Cook, Private capacity, *Committee Hansard*, 19 February 2026. pp. 32–35.

29 Mrs Patricia Cook, Private capacity, *Committee Hansard*, 19 February 2026. pp. 32–35.

30 Mr Adam Nettheim, Chief Customer Officer, Commonwealth Superannuation Corporation, *Committee Hansard*, 19 February 2026, p. 45–46.

46 to 51, a clear indication that resourcing has not kept pace with the growing demand.[31]

1.50 The organisation continues to receive approximately 100 new retrospective claims each month.[32] These extended processing times often result in financial hardship and personal stress to veterans, especially for individuals unable to work while their claims are being assessed, noting the CSC had stated that they had claims that were over 18 months old.[33]

Recommendation 10

1.51 The Australian Government provide sufficient resourcing for the Commonwealth Superannuation Corporation to ensure its claim management team is appropriately staffed to process claims in a timely manner, consistent with the needs of serving and former ADF members.

Conclusion

1.52 Military superannuation and pension schemes remain a critical issue for many current and former members of the ADF and their families. While frameworks such as the DFRDB scheme were established to accommodate the unique career patterns of military service, evidence indicate that key elements of their design continue to give rise to concern. Specifically, issues relating to commutation, outdated life expectancy assumptions, indexation and the treatment of dependents have contributed to perceptions of inequity and financial disadvantage among veterans.

1.53 The military superannuation and pension schemes have been subject to multiple inquiries and investigations which have identified various shortcomings, yet meaningful reforms have not been implemented. There is an urgent need for the government to build upon the extensive body of existing reviews and recommendations to deliver a modern, fit for purpose system that reflects the realities of military service, but also meets the needs and expectations of ADF personnel post separation.

1.54 The legislative framework underpinning military superannuation and pension schemes is complex, characterised by layered amendments and technical provisions that are difficult to navigate. This complexity and gaps in

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[31] Mr Adam Nettheim, Chief Customer Officer, Commonwealth Superannuation Corporation, *Committee Hansard*, 19 February 2026, p. 45–46.

[32] Mr Adam Nettheim, Chief Customer Officer, Commonwealth Superannuation Corporation, *Committee Hansard*, 19 February 2026, p. 45–46.

[33] Mr Adam Nettheim, Chief Customer Officer, Commonwealth Superannuation Corporation, *Committee Hansard*, 19 February 2026, p. 45–46.

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communication and financial education has contributed to misunderstandings about entitlements and implications of decisions in retirement.

1.55 Ultimately, military superannuation and pension schemes are a fundamental expression of the nation's obligation to those who have served. Ensuring these arrangements are fair, transparent and sustainable is essential to restoring confidence and delivering equitable outcomes for veterans and their families.

Senator Jacqui Lambie

Appendix 1
Submissions and additional information

47th Parliament

1 Australian Defence Force Retirees Association Inc.
2 DFRDB Commutation Campaign
3 Royal Australian & New Zealand College of Psychiatrists
4 Commonwealth Superannuation Corporation (CSC)
5 Department of Defence
6 Australian Financial Complaints Authority
7 Department of Veterans' Affairs
8 The Repatriation Commission
9 Mr Arran Bartholomeusz
10 Name Withheld
11 Major (Rtd) Robert Fitzgerald
12 Mr David Burrows
13 Mr H.P.M. Hoebee
14 RSL Australia
15 Mr Gordon Wright
16 Defence Force Welfare Association
17 Mrs Samantha Field
18 Confidential
19 Confidential

48th Parliament

1 Mr Graham Darcy
2 Mr Dave Jones
- 2.1 Supplementary to submission 2
- 2.2 Supplementary to submission 2
- 2.3 Supplementary to submission 2
- 2.4 Supplementary to submission 2

3 Mr Peter Grothen
4 Mr Andrew Macfarlane
5 Mr Craig Thomas
6 Mr Peter Lehman
7 Mr Charles Mollison
8 Mr Brian Macklin
9 Mr Brian Collins
10 Mr Fred Lane

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11 Mr Thomas Williams
12 Mr Brian Roberts
13 Mr David Stacy
14 Mr Peter Martin
15 Mr Anthony Parkin
16 Mr Warren Duscha
17 Mr H.P.M. Hoebee
18 Mr Darryl Nicholls
19 Mr Peter Murray
20 Mr Peter Foote
21 DFRDB Commutation Campaign
- 21.1 Supplementary to submission 21

22 Mr Chris Duffield
23 Colonel (Ret) Peter Diddams
24 Mr Michael Brown
25 Mr Russell Linwood ASM
26 Mr Clive Dennett
27 Mr John Pollock
28 Mr Gary Lang
29 Mr Victor Edwards
30 Mr Mario Simic
31 Mr Doug Conn
32 Mr Alan Young
33 Mr Robert May
34 Mr Richard Usher OAM
35 Mr David Burrows
36 Mr Derek Bannister
37 Mr Gary Thompson
38 Mr Charles Myhill
39 Mr Ron Haack
40 Mr Greg Hynds
41 Mr Andrew Podger AO
42 Mr Brian Roberts
43 Mr Garth Gilbert
44 Legacy Australia
45 Mr Warren Schilling
46 Veteran Family Advocate Commissioner
47 Super Members Council
48 Mr Geoff Trowbridge
49 Mr Mike Smith
50 Mr M. Hughes
51 Mr David Foster
52 Mr Clinton McKenzie

53 Australian Prudential Regulation Authority
54 Name Withheld
55 Name Withheld
56 Name Withheld
57 Mr Herb Ellerbock
- 57.1 Supplementary to submission 57
- 57.2 Supplementary to submission 57

58 Mr Jim Hislop
59 Mr Benjamin Cremen
60 Mr Mark Croxford
61 Col (Retd) Peter Bysouth
- 61.1 Supplementary to submission 61

62 Mr Robert McGuinness
63 Mr Gregory Decker
64 Mr Jason Andersen
- 64.1 Supplementary to submission 64

65 Mr Nathan Castle
66 Name Withheld
67 Name Withheld
68 Defence Force Welfare Association
- 68.1 Supplementary to submission 68
- 68.2 Supplementary to submission 68
- 68.3 Supplementary to submission 68

69 Super Info
70 Ms Emma Byrnes
- 70.1 Supplementary to submission 70

71 Advocates Online
72 Mr Graham Boyd
73 Mr Steve Coates
74 Name Withheld
75 Mr Peter Williamson
76 Mr Paul Cook
77 Mr Robert Oliveri
78 Commonwealth Superannuation Corporation
79 Mr Peter Thornton
80 Confidential

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Additional Information

1 Australian Defence Force Retirees Association, Cabinet minutes, 8 December 1976 (received 19 February 2026)

2 Australian Defence Force Retirees Association, DFRDB Retirement Benefits pamphlet, December 1981 (received 19 February 2026)

3 Australian Defence Force Retirees Association, DFRDB Retirement Benefits pamphlet, January 1985 (received 19 February 2026)

4 Australian Defence Force Retirees Association, DFRDB Retirement Benefits pamphlet, January 1987 (received 19 February 2026)

5 Australian Defence Force Retirees Association, DFRDB Retirement Benefits pamphlet, June 1989 (received 19 February 2026)

6 Australian Defence Force Retirees Association, Email to the Hon Matt Keogh, Minister for Veterans' Affairs, 20 January 2023 (received 19 February 2026)

7 Australian Defence Force Retirees Association, Information on DFRB and DFRDB commutation (received 19 February 2026)

8 Ms Kelliegh Jackson, Chief Executive Officer, Advocates Online, Opening statement (received 19 February 2026)

9 Dr Mark Lax, Chair, Legacy Australia, Opening statement (received 19 February 2026)

10 Dr Mark Lax, Chair, Legacy Australia, Additional statement (received 19 February 2026)

11 Mr John Lowis, Acting President, Defence Force Welfare Association Queensland Branch, Opening statement (received 19 February 2026)

12 Mrs Patricia Cook, Opening statement (received 19 February 2026)

13 Mr Dave Jones (received 19 February 2026)

14 Mr Dave Jones, Supporting Table: How DFRDB Fails as a Superannuation or Pension Scheme (received 19 February 2026)

Answer to Question on Notice

1 Mr Andrew Bruce Macfarlane, answer to question on notice from a public hearing on 19 February 2026 (received 27 February 2026)

2 Commonwealth Superannuation Corporation, answers to questions on notice from a public hearing on 19 February 2026 (received 5 March 2026)

3 Defence Force Welfare Association, answers to questions on notice from a public hearing on 19 February 2026 (received 6 March 2026)

4 Department of Defence, answers to questions on notice from a public hearing on 19 February 2026 (received 17 March 2026)

Correspondence

1 Mr Ernest Gimm, Correspondence for ADF Superannuation Inquiry (Received 21 October 2025)

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Appendix 2
Public hearings and witnesses

Thursday 19 February 2026
Committee Room 2S1
Parliament House
Canberra

DFRDB Commutation Campaign
- Mr Peter Williamson

Australian Defence Force Retirees Association
- Mr Jim Hislop OAM, President

Australian Defence Force Retirees Association
- Mr Herb Ellerbock, Secretary

Australian Defence Force Retirees Association
- Mr Ron Haack, Treasurer

Australian Defence Force Retirees Association
- Mr Clinton McKenzie, Member

Advocates Online
- Ms Kelliegh Jackson, Chief Executive Officer (Veteran)

Legacy Australia
- Dr Mark Lax OAM CSM, Chair

Defence Force Welfare Association
- Mr Chris Lowis, National Secretary

Defence Force Welfare Association
- Mr John Lowis (by video conference), Qld Branch President

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Ms Patricia Cook, Private capacity

Mr Ian Wills, Private capacity

Mr Dave Jones (by video conference), Private capacity

Mr Jason Andersen (by video conference), Private capacity

Mr Nathan Castle (by video conference), Private capacity

Mr Andrew Macfarlane, Private capacity

Mr Peter Thornton (by video conference), Private capacity

Department of Defence

- Mr Ky Blackman, First Assistant Secretary, People Policy and Development

Department of Defence

- BRIG Kirk Lloyd, Director General, People Policy and Employment Conditions

Commonwealth Superannuation Corporation

- Mr Adam Nettheim, Chief Customer Officer

Australian Government
Defence

Ministerial Brief for Action

PQ23-000083

FOR: Minister for Defence Personnel

Action Requested by: 18 September 2023
Reason for Urgency: To progress for tabling

CC: SEC, CDF, VCDF, ASSOCSEC, FASMECC

HOR - Q265 - DFRDB INQUIRY RECOMMENDATION - JOYCE

Key Issues:
On 1 August 2023, the Hon Barnaby Joyce MP asked the Minister for Veterans' Affairs and Minister for Defence Personnel questions in writing regarding the Defence Force Retirement and Death Benefits (DFRDB) Inquiry Recommendations, under notice.
Defence has prepared a response, via Question No. 265 on Notice, for your approval at Attachment A.

Recommendation: **Decision**
That you:
1. **Approve** the response to Senate Question on Notice 265 **Approved/Not approved**

Media Considerations:
Defence does not anticipate media interest in response to this Question on Notice.

Signature s22
s22
s22
Matt Keogh 11/9/2023
August 2023

Minister comments:

Cleared by	Ms Justine Greig PSM Deputy Secretary Defence People Group
23 August 2023	s22
Contact Officer	s47E(c) Director of Superannuation Policy s22

Sensitivity: No.

Financial Impacts: No.

Systems/legislation/deregulation: No.

Consultation: Yes.

1. s47E(c) Office of General Counsel, Defence Legal, Associate Secretary Group.

Attachment:

Attachment A Response to Senate Question (Question No. 265)

Background

2. On 18 March 2021, the Senate referred the 'Accuracy of information provided to DFRDB members' to the Foreign Affairs, Defence and Trade References Committee for inquiry.

3. The final report was released on 2 July 2021 and made two recommendations:

   a. recommendation 1 relates to member education;

   b. recommendation 2 proposed a separate reparation payments scheme for DFRDB members who are unsuccessful under the Compensation for Detriment caused by Defective Administration (CDDA) scheme.

4. The Australian Government's response to this report was tabled in Parliament on 2 December 2021 supporting recommendation 1 and partially supporting recommendation 2.

5. In relation to recommendation 1, Defence has implemented a continuous improvement approach to the education of ADF members on financial matters including their understanding of the DFRDB scheme and other military superannuation arrangements. This includes the regular review and updating of website content and the publishing of new material as required. This has been in place since 2004 when Defence recognised that some misinformation had been supplied to members. Education is also delivered to ADF members and their families by the ADF Financial Services Consumer Centre and the Commonwealth Superannuation Corporation, and has included:

   a. around 150 seminars per year to approximately 11,000 ADF members on various financial topics delivered by the ADF Financial Services Consumer Centre;

   b. The Commonwealth Superannuation Scheme's member education team facilitate on base superannuation scheme presentations to ADF members and free individual member consultations to all ADF members; and

   c. continuously strengthen Defence partnerships to provide more regular and relevant information to ADF members and decision makers.

6. In relation to recommendation 2, the previous Government did not support the creation of a separate reparation scheme for DFRDB members who were unsuccessful under the CDDA scheme. Any such scheme would likely create perverse outcomes for different groups of DFRDB members and likely create further inequities between those who commuted and those who did not.

7. The previous Government supported the aspect of recommendation 2 that commits to support members in making an application under the CDDA scheme.

   a. CDDA guidelines published by the Department of Finance make a distinction between financial loss (when someone receives less than their entitlement due to defective administration) and financial disappointment (when someone was led to believe that they would receive more than their entitlement).

   b. Defence has implemented a tailored approach to help direct members' attention to the issues critical to the determination of their claim.

8. As at 4 August 2023, Defence had received 49 claims under the CDDA scheme regarding commutation within the DFRDB scheme. Of those claims, 44 were declined and five were withdrawn after discussion with the claims manager in Defence Legal. Three cases requested an internal review after the initial decision to decline the application was made. All of these cases were affirmed on review and none have been approved.

9. On examination of the claimants' circumstances, none were able to show how their situation differed from those who the Ombudsman's commissioned modelling showed were generally better off having commuted. Most were in the cohort who used the commutation lump sum to help them purchase a house.

10. Generally, the claimants did not dispute that they were better off having commuted than had they not commuted. Their complaints about the DFRDB scheme were that it was not as generous as they were led to believe it would be.

Defence Portfolio

SENATE QUESTION

(Question No. 265)

The Hon Barnaby Joyce MP asked the Minister for Veterans' Affair and Minister for Defence Personnel, upon notice, on 01 August 2023.

In respect of the Government's response to the Senate Foreign Affairs, Defence and Trade References Committee: Inquiry into the accuracy of information provided to Defence Force Retirement and Death Benefits (DFRDB) members, tabled on 2 December 2021:
1. What is the current status of each recommendation.
2. Does the Government concur with the response from the previous government; if not, which responses does the Government not concur with and how do they differ.

The Minister for Veterans' Affairs and Minister for Defence Personnel has provided the following answer to the Member's question:

1. What is the current status of each recommendation?

Recommendation 1

Defence has implemented a continuous improvement approach to the education of ADF members on financial matters, including their understanding of the Defence Force Retirement and Death Benefits scheme and other military superannuation arrangements.

This includes the delivery of around 150 seminars each year to approximately 11,000 ADF members on various financial topics.

Additionally, Commonwealth Superannuation Corporation's member education team facilitate on base presentations to ADF members which provide superannuation scheme overviews and free individual member consultation to all ADF members.

Recommendation 2

Recommendation 2 proposed a separate reparation payments scheme for Defence Force Retirement and Death Benefits members who are unsuccessful under the Compensation for Detriment caused by Defective Administration scheme. Any such scheme would likely create perverse outcomes for different groups of Defence Force Retirement and Death Benefits members and likely create further inequities between those who commuted and those who did not. The Government does not support this section of the recommendation.

The Government supports the aspect of Recommendation 2 that commits to support members in making an application under the Compensation for Detriment caused by Defective Administration scheme. Defence has implemented a tailored approach to help direct members' attention to the issues critical to the determination of their claim.

2. Does the Government concur with the response from the previous government; if not, which responses does the Government not concur with and how do they differ?

The Government concurs with the response from the previous government and continues to support Recommendation 1 and partially support Recommendation 2.