

DFRDB UPDATE - SEPTEMBER 2017

We apologize for the delay in this update. Unexpected heart surgery for Herb put a dent in our timeline.

Submission to Minister Dan Tehan

Finally, after 176 days, we have a response to [Herb's submission](#), which we presented in Minister Tehan's offices in February 2017.

As has been the case with all previous submissions, the [Minister's response](#) lacks any objectivity. It presents a *fait accompli* "that nothing will be done" and then goes to questionable lengths to try and justify that position.

[Herb's reply](#) has dissected the Minister's response and exposed it for what it is.

Herb has also commented on a template response on DFRDB, which has been circulated by Labor to each of its Senators and MPs ([see below](#)).

Both the Government and Labor positions on DFRDB are the work of the Department of Defence, which has a lot to answer for in the drafting of the DFRDB Act and its amendments. It has consistently taken a prejudiced stance on DFRDB concerns, which a long list of responsible Ministers, from both sides of politics, have blindly rubber-stamped.

Petition to the House of Representatives

Our DFRDB Petition was presented to the House on 14/07/2017 and has been referred to the Minister of Finance who, under petition requirements, must respond in the House within 90 days.

Action in the Senate

For those who follow the comings and goings within the Senate, stay tuned for the debate on the Defence Legislation Bill 2017. It should be of interest.

Emails, Phone Calls and Letters to your Senators and MPs

Herb has circulated his comments on both the Labor position on DFRDB and the [Minister's response](#) to all Senators and MPs (see [email below](#)), but the majority simply reject them with the excuse that Herb is not a resident in their State or Electorate.

It is important therefore, for **you** to convince the Senators in your State and your MP to act on **your** behalf. All the evidence you need is available by clicking on the underlined links or by copying those links or any part of those references into your own emails and letters. Contact us if you need any help.

This is by far the best opportunity we have had in years, so we urge you to act and approach your Senators and/or MPs **now**.

Regards Jim

Herb Ellerbock
12 Alluvial Street
RUTHERGLEN VIC 3685

Senator Glenn Sterle
Labor Senator for Western Australia
6a Market Street
280 Bannister Road
CANNING VALE WA 6155

23 July 2017

Dear Senator Sterle,

I refer to your letter to your constituents Mr Graham Darcy and Mr Robert Betts, dated 17 July 2017, regarding the Defence Force Retirement and Death Benefits (DFRDB) and Defence Force Retirement Benefits (DFRB) schemes. Since I have done considerable research on the DFRDB/DFRB schemes, both Mr Darcy and Mr Betts have asked me to reply on their behalf.

During the past 3 years I have seen many versions of your letter from both Labor and Coalition perspectives. While the wording of those letters varies marginally it is obvious that they all have their origins in the Department of Defence.

I will address your comments which I have repeated in the *highlighted text* below.

Labor understands commuting part of the DFRDB pension means exchanging part of the pension for a lump sum. When a member commutes part of the pension, that pension is permanently reduced to take account of the fact that part has been paid in a lump sum.

The commuted amount is not a loan, nor are the reductions in pension payments following the commutation a 'repayment' of the lump sum.

In addition, no effort is made to reclaim the commuted amount if the recipient dies earlier than their life expectancy.

For its establishment, it was the intention of the DFRDB scheme that there would be a permanent reduction of the pension to take account of the commutation and there would be a clear choice about how recipients would receive their benefits.

As you correctly note, the commutation methodology was drawn from the report of the Joint Select Committee on Defence Force Retirement Benefits Legislation, commonly referred to as the [Jess Report](#). Recommendations 14 (a), (b) and (c) in that report set down the commutation arrangement. Those recommendations state, inter alia:

*That ... a recipient member should be entitled to **commute** an amount not exceeding four times the amount of the annual retired pay entitlement payable to him in the first year of his retirement.*

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

That for the purpose of determining a widow's entitlement commutation should be disregarded.

The English Oxford Thesaurus lists the following synonyms for the pertinent terms used in the description of the commutation arrangement. They are:

Commute *exchange, change, interchange, substitute, swap, trade, barter, switch*

Proportionate *corresponding, proportional, comparable, in proportion, pro rata, commensurate, equivalent, consistent, relative, correlated, correlative, analogous, analogical*

Disregard *ignore, take no notice of, take no account of, pay no attention to, pay no heed to, refuse to acknowledge*

The meaning of the [Jess Report](#) recommendations is unequivocal, as was the information conveyed to DFRDB members who were approaching retirement and having to make their decisions on commutation. That meaning was then and still is now:

That the DFRDB commutation arrangement is the exchange of a single pre-payment of future retirement pay entitlements for a comparable or equivalent reduction in future retirement pay entitlements and that the commutation arrangement ceases on the death of the member.

When the governing legislation, the [DFRDB Act](#), was drafted, its architects effectively changed the operative phrase from **proportionate** to **permanent** reduction of retirement pay by failing to include a provision which restores retirement pay to full level after life expectancy is reached. That draft legislation was then rushed through the Parliament and into law with little or no scrutiny.

It is a fallacy to imply that members considering commutation were given a clear choice of facing the risk of permanent retirement pay reduction beyond their life expectancy because no effort would be made to reclaim the commuted amount if they died earlier than their life expectancy. Members received no such advice, to which, the many information pamphlets, published by the DFRDB Authority and disseminated to members approaching retirement, are testament. It is equally fallacious to imply that this risk was balanced. When a DFRDB recipient dies it constitutes a reduction in the Commonwealth's DFRDB liability. The earlier death occurs, the greater is the reduction in the Commonwealth's liability.

The arrangement surrounding the use of the 1960s life expectancy factor were reviewed in 2007-2008 in the Podger Review into Military Superannuation Arrangements. While the Review acknowledged that life expectancy has improved since the 1960s, they concluded that this commutation methodology was substantially more favourable than a recommended cost-neutral conversion factor.

While the former Labor Government did not go ahead with this recommendation to increase the reduction amount, it was also decided that there would be no other changes to the commutation arrangements.

The **cost-neutral conversion factor** referred to in the [Podger Review](#) takes into account opportunities to earn interest on the commuted lump sum. This was not an option for many members who had to establish a home after their departure from the Defence Force or for those

who had other demands for that lump sum. Furthermore, the *(fair price) cost-neutral conversion* comparison factor, used by the Podger Review Team to conclude that there should be no change to the DFRDB life expectancy factors, was nebulous with no empirical basis.

In any case, there is no expectation that there should be a change to the life expectancy factors which have determined the reduction of retirement pay for all who have commuted since the commencement of the DFRDB scheme in 1973.

Two aspects of life expectancy are pertinent to the DFRDB commutation arrangement:

1. With life expectancy increasing over time, the use of earlier (and therefore lower) life expectancy factors in the calculation of retirement pay reduction produces higher rates of reduction and therefore, lower rates of retirement pay.
2. Based on the most recent life expectancy data published by the Australian Bureau of Statistics, some 80% of DFRDB recipients will now survive an average of 15 years beyond the 1960 life expectancies on which their retirement pay reductions were based.

The effect of the combination of 1960 life expectancy factors and a permanent reduction of retirement pay is that the total retirement pay reductions for 80% of DFRDB members who commuted will equate to an average of 4 to 5 times the amount of their commutation lump sums.

That does not constitute a proportionate exchange.

Labor believes in providing a strong system of supports and benefits to our current and former service personnel, which is why in 2014 Labor supported the triple indexation of the Defence Forces Retirement Benefits (DFRB) and DFRDB schemes.

This is reminiscent of the Labor election promise leading up to the 2007 Federal Election. A promise which was broken as soon as Labor was elected. During its two terms in Government, Labor with the support of the Greens also defeated separate DFRDB/DFRB fair indexation Bills which were introduced by the Opposition and the Independent Andrew Wilkie MP.

What will Labor's position be when it is next returned to Government?

The benefits of this triple indexation will become clearer over time, the compounding effect of improved indexation means pensions will move further ahead of an equivalent CPI only indexed pension and will increase at a higher rate than the cost of living.

The benefits of triple indexation are perfectly clear now. From 1 July 2014 to 1 July 2017 the compounding effect of improved indexation means that the retirement pay, of recipients aged 55 and over, has moved 0.2% ahead of the CPI.

It is more significant that the retirement pay of DFRDB recipients aged under 55, for whom triple indexation does not apply, has effectively been reduced by 0.2%. If and when inflation rates return to normal, that reduction will increase substantially.

Far more significant still is the fact that from 1991 to 2014, the CPI fell more than 25% below Male Total Average Weekly Earnings (MTAWE), resulting in what was effectively a

corresponding reduction of DFRDB/DFRB benefits over that time. Neither Labor nor the Coalition have given any consideration to restoring those benefits to their proper levels.

Given the historical lag of the CPI relative to the cost of living, the suggestion that triple indexed pensions will increase at a higher rate than the cost of living is totally absurd.

There are two other concerns which Mr Darcy and Mr Betts may not have touched on in their letters to you.

1. In 1977, the [DFRDB Act](#) was amended to reduce the rate of indexation of the retirement pay of the some 5% of DFRDB members who did not commute by limiting their indexation increases to what they would have received had they commuted to the fullest extent. This is referred to in the Act as **notional** retirement pay.
2. That amendment also related the pensions, of all spouses, dependent children and orphans of deceased DFRDB members, directly to that **notional** rate of retirement pay.

Recommendation 15(a) of the [Jess Report](#) states:

That the widow of a recipient member receive an annuity of five-eighths of his retired pay entitlement at the date of his death.

As a result of the 1977 amendment, rather than receiving five-eighths (62.5%) of the DFRDB member's retirement pay entitlement, the majority of widows' will receive only around 57%, decreasing further the longer the member lives and after his death, the widow lives.

In the upcoming sitting, formal petitions related to these injustices will be tabled in both Houses of Parliament.

Labor will continue to listen and work with the veterans' community.

If you and Labor are indeed genuine about listening to and working with the veterans' community then you could begin by forwarding this letter to your colleagues in the Parliament.

My colleague Mr Jim Hislop (LtCol retired) and I have been seeking a redress of these injustices for the past 3 years. Attached is the Executive Summary of a submission, [The Gross Reduction of DFRDB Benefits](#), which we presented to the office of the Minister, The Honourable Daniel Tehan MP, in February this year. We have yet to receive a reply.

If required, Jim Hislop and I are more than willing to travel to Canberra, from our homes in Wodonga and Rutherglen, to discuss these DFRDB/DFRB concerns with Labor representatives.

Yours sincerely,



(H F Ellerbock)

Senator The Honourable Eric Abetz

Senator for Tasmania

Dear Senator Abetz,

On 14 August 2017, a Petition (PN0063) relating to injustices the Defence Force Retirement and Death Benefits (DFRDB) Scheme was tabled in the House of Representatives. That Petition was referred to the Minister of Finance who has 90 days from presentation in the House to respond.

A similar Petition was submitted to the Senate.

On 21 February 2017, a [detailed submission](#), which underlies these Petitions, was put to the responsible Minister's Advisor on DFRDB and representatives from the Department of Defence, in the Minister's offices.

On 16 August 2017, the [Minister's response](#), which rejected that submission, was received.

A reply to the Minister's response appears below.

It is anticipated that the Finance Minister's response will accord with that of the responsible Minister, the Hon. Dan Tehan MP and that he will justify Government inaction on the basis of cost, which will be in the region of \$10 to \$15 billion over the remaining life of the Scheme.

The author has not been privy to the DFRDB recipient population profile, but \$10 to \$15 billion is considered to be a reasonable estimate of the amount which will have been stripped from recipients' benefits by:

- a. Unfair indexation through the use of the Consumer Price Index,
- b. The highly disproportionate commutation arrangement and
- c. The reduction of reversionary pensions through partial indexation.

The signatories ask that, when this Petition is debated, you consider the following:

- a. The estimated \$10 to \$15 billion reduction in benefits is over the anticipated life of the DFRDB Scheme, that is, from 1973 to at least 2063.
- b. This Petition does not seek retrospective restoration of the benefits which have been reduced to date. Rather, it seeks a restoration of the rate of benefits from now on.
- c. \$10 to \$15 billion over the next 46 years is a proverbial *drop in the bucket* of the \$148 billion Future Fund, a primary purpose of which is to meet unfunded Commonwealth Superannuation liabilities such as the DFRDB Scheme.

Yours sincerely,

Herb Ellerbock

On behalf of the signatories to Petition PN0063