

COMMITTEE INQUIRY QUESTION

(Question No. 1)

Senator Kimberley Kitching asked the Department of Defence, upon notice, on 20 May 2021:

Mr Nockels: 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.

CHAIR: Did you have many members contact you after that?

Mr Nockels: In relation to the review or in general?

CHAIR: I'll take in relation to the review and in general.

Mr Nockels: I'd have to take on notice in relation to the review—for instance, how many people contacted Defence via the website and asked for a direct apology. I'll have to take that on notice, if you're okay with that.

CHAIR: Yes, I am.

Senator Kimberley Kitching – The Department of Defence has provided the following answer to the Honourable Senator's question:

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.

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.

COMMITTEE INQUIRY QUESTION

(Question No. 2)

Senator Kimberley Kitching asked the Department of Defence, upon notice, on 20 May 2021:

CHAIR: Did you contact any of the veterans' groups after the investigation was complete? Did you contact those groups so that they could disseminate information to their members, to ensure that all of those members knew?

Mr Nockels: I'll have to take that on notice, I don't have that detail with me at the moment. I do know that Defence engages with those groups regularly and so it could have been within the context of those regular engagements. But I'll need to take that on notice.

Senator Kimberley Kitching – The Department of Defence has provided the following answer to the Honourable Senator's question:

Defence did not contact any veteran groups after the investigation was completed. 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.

COMMITTEE INQUIRY QUESTION

(Question No. 3)

Senator Kimberley Kitching asked the Department of Defence, upon notice, on 20 May 2021:

CHAIR: Thank you. Defence's submission states:

... any changes to the scheme, including the life expectancy factors could involve significant ... costs, both prospective and retrospective.

Do you have any costings you can provide?

Mr Nockels: No, we haven't been asked to develop those.

CHAIR: I ask you to do that.

Mr Nockels: To develop those costings?

CHAIR: Yes. In your submission you've said that it would involve significant costs, and I presume that you had a concept of those significant costs. So if you could provide some costings, both prospective and retrospective, that would be helpful.

Mr Nockels: I'll take that on notice..

Senator Kimberley Kitching – The Department of Defence has provided the following answer to the Honourable Senator's question:

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).

In Defence's submission to the Senate Inquiry, Defence stated that any change made to DFRDB would likely be at a 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.

COMMITTEE INQUIRY QUESTION

(Question No. 4)

Senator Kimberley Kitching asked the Minister representing the Minister for Defence, upon notice, on 21 May 2021:

CHAIR: On notice, are you able to provide me with the criteria for making a claim, or maybe even provide me with a summary of the 36 cases that were assessed? Were there common grounds in those 36 cases on which applicants were not successful? Even if you can give me an idea of that now, that would be helpful.

Mr Nockels: Chair, I think we can do that now, and, if you have any further follow-up questions, we'd obviously be more than happy to take them on notice.

CHAIR: On notice, are you able to list the criteria and give me a summary of the 36 claims that were assessed? Do I have that number correct?

Mr Nockels: You have the number correct.

CHAIR: I'm just wondering, in order to give the committee an idea of the grounds that were explored and a better understanding of the assessment, if there was common ground in those assessments, including where claims failed at the assessment. It just might give us a good idea of the CDDA, as well as the perspective of the department in relation to defective administration.

Mr Nockels: Certainly, we can do that. We'll come back within the two-week period that's already been nominated for responding to questions on notice

Senator Kimberley Kitching – The Department of Defence has provided the following answer to the Honourable Senator's question:

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

In 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.

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.

COMMITTEE INQUIRY QUESTION

(Question No. 5)

Senator Kimberley Kitching asked the Department of Defence, upon notice, on 20 May 2021:

Senator LAMBIE: Does Defence know how many people have commuted? Does Defence have that information?

Mr Nockels: I'll take that one on notice, but I think it's about 85 per cent. But I will take that on notice in terms of those who took the option to commute within that 12-month period of leaving, and I think it was the 12 months that they had to then make a decision. But I'll come back on notice to the committee on the exact number.

Senator Kimberley Kitching – The Department of Defence has provided the following answer to the Honourable Senator's question:

The data provided by the Commonwealth Superannuation Corporation (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. CSC has advised that data prior to 1996 is not available.

COMMITTEE INQUIRY QUESTION

(Question No. 6)

Senator Jacqui Lambie asked the Department of Defence, upon notice, on 20 May 2021:

Senator LAMBIE: Did Defence contact people when they realised this was an issue, or did they leave it for people to find out for themselves?

Mr Nockels: I'll have to take that on notice. Obviously that would have happened in the early-2000s, so I'll have to take it on notice to see what Defence did at the time.

Senator Jacqui Lambie – The Department of Defence has provided the following answer to the Senator's question:

During the course of the 2019 Ombudsman's investigation into the administration of DFRDB, Defence became aware of the extent of the incorrect information that had been historically communicated across Defence.

Over time, as Defence became aware of incorrect information, updates were made to all relevant information relating to DFRDB that was owned by Defence. This included policy material, booklets and training content. Defence continues to update any Defence owned information about DFRDB to ensure that it remains current.

COMMITTEE INQUIRY QUESTION

(Question No. 7)

Senator Jacqui Lambie asked the Department of Defence, upon notice, on 20 May 2021:

Senator LAMBIE: What actions did Defence take when it became aware that so many people thought that their pensions and death benefits would be higher than what they were going to be? Did it reach out and tell people then? Did Defence try and clear up that misunderstanding with the people by correspondence, not just via the website?

Mr Nockels: As I've already mentioned in my testimony to this committee, Defence clearly changed its approach from the early-2000s to ensure that when people left they had a clear understanding of what commutation meant. In terms of what had happened prior to that—and I've touched on that already, particularly the Ombudsman's perspectives on that—I'd have to take on notice whether or not there was an explicit mail-out at the time to affected members. But I'll take that on notice.

Senator Jacqui Lambie – The Department of Defence has provided the following answer to the Senator's question:

During the course of the 2019 Ombudsman's investigation into the administration of DFRDB, Defence became aware of the extent of the incorrect information that had been historically communicated across Defence.

Over time, as Defence became aware of incorrect information, updates were made to all relevant information relating to DFRDB that was owned by Defence. This included policy material, booklets and training content. Defence continues to update any Defence owned information about DFRDB to ensure that it remains current.

COMMITTEE INQUIRY QUESTION

(Question No. 8)

Senator Jacqui Lambie asked the Department of Defence, upon notice, on 20 May 2021:

Senator LAMBIE: So you didn't bother to try and track down the people that weren't serving any longer and do anything about that?

Mr Nockels: Again, I think that's wrapped up in my comment about taking that question on notice. Obviously we would have had to have dealt through CSC or its predecessor in terms of accessing where people were and so on. But, again, I'll take that on notice in terms of what Defence did and how, and if, it communicated at the time

Senator Jacqui Lambie – The Department of Defence has provided the following answer to the Senator's question:

During the course of the 2019 Ombudsman's investigation into the administration of DFRDB, Defence became aware of the extent of the incorrect information that had been historically communicated across Defence.

Over time, as Defence became aware of incorrect information, updates were made to all relevant information relating to DFRDB that was owned by Defence. This included policy material, booklets and training content. Defence continues to update any Defence owned information about DFRDB to ensure that it remains current.

COMMITTEE INQUIRY QUESTION

(Question No. 9)

Senator Jacqui Lambie asked the Department of Defence, upon notice, on 20 May 2021:

Senator LAMBIE: How do you measure your reach? That's what I'm asking you. When you do all this stuff, how are you measuring the reach, or are you just throwing it out there and hoping for the best?

Mr Nockels: That's an interesting question, Senator, but I'd have to take it on notice and we'd have to engage with our colleagues in our media area, who probably might have some measures around reach in terms of the messaging that Defence has.

Senator Jacqui Lambie – The Department of Defence has provided the following answer to the Senator's question:

Defence uses various analytic tools, social media reporting software, and media monitoring services to measure the reach and engagement of its communication products across media, digital media and social media.

COMMITTEE INQUIRY QUESTION

(Question No. 10)

Senator Jacqui Lambie asked the Minister representing the Minister for Defence, upon notice, on 21 May 2021:

Senator LAMBIE: How many of those people that have made their application have actually used that proforma themselves and how many have used a legal representative?

Mr Nockels: I'll have to come back to you on that question. I'll take that on notice. As I mentioned earlier, there are 36 individuals who have followed through with using the scheme, but I don't know whether or not they used the proforma or approached it separately and wrote to us in a different format or whether they used or relied upon some sort of legal representation to assist in that. We may not be aware if they have used legal representation to assist in filling out the proforma. But we will take on notice to get you that data.

Senator Jacqui Lambie – The Department of Defence has provided the following answer to the Senator's question:

The special claim form was used by 36 of the 38 claimants. The other two used the generic claim form available on the Defence website.

None of the claimants, to our knowledge, engaged a lawyer or other representative to assist them with their claim.