



Australian Defence Force Retirees Association Inc.

No. A0108026R

We represent the interests of Defence Force Retirees regarding their Superannuation

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FEDERAL COURT HEARING

Today's short hearing of Clinton McKenzie's matter in the Federal Court took an unexpected but positive turn from ADFRA's perspective. Justice Perry recognized the potential significance of the outcome of the matter for a large number of former members of the Australian Defence Force, their widows, widowers and dependent children and orphans. Accordingly, her Honour issued an order requiring the Federal Court Registrar to attempt to arrange Pro Bono legal assistance for Clinton.

One remarkable aspect of the hearing is that Counsel for the Commonwealth Superannuation Corporation (CSC) said that the issues in dispute affected only a few hundred people. Clinton clarified that the issues affected tens of thousands of people, which seemed to be a revelation to CSC's Counsel.

To be clear: Clinton is not making any argument based on members being misled about the effects of commutation. Clinton is arguing that, properly interpreted, the DFRDB Act does not have the effect of permanently reducing the rate of commuted retirement pay. Clinton is arguing that the reduction only lasts until a member reaches the age on which the applicable expectancy of life factor in Schedule 3 of the DFRDB Act is based.

If the Court accepts that argument, the previous apology given by the Commonwealth for failure to provide adequate information about how the DFRDB Authority and the CSC were going to permanently reduce commuted retirement pay (and commuted Class C invalidity pay) will have been unnecessary. The necessary apology will instead be for not administering the system in accordance with the law, quickly followed by payment of the pay unlawfully withheld beyond a member's Schedule 3 life expectancy.

We are under no illusion that there are strong arguments for the DFRDB Authority's/CSC's interpretation. However, the judge will ultimately decide the correct interpretation.

Members should rest assured that they are not at risk of losing anything as a consequence of Clinton's Federal Court action. If the DFRDB Authority's/CSC's interpretation prevails, nothing will change. Our commuted pay will continue to be permanently reduced as a consequence of commutation, in accordance with the DFRDB Authority's/CSC's usual practice. That would be a disappointing outcome which – sadly – would merely confirm that the generous scheme used to entice us into and remain in the Defence Force was deliberately less generous than was marketed to us at the time.

In any event, the most significant and important fight for us remains the indexation methodology which continues to result in the inexorable reduction in the buying power of our entitlements.

One practical matter that has become obvious is how difficult it can be to utilize video conferencing technology (Microsoft Teams) used to stream the Court hearing. It was evident that quite a number had difficulty obtaining and/or accessing the link to the hearing and some who were successful made unintended virtual appearances in Court today. Fortunately, they were not too disruptive, and Justice Perry was lenient.

Nearer to the date of the next hearing, we will organize an 'anyone can join' Teams Meeting to enable members to master the technology. Clinton is happy to make himself available to field any questions members may have. We will circulate a link to the meeting at the appropriate time.

The next hearing in Clinton's matter is a case management hearing on 28 February, so that the judge can get an understanding of how preparations for resumption of the 'main' hearing are going. We will keep members updated.

Jim Hislop OAM

President