



AUSTRALIAN DEFENCE FORCE RETIREES ASSOCIATION

We act on behalf of Defence Force Retirees and their Military Superannuation grievances

Register on: <https://www.adfra.org/>

Contact us on: admin@adfra.org

Herb Ellerbock
12 Alluvial Street
Rutherglen VIC 3685
Phone: 0418 549 749
25 March 2019

The Commonwealth Ombudsman
GPO Box 442
Canberra ACT 2601

COMPLAINT - THE DENIAL OF SUPERANNUATION BENEFITS

This complaint is submitted in accordance with the provisions of the Ombudsman Act 1976 including but not limited to Part IIA--Establishment, Functions, Powers and Duties of the Defence Force Ombudsman.

We, the members of the Australian Defence Force Retirees Association (ADFRA), who represent the more than 50,000 surviving beneficiaries of the Defence Force Retirement and Death Benefits (DFRDB) scheme, seek a determination by the Commonwealth Ombudsman to overturn the deficient administrative decision and policy by Government, in its application of Defence Force Retirement and Death Benefits Act 1973.

We submit that the implementation of Government policy regarding the DFRDB Scheme, encompassed actions which were administratively deficient, resulting in:

- a. An inequitable commutation arrangement where members entitled to a one-time lump-sum advance payment of a portion of accrued future superannuation entitlements suffer a grossly disproportionate lifetime reduction of ongoing benefits; and
- b. A failure to maintain the relativity, i.e. the real value of benefits, in keeping with general community standards, through the use of an inappropriate index and a failure to apply indexation increases to the full amount of benefits;

These outcomes are unreasonable, discriminating against recipient members by gender, age on retirement and time of retirement.

We further submit that:

- a. The Government has failed to meet its fiduciary obligations because it is conflicted between its budgetary interests and that of DFRDB members; and
- b. That this constitutes unconscionable conduct and is contrary to the principles of fairness and equity.

The detail of this complaint is expressed in the enclosure, Defence Force Retirement Pay and Death Benefits Scheme - The Denial of Benefits.

Complaints regarding these matters have previously been referred to:

- a. the DFRDB Authority, by retired RAAF Wing Commander Jim Treadwell, as early as March 2008;
- b. the Commonwealth Superannuation Corporation (CSC), by retired Army Warrant Officer Class 1 Herb Ellerbock, in March 2016;
- c. the Minister for Defence Personnel, by retired Army Warrant Officer Class 1 Herb Ellerbock, in February 2017; the House of Representatives via Petition PN0063, by retired Army Lieutenant Colonel Jim Hislop, in September 2017;
- d. the Attorney-General in November, by retired Army Warrant Officer Class 1 Herb Ellerbock, in December 2018; and
- e. Senators and Members of Parliament by numerous other beneficiaries of the DFRDB scheme.

The essence of the responses to these concerns has been:

- a. From the DFRDB Authority and the CSC that; *they administer the DFRDB scheme in accordance with the DFRDB Act and cannot review or change the legislation.*
- b. From the Attorney-General that; *the matters raised do not fall within the Attorney-General's portfolio responsibilities and have been forwarded to the Department of Defence.*
- c. From the responsible Minister and Department of Defence Personnel that; *the Government does not intend to undertake a further examination of the benefit structure of the closed DFRDB scheme.*

To remedy the wrongs caused by the deficient administrative decision and policy by Government, the ADFRA seeks a determination that will lead to the following remedial action:

- a. The indexation baseline to be set to where it should have been set, in 2014, when the Government acknowledged that the past index was unfair and inequitable;
- b. All future DFRDB benefits to be fully indexed against the corrected baseline, i.e. the effective baseline had the better of the Consumer Price Index and Male Total Average Weekly Earnings been used, from 1 July 1976;
- c. Retirement pay reductions which exceed the amount advanced to cease immediately;
- d. Amend the DFRDB policy where necessary to accommodate this solution; and
- e. Refund retirement pay reductions which exceeded the advanced amounts.



Herb Ellerbock

Warrant Officer Class 1 (retired)

Enclosure: Defence Force Retirement Pay and Death Benefits Scheme - The Denial of Benefits