

Herbert Ellerbock

Email:

21 January 2024

Ms Ingrid Singh
Director
Directorate of Employment Law and Discretionary Claims
Defence Legal

By email to: dl.deldc@defence.gov.au

The Hon Richard Marles MP
Deputy Prime Minister | Minister for Defence

By email to: Richard.Marles.MP@aph.gov.au

Dear Ms Singh

I am writing in response to your letter *240108 Ellerbock signed, dated 8 January 2024*, setting out your decision and reasons for your decision, on my application under the Scheme for Compensation for Detriment caused by Defective Administration (CDDA Scheme), dated 3 December 2023.

I intend to seek a review of your decision.

Per your advice, I referred to <https://www.finance.gov.au/individuals/act-grace-payments-waiver-debts-commonwealth-compensation-detriment-caused-defective-administration-cdda/scheme-compensation-detriment-caused-defective-administration-cdda-scheme> where I noted that I can ask the Non-Corporate Commonwealth Entity, that is, the Department of Defence (*Defence*) and specifically you, as the Minister's delegate, to reconsider your decision.

Alternatively, I can seek a review by the Commonwealth Ombudsman.

However, my concerns are that:

- You represent *Defence*, the perpetrator of the defective administration, which is the subject of my CDDA application, yet you sit in judgement of my claim; and
- The Commonwealth Ombudsman, who is also the Defence Ombudsman, conducted a limited scope investigation in 2019 which was confined to the administration of the commutation provisions contained in the *Defence Force Retirement and Death Benefits (DFRDB)* Act, the findings of which have been used to largely deny compensation under the CDDA scheme.

It is difficult for me to see how, under those circumstances, I can expect to receive objectively fair and impartial treatment.

My only other avenue of review is the Federal Court. But, as you will know, I would be obliged to file a *Genuine Steps Statement* setting out the steps taken to try to resolve the issues in dispute in relation to your decision.

The purpose of this letter, therefore, is to:

- Explain the grounds on which an application to the Federal Court could be based; and
- Determine whether you are inclined to revisit your decision and obviate the need for me to make such an application.

Response to your Decision

Below are my comments, numbered for convenient reference, relating to specific statements in your decision shown in *highlighted italics*.

“For compensation to be payable under the CDDA scheme, the decision-maker must be satisfied that there has been defective administration by the Department of Defence...”

1. Regarding the information provided about commutation, in paragraph 6.3 of his [Report 06|2019](#) on the Investigation into the administration of the *Defence Force Retirement and Death Benefits (DFRDB)* scheme, the Ombudsman said:

“This information was misleading, and providing it amounted to defective administration by the ADF.”

That is a shameful finding. The ADF did not provide the information. *Defence* provided the information and the ADF merely forwarded it to its members.

But it should come as no surprise that the Ombudsman would want to protect his Public Service colleagues in *Defence*.

Regarding the information provided about indexation, you said:

“The Ombudsman discussed indexation in part 4 of his report. He acknowledged that the indexation provisions in the DFRDB Act are complex and reinforced the need for information products to explain complex laws in a way that lay people can understand them. The Ombudsman concentrated on information supplied to members who elected to commute more than four times the amount of their retirement pay. He concluded that the information supplied to members by the Commonwealth Superannuation Corporation (CSC) did not advise the longer term consequences of electing to commute more than four times a member’s retirement pay. In particular, the information products could have made clearer that doing so has the effect of commuting a portion of the member’s indexed retirement pay, which in turn would lower the amount by which their remaining annual retirement pay would grow through indexation. You are not in this cohort because you elected to commute only four times your retirement pay.”

2. Considering The *DFRDB* scheme was abandoned in 1991, the Ombudsman’s observation, in 2019, about the need for clarity, was a little late.

For me, the need for information products which explained the *DFRDB* Act’s commutation and indexation provisions, in a way that I could understand them, was in 1975 and 1978.

3. The Ombudsman’s “*concentration*” on the effects of indexation on the benefits of members who commuted more than four times their annual *Retirement Pay* does not apply to me, as you acknowledge, because, in January 1983, the maximum I was entitled to commute was only four times my *Retirement Pay*. But that does not obviate the fact that the effects of indexation on benefits generally – commuted or otherwise – were not explained in a way that I could understand in 1975 and 1978.

I say that:

- a. The Ombudsman omitted the effect of indexation on members who commuted four times or less from his Report because the terms of reference of his investigation were carefully crafted to avoid exposing the fact that a far greater potential detriment was caused by Defence’s failure to explain, in understandable lay people’s terms, the effects of indexation on benefits generally, commuted or otherwise; and
- b. The exposure of that fact would likely have precipitated numerous members to come to the realization, to which I eventually came, and which precipitated my present application, that the potential detriment of commuting or not is a sideshow compared with the potential detriment caused by the failure by *Defence* to explain, in layman’s terms, the effects of indexation on benefits generally, commuted or otherwise.

“I accept that the information products supplied by Defence before your retirement in 1983 did not make clear that the portion of a member’s pension which may be commuted is not indexed under the DFRDB Act, even if the member does not elect to commute. Nor did they address the implications of that for reversionary pensions. I think it is arguable that failure to re-state information from the DFRDB Act about indexation in information products that describe other aspects of the scheme in layman’s terms could be described as defective administration because it could have made a difference to a member’s decision about whether to elect to commute or take a full pension.”

4. That failure could also have made a considerable difference to a member’s decision on how long to serve, which is the basis of my 3 December 2023 application.

Can I take your finding as an acknowledgement of defective administration in respect of the misleading information *Defence* provided about indexation?

You added:

“But the only members potentially affected by that omission appear to be members who elected to take a full pension in the mistaken belief that the whole pension would be indexed annually. If

they knew, they may have been more inclined to commute the portion of their pension which would not be indexed. You are not in this cohort.”

5. It appears that you do not fully comprehend the effects of the indexation provisions.

The effect of the indexation provisions is to reduce the value of the benefits, defined in sections [23](#) and [32](#) of the *DFRDB Act*, over the lifetime of the cohort entitled to *Retirement Pay* and *Class C Invalidity Pay*, from the commencement date of those entitlements until the recipients' death.

The effect is the same, regardless of whether or not those members commuted, or the amount they commuted, and the effect continues after the members' death, as though they had not died, to reduce until their death, the value of their widows' and widowers' *Spouse's Pensions*.

My spouse and I are in that cohort.

6. My application cannot be properly decided unless and until you, as the decision-maker, fully understand the effects of the indexation provisions.

“This is your third claim under the CDDA scheme related to the operation of the DFRDB Act. You say the present claim is an entirely new claim, which has nothing to do with the two claims you lodged in 2020. But the defective administration alleged in the present claim relates to commutation under the DFRDB Act, which is the subject of the first claim, and indexation under the DFRDB Act, which is the subject of the second claim, so there appears to be some overlap in terms of subject matter.”

7. While the misleading information *Defence* provided about the *DFRDB* scheme is pertinent to each of my claims, the circumstances relating to those claims are very different.

My first claim was based on the advice in the Ombudsman's [Report 06|2019](#). But that claim was confined to the detrimental effect of the decision to commute by *Defence*'s specially designed CDDA application form.

So, I had to submit a second CDDA claim in respect of the detrimental effect of indexation.

My present claim stems from the realization that, in my case, the impact of the misleading information *Defence* provided about the *DFRDB* scheme, that is, the defective administration, was far more extensive than I had considered in my first two claims.

The basis of my present claim is that the misleading information about the *DFRDB* scheme prevented me from making objective and fully informed career decisions to my financial, vocational, social and self-esteem detriment. Indeed, the misleading information drove my analysis and comprehension of future lifestyle choices in a direction that complete and accurate information would have qualified and led to the pursuit of alternative options.

The career choices I made in 1975 and 1978 are not contemporaneous with my decision to commute in 1983. Therefore, the two claims I lodged in 2020 are not relevant to my present claim.

“Your second claim, dated 21 April 2020, was that the DFRDB Act provisions relating to indexation of pensions enacted in 1973 did not reflect the parliamentary committee recommendations which led to the introduction of the Act, and that officials and the relevant ministers misled cabinet and the parliament about what was recommended.”

8. Your understanding is not correct. No provisions relating to indexation were enacted in 1973.

When he moved that *Defence Forces Retirement and Benefits Bill 1973 (DFRDB Bill)* be read a second time, the Minister for Defence, Minister for the Navy, Minister for the Army, Minister for Air and Minister for Supply, **The Hon Lance Barnard**, said:

“The whole question of suitable methods of adjustment [indexation] of retirement benefits payable to members of the forces, whether they retired under the old or will retire under the new scheme, is currently being examined. Since the Jess Committee presented its report, there have been developments on pension updating in other Commonwealth pension schemes and I want these developments carefully investigated and assessed in relation to the new DFRB scheme.”

House of Representatives Hansard, 25 May 1973

The PART XA PENSION INCREASES (indexation) provisions were enacted in 1977 and made effective from 1 July 1976, which is relevant to the continuum of the circumstances which form the basis of my present claim.

“On the second claim, I concluded that the actions of ministers and officials prior to the enactment of the DFRDB Act were beyond the scope of the CDDA scheme but, in any case, your criticisms of the legislative process were misplaced.”

9. In your decision relating to my second claim, you made no reference whatsoever to what I said about the effect of the indexation provisions, which I say was for the same reason the Ombudsman did not discuss the full effects in 2019.

But you now consider what I said in that claim to be fundamental to your current decision.

10. Why *Defence* deceived more than 78,000 ADF members about the commutation provisions and many more about the indexation provisions, that is, the reason for its defective administration, is clearly evident in Hansard.

Commutation

Commutation, was a key entitlement under the *DFRDB Scheme*, but when he moved that *Defence Forces Retirement and Benefits Bill 1973 (DFRDB Bill)* be read a second time, all the Minister for Defence, Minister for the Navy, Minister for the Army, Minister for Air and Minister for Supply, **The Hon Lance Barnard**, said about commutation was:

“Commutation of retirement pay will be a right for members who retired after 1 October 1972, subject only to applications for commutation being made within one year of retirement or such longer period as may be necessary in special circumstances;”

House of Representatives Hansard, 25 May 1973

During the Second Reading debate of the *DFRDB Bill*, the Member for Herbert, **Mr Robert Bonnett**, said:”

“The Jess Committee, as the Minister well knows, set out to devise a simple scheme which servicemen could understand, and I believe it succeeded. But when translated into the present legislation its recommendations are on the way to becoming incomprehensible.

...

The Minister for Defence, Minister for Navy, Minister for the Army, Minister for Air and Minister for Supply, (Mr Barnard) mentioned during his second reading speech the necessity for simplicity. I think I can quite rightly say that the Minister has not read the draft legislation but has merely made comparisons with the Committee's recommendations if he thinks that the legislation in its present form is simple legislation.

...

But how could this be possible, how could simplicity of understanding be achieved, when the Minister permitted the exclusion of Service representation from the drafting committee?

...

While the Minister is to be commended for wishing the legislation to be introduced and accepted as soon as possible, surely he could have supervised its construction to the extent that a clear and concise definition of the retirement entitlements of servemen [servicemen] was produced.”

House of Representatives Hansard, 30 May 1973

During his Second Reading speech, the Member for Isaacs, **Mr David Hamer**, said”

“... what we are considering today are 3 Bills of great complexity. The main one contains 79 pages. These Bills affect about 70,000 present servicemen and many thousands of retired ones. It was introduced into this House last Friday and 5 days later we are debating it. For a Bill of such complexity, in my opinion, that is a grossly inadequate time for proper consideration.”

House of Representatives Hansard, 30 May 1973

Indexation

When he moved that *Defence Force (Retirement and Death Benefits Amendments) Bill 1977 (Indexation Bill)*, which incorporated indexation in the *DFRDB Act*, the Member for Oxley, then Minister for Construction and Minister Assisting the Minister for Defence and Member for Boothby, **The Hon John McLeay**, said:

“The adjustment provisions incorporated in the Bill are detailed and complex. I propose therefore to explain in broad terms only how they are to operate. A more

detailed explanation of their practical effects will be made available to beneficiaries by the Defence Force Retirement and Death Benefits Authority when the increased rates of pension become payable.

...

DFRDB pensioners - those retired since 30 September 1972 - who are in receipt of retirement pay, are to receive increases by applying the same pension adjustment factor to an amount that represents the amount of retirement pay remaining as if the member had commuted to the fullest possible extent following his retirement.

...

Pensions payable to the widows of DFRDB retirement pensioners will be adjusted by applying the pension adjustment factor to that proportion of the widow's pension that bears the same ratio as the member's residual pension, or notional residual pension as the case may be, to his total retirement pay at retirement.

...

In essence, therefore, the pension updating arrangements encompassed by this Bill achieve the earlier stated aim of consistency with those currently applying to comparable classes of pensioners under the Commonwealth Public Service superannuation schemes."

[House of Representatives Hansard, 17 February 1977](#)

In his speech during the Second Reading debate, the Member for Oxley, **The Hon Bill Hayden**, said:

*"This Bill provides an initiative on the part of the Minister for Defence (**Mr Killen**), which is welcomed. Its proposal is to index in accordance with the consumer price index and a simple formula outlined by the Minister in this House last week, the payments under the DFRB and DFRDB pension system. The Opposition endorses and proposals and I see little point in debating the subject further and unnecessarily taking up the time of this House and its officers."*

[House of Representatives Hansard, 23 February 1977](#)

11. As the Department responsible for the DFRDB scheme, Defence would have:
 - a. Drafted the responsible Ministers' Submissions to Cabinet;
 - b. Instructed the *Office of the Parliamentary Counsel (OPC)* on the policy of the legislation;
 - c. Determined when the legislation could be introduced into Parliament; and
 - d. Drafted the responsible Ministers' Second Reading speeches.
12. Defence would have been fully aware that once legislation is enacted, the Courts are powerless to change it (except in very narrow circumstances of complete invalidity), regardless of how unfair it is to those affected, and the longer the interval after enactment, the less is the likelihood that it will be challenged by those affected.

Concerns about the effect of the commutation and indexation provisions were first raised circa 1997 by James Alfred Treadwell AFC OAM (WgCdr deceased), 24 years after the commutation provisions were enacted, and 20 years after the indexation provisions were

enacted. So, I say it is also reasonable to conclude that, as an extension of its manipulation of the legislative process, *Defence* misled ADF members to ensure they did not become aware of the effect of the commutation and indexation provisions until it was far too late.

Defence has never provided me, or so far as I am aware, any other member making career decisions, with a more detailed explanation of the legislation's practical effects as alluded to by the Minister in the House of Representatives on 17 February.

The complex wording of the legislation is also a common theme, which begs the question; why would the *OPC* produce such complex and convoluted legislation when the *Jess Committee* stressed the need for simplicity?

13. The actions of *Defence* and the *OPC* are rooted in the strong opposition to the *Jess Committee's* recommendations from the Public Service and *Treasury* in particular, which is evident in:
 - a. *Treasury's* Submission No. 913 to the McMahon Cabinet;
[*Cabinet Minute, Canberra, 24 October 1972, Decision No. 1147*](#)
 - b. *Defence's* Submission No. 916 to the McMahon Cabinet;
[*Cabinet Minute, Canberra, 24 October 1972, Decision No. 1447*](#)
 - c. The speech in the House of Representatives by **John Jess**, Member for La Trobe, and Chairman of the *Jess Committee*; and
[*House of Representatives Hansard, 26 October 1972*](#)
 - d. The speech in the House of Representatives by **Gough Whitlam**, Member for Werriwa, and Leader of the Opposition.
[*House of Representatives Hansard, 26 October 1972*](#)
 14. There is no record of any Whitlam or Fraser Government policy decisions with the intent of reducing the defined benefits recommended by the *Jess Committee* on a scale that is evident in comment 18 below. If Parliament was aware of such a negative impact of the proposed legislation, it is inconceivable that not one member would question the legislative intent during the Second Reading debate.
 15. The evidence suggests, overwhelmingly, that the reduction of the *DFRDB* defined benefits was instigated by *Defence* and not Government policy, and I say it is reasonable to conclude that *Defence* manipulated the legislative process to ensure that the Parliament did not comprehend the effect of the commutation and indexation provisions before it enacted the relative legislation.
- “The critical difference between the 2020 claims and the present claim is the extent to which you say you were misled and the detriment you say you suffered as a result.”*
16. As I have already explained in comment 7, the 2020 claims are not relevant to my present claim.

17. Prior to appearing before the *Foreign Affairs, Defence and Trade (FADT) Committee* enquiry into the accuracy of information provided to *DFRDB* members, I set out to determine the financial impact of the commutation and indexation provisions on the cohort entitled to *Retirement Pay, Class C Invalidity Pay* and *Spouse's Pensions*, because I felt certain that I would be asked to provide an estimate of the cost of remedying *DFRDB* members' concerns.

18. I found that:

- a. by the time every member of that cohort is deceased, some \$30 Billion will have been wiped from the value of their defined benefits;
- b. the reduction due to commutation is less than 6.5% of the total reduction; and
- c. the impact of commuting was significantly less than I had previously assumed.

"In the circumstances, it is difficult to conclude that you were misled in any relevant way about the indexation provisions in the DFRDB Act."

19. The difficulty lies in your failure to comprehend the indexation provisions and their profound effects, generally, on *DFRDB* defined benefits.

"There is an obvious inconsistency between your evidence in 2020 that had you not been misled about the effect of commutation, you would not have commuted and your evidence now that had you not been misled about the effect of commutation and about the indexation rules, you would have stayed in the Army for another 19 years. That inconsistency is compounded by your evidence in 2021 to the Senate Foreign Affairs, Defence and Trade References Committee enquiry into the accuracy of information provided to DFRDB members that had you not been misled about the effect of commutation, you would have commuted anyway:"

20. As I have already explained in comment 7, the circumstances relating to my decision to commute in 1983 and the decisions I made in 1975 and 1978 are not contemporaneous, and my views in 2020 and 2021 about my decision to commute are, therefore, not relevant.

"The difficulty with your answer is that you have been pursuing your criticisms of the DFRDB scheme, including issues around commutation and indexation, since 2015. Your research has been comprehensive and impressive. Your presentation to the Ombudsman's investigation team on 27 June 2019 specifically addressed the commutation and indexation issues you now rely upon. So, when you said on your 2020 claim form that you would not have commuted if you had not been misled, and when you said in your 2021 evidence to the Senate enquiry that you would have commuted regardless of having been misled, you appear to have already been aware of all the relevant information about commutation and indexation which now leads you to say that you would have stayed in the Army if you had not been misled"

21. If you are saying that by the time of my presentation to the Ombudsman's investigation team on 27 June 2019, I knew everything there was to know about commutation and indexation, then you are giving me far more credit than I deserve.

It has been said that *Defence Force Retirement and Death Benefits Act 1973* is one of the most complex Acts in the *Federal Register of Legislation* and I say that few, if any, past and present Members of Parliament, Senators, and affected individuals fully understand its provisions.

I include myself in that cohort, but my understanding has progressively improved after years of ongoing research.

My present claim is the product of my ongoing research and, as I have already explained in comment 7, does not rely on the evidence I presented to the Ombudsman's investigation in 2019 or the Senate FADT Reference Committee enquiry in 2021.

In respect of my evidence to the Senate enquiry, the question Senator Lambie asked was:

"Would you have chosen to commute if you had understood how the system works today?"

The operative word being "today".

I gave an honest answer because, as I explained in comments 17 and 18, my understanding of "how the system works" had changed after I had submitted my first CDDA claim.

"It can be very difficult to determine historical claims based on what the claimant asserts would have happened if not for the defective administration. In this case, it is necessary to consider what you would have done more than 40 years ago. The circumstances place a high evidentiary burden on you to establish that you would have stayed in the Army had you been armed with more information about your potential DFRDB pension entitlements."

22. In 1970-71, I was an instructor in advanced radar techniques at the Royal Australian Electrical and Mechanical Engineers Training Centre, where the techniques I taught included determining the trajectory of ballistic projectiles requiring complex calculations. By comparison, calculating the future value of a partly indexed benefit is relatively simple.

Had *Defence* not provided the misleading information about commutation and withheld the method of indexation from ADF members, I would readily have deduced, in 1978, that:

- a. The indexation method was designed to significantly reduce the value of my *Retirement Pay* entitlement and the rate of my spouse's *Pension* entitlement, from the date I became entitled to it until my death, and if my spouse survived my death, until her death;
- b. Commutation would further reduce my *Retirement Pay* entitlement if I lived beyond the life expectancy from which my residual *Retirement Pay* after commutation was determined;
- c. The only way for me to mitigate the effect of the indexation and commutation provisions would be to increase the rate of my *Retirement Pay* entitlement, which could only be achieved by a higher rate of salary and, or a greater portion of that salary by completing more years of service; and

- d. For me that would entail seeking a commission, because I already held the highest non-commissioned rank, and continuing to serve beyond 20 years.
23. My decision on how long I would have served, would have been influenced by:
- a. My spouse's welfare, because she has a permanent disability;
 - b. The penalty for resigning before the notional retirement age for the commissioned rank I may have reached; and
 - c. My employability in civilian life, beyond my notional retirement age.

If I had known that my spouse's *Pension* entitlement would be so significantly reduced over her lifetime, I would have done whatever I needed to do to ensure she received the highest possible rate of *Spouse's Pension* after my death.

In 1982, I was already overlooked for several positions I had applied for because I was considered to be too old or overqualified. Logic would have dictated that I should therefore continue to serve until my compulsory retirement age for rank.

24. My decision to commute was determined by my circumstances at the time of my resignation in 1983 but, as I have already explained in comment 7, my decision to leave the ADF after serving 20 years had already been predetermined by my decisions in 1975 and 1978 which were based on the information I had received from *Defence*. Information which the Ombudsman and you have found to be misleading and the result of defective administration.

"In my view, that burden is made more difficult because you have now given three distinctly different versions about what you would have done."

25. I have not given three different versions of what I would have done. As I have already explained in comment 7, my views about my decision to commute in 1983 have nothing to do with the decisions I made in 1975 and 1978.

"Your assertion now that you would have stayed in the Army for at least another 19 years appears to reflect your subsequent disappointment about your pension entitlements, and the rejection of your earlier claims on a different basis. I have no reason to prefer your evidence now over your earlier evidence about what you would have done. Indeed, I would go so far as to say that your evidence to the Senate committee is the most plausible of the three versions you have presented because it is the only version of the three that takes account of your contemporaneous circumstances. Also, it is consistent with what many other former members in similar circumstances to you have said about why they commuted."

26. Your conclusion is an insult to my intelligence and an attempt to besmirch my character.

false dichotomy

noun

a logical fallacy in which a spectrum of possible options is misrepresented as an either-or choice between two mutually exclusive things.

In your zealous endeavor to refuse my claim you have created a *false dichotomy* by concluding that I could not possibly have held different views, in 2020 and 2021, about my decision to commute in 1983, while ignoring the career decisions I made in 1975 and 1978, and the fact that those decisions were not contemporaneous with my decision to commute.

“Disappointment” is not a strong enough term. I am very angry that after committing 20 years to the service of my country I would be so comprehensively deceived by *Defence* which, I trusted, would look after my welfare.

But that did not affect my decision-making in 1975 and 1978, the outcomes of which were directly influenced by *Defence’s* deception.

27. I highly doubt that you know of any other former members in similar circumstances to mine.

“In light of that conclusion, it is unnecessary to consider your assessment of your loss as a result of that hypothetical situation. However, for completeness, I note that your analysis appears to take no account of the civilian employment income and civilian superannuation entitlements you earned, or could have earned, between 1983 and your retirement from the civilian workforce, which would not have accrued had you stayed in the Army until at least 2002. Absent evidence about that, it would be impossible to conclude that you have sustained a loss at all by retiring from the Army in 1983.”

28. I did not receive any superannuation entitlements from my civilian employment because the Superannuation Guarantee did not come into force until 1 July 1992, after my civilian employment ended.

29. Your assertion that I did not provide any evidence of my income from 1983 until 2002 is not correct.

On my CDDA application, I declared an estimated [REDACTED] in civilian employment income from 1983 until 1990, which was to the best of my recollection.

30. I stated that I have not been able to obtain my pre-1997 taxation records from the Australian Taxation Office but would adjust that income amount as necessary if I do receive those records.

If you have sustained a loss, it is definitely not [REDACTED] or anything approaching that figure. I hope you can take some comfort from that.”

31. I take comfort in knowing that, notwithstanding any adjustment per comment 30, I have provided detailed evidence supporting the loss I would have sustained, which is based on facts and reasonable assumptions, while you have provided no evidence or explanation whatsoever, to support your assertion to the contrary.

“I see from your claim and subsequent correspondence that these issues have caused you distress. I encourage you to use the support that is available. The Open Arms Veterans’ Families’ Counselling provides counselling at no charge by calling 1800 011 046. Open Arms may also be able to provide a referral to other support services, if required.”

32. I am seeking compensation for the many years of acute emotional distress and humiliation I suffered, as a direct result of *Defence's* defective administration.

Apart from a profound sense of betrayal, I have not sustained any permanent psychological effects of the defective administration, so counselling is of no benefit to me.

I appreciate your advice, but uniformed personnel are proud, independent, and capable contributors to Australian society and do not want charity. They expect to be treated with respect and receive the benefits they were led to believe they would receive if they committed a significant part of their youth and adult lives to the service of their country.

But *Defence* reneged on the benefits pledged from the outset.

Conclusion

The motivation for your decision is understandable. You represent *Defence*, the perpetrator of the defective administration. Yet, you sit in judgement of my claim.

I can't see how this is procedural fairness.

The merits of my claim cannot be properly assessed unless:

- (1) The indexation provisions of the *DFRDB* Act, and their effects on benefits generally, are properly understood by the decision-maker; and
- (2) The circumstances in which and the consequences of ADF members' decisions to reenlist for periods of service when the *DFRDB* scheme was in operation are properly understood by the decision-maker.

The evident focus on the consequences of commuting and my decision to commute, in your reasons for decision, manifest a proper understanding of neither.

That could be a jurisdictional error on your part.

Airing my claim and your decision in the Federal Court would, in the current climate, be both timely and appropriate.

I look forward to your reply.

Yours sincerely,



(H. F. Ellerbock)