



DEFENCE FORCE OMBUDSMAN

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Dear Prime Minister,

28 OCT 1986

Report under Section 16 of the Ombudsman Act 1976

On 20 August 1986 I made a report pursuant to section 15 of the Ombudsman Act 1976 to the Department of Defence and the Defence Force Retirement and Death Benefits Authority of an investigation of complaints by three former members of the Defence Force, Messrs [REDACTED], [REDACTED] and [REDACTED], about their retirement benefits.

The investigation of the complaints established that the three complainants and others who had retired from the Defence Force after a date towards the end of 1981 had been denied certain benefits when it was realised that they were not legally entitled to them because of defective legislation. Members who had retired earlier continued to receive those benefits, although not legally entitled. Amending legislation became effective in October 1984, and payment of arrears of pension and additional commutation lump sums were thereafter paid to the disadvantaged group. In my opinion the actions of the Department of Defence and the Australian Government Retirement Benefits Office were administratively defective, and I recommended additional payments for the persons affected by way of interest, adjustment for inflation and compensation for any additional income tax resulting from the payment of the amounts in a lump sum.

The Chairman of the Defence Force Retirement and Death Benefits Authority responded that if the Government decided that additional payments would be made the Authority would be responsible for ensuring calculation and payment of the amounts concerned. However, the Secretary to the Department of Defence has advised that until you respond to a letter on the topic from the Minister for Defence he would not be in a position to advise me what action would be taken in respect of my recommendations.

The background to the matter is that in June 1984 the Deputy Ombudsman (Defence Force) raised with the Department of Defence that there be interest or current value adjustments for the persons affected. In November 1984 he proposed to the Departments of Defence and Finance

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and to the Australian Government Retirement Benefits Office that there be discussions with the Ombudsman's office about the resolution of the complaints, with the payment of interest and/or current values on arrears of pension in mind. Initially the Department of Defence resisted discussion, but eventually there was a discussion with the Department of Finance and the Ombudsman's office in June 1985. In August 1985 the Department of Defence informed my office that it had formulated its views but said there were issues of policy and principle which required consideration at Government level, and that the Department would submit them to the Minister for Defence, who might wish to consult other Ministers.

In March 1986 my office learned from your Department that on 1 October 1985 the Minister for Defence had written to you and the Minister for Finance in the matter arguing against a remedy of the kind proposed. The Acting Defence Force Ombudsman therefore notified the Minister for Defence in terms of section 8(7A) of the Ombudsman Act 1976 of the investigation and of his intention to discharge his statutory responsibilities by moving towards a formal report. I believe that that was the proper course in the circumstances, having regard to the Defence Force Ombudsman's statutory responsibilities, and in particular his independent and impartial role. It was evident that the Department had sought by a variety of means to resist informal suggestions for a remedy for the complainants, and it was time to invoke the formal steps of report and recommendation.

The situation is then that the Department has not said what action it proposes to take in response to my recommendations, but has sought through its Minister to oppose the implementation of those recommendations. It has not taken action that is in my opinion adequate and appropriate with respect to the matters and recommendations included in my report within a reasonable time after I furnished it with the report under section 15, and I therefore so inform you in terms of section 16 of the Ombudsman Act 1976.

As required by sub-section 16(2) I attach copies of the report and of subsequent correspondence with the Department of Defence and the Defence Force Retirement and Death Benefits Authority.

Yours sincerely,

Geoffrey Kolts

(Geoffrey Kolts)
Defence Force Ombudsman

The Hon R.J.L. Hawke, A.C., M.P.,
Prime Minister
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