

COMMITTEE EVIDENCE PACK – ITEM 1 – INITIAL STATEMENT TO CCDA SEEKING REVERSION OF PENSION POST ACHIEVEMENT OF EXPECTED LIFE

STATEMENT IN SUPPORT OF CCDA CLAIM

1. I recently read the 06/2019 Report¹ constructed by the Commonwealth Ombudsman, Mr Michael Manthorpe. I understand it to be propaganda because it poses a position that is largely unsubstantiated and then cherry picks information to defend that position. The one principle that should have existed within the 06/2019 reports' investigation is that all DFRDB members are treated the same based on an equivalent percentage of salary at their retiring rank. If a member chooses to commute a portion of their retirement pay, there should not exist a ~15% annual difference in retirement pay. Both members should receive the same amount of retirement pay. I qualify this claim further as follows.

- a. Defence has no cost if a DFRDB member elects to commute some amount of retirement pay to a lump sum. All that occurs is that an agreed expense is brought forward which is covered by 20 years of member contributions. The 06/2019 report suggests members who commute should expect a permanent reduction in retirement pay – which lacks moral basis.
- b. In the 06/2019 report there is a discussion² about who said what about commutation and when, and what glossy pamphlets or transition conferences might have expounded. The fact is that all DFRDB members would have gone straight to Schedule 3 of the DFRDB Act when the time for electing commutation was required in earnest. Firstly, because there would be no real context from pamphlets or conferences, and secondly because Schedule 3 provides fair and equal treatment for all members and shows the exact period to repay a lump sum as well as the period of reduced retirement pay. There is no other way to understand the effect of life expectancy factors. These data were not what was provided at any conferences or in pamphlets.

2. The erosion of pensions under DFRDB is a lived experience for many veterans. DFRDB members have been shouting from the rooftops about eroding pensions for more than two decades. This CCDA claim builds on key information from the Ombudsman's 06/2019 report to explain why the permanent reduction in retirement pay for the commuting cohort needs to end.

The common ground within this claim

3. Common ground between the 06/2019 report and this CCDA claim are:
 - a. Retirement pensions are based on rank and were designed to supplement **civil employment earnings**.
 - b. **A legislated formula sets the rate of retirement pay** which is unaffected by **market performance**.
 - c. Incentive exists to **remain in the ADF** for at least the minimum service period (generally 20 years) because the **benefits of retirement pay are considerable** and **relative to a refund of**

¹ Investigation into the administration of the Defence Force Retirement and Death Benefits scheme.

² The forward of 06/2019 indicates that some DFRDB members may have been incorrectly informed about commutation.

contributions.

Reynolds vs DFRDB Authority – 28 June 2001

4. Common ground between the appeal Reason for Decision (RfD) and this CDDA claim are:
 - a. **Reynolds 14.** With respect to the applicant, the Tribunal is limited to an examination of the factual matrix of each application and the application of the relevant law to those facts. In the opinion of the Tribunal, in considering the application of the relevant law, it cannot take into account any extraneous material except that it does so pursuant to sections 15AA and 15AB of the Acts Interpretation Act 1901:
 - b. The above statement reflects a caveat in the case where examination was limited to a factual matrix. Indeed, Schedule 3 within the DFRDB Act was treated as extraneous material.
 - c. SECT 15AB (1) Subject to (3), in the interpretation of a provision of an Act, if any material not forming part of the Act, is capable of assisting in the ascertainment of the meaning of the provision, consideration may be given to that material:
 - (a) not used
 - (b) to determine the meaning of the provision when:
 - (i) the provision is **ambiguous or obscure**; or
 - (ii) the ordinary meaning conveyed by the text (**'on or after'**) of the provision taking into account its context in the Act and the purpose or object underlying the Act leads to a result that is manifestly **absurd or is unreasonable**.

Note: Words emphasised in bold from the above understandings, have meaning and context within the following sections.

For this CDDA claim – My DFRDB commuted retirement pay must be reverted to the statutory full retirement pay, once I achieve my life expectation factor as per Schedule 3 of the DFRDB Act.

Contentions supporting this outcome

5. Industry best practice allows for the partial commutation of any pension to be reverted once an agreed condition is met. s 24(1) of the DFRDB Act uses the language, 'elect to commute a portion of retirement pay'. There is no meaning in the words, 'commute a portion', that provides for that it affects the whole of the pension. Partial means 'part of' so it would logically not apply to the whole. A permanent reduction in retirement pay is logically not feasible.

6. Schedule 3 of the DFRDB Act 1973—provides an Expectation of Life Factor (ELF) in table form. Schedule 3 is a key document for governing because it is used to set up the commutation portion. The ELF becomes a divider of the lump sum and establishes the statutory reduction in commuted retirement pay. The ELF also provides the statutory time in years to repay the commuted lump sum amount. For example, a 33 year old male with a factor of 38.31 would take 38.31 years to repay their commutation. A 40 year old female would take 36.99 years to repay their commuted amount. The figures post-decimal can be readily converted into days.

7. S 24(3)(b) in effect states, the amount per annum that... would be **payable reduced** by an amount calculated by dividing the amount referred to in [paragraph \(a\)](#) by the expectation of life

factor that, having regard to the age and sex of the person on the day on which [the election](#) takes effect, is applicable to him under Schedule 3. It is difficult to understand how an interpretation could be made that a reduced retirement pay continues past the life expectancy factor.

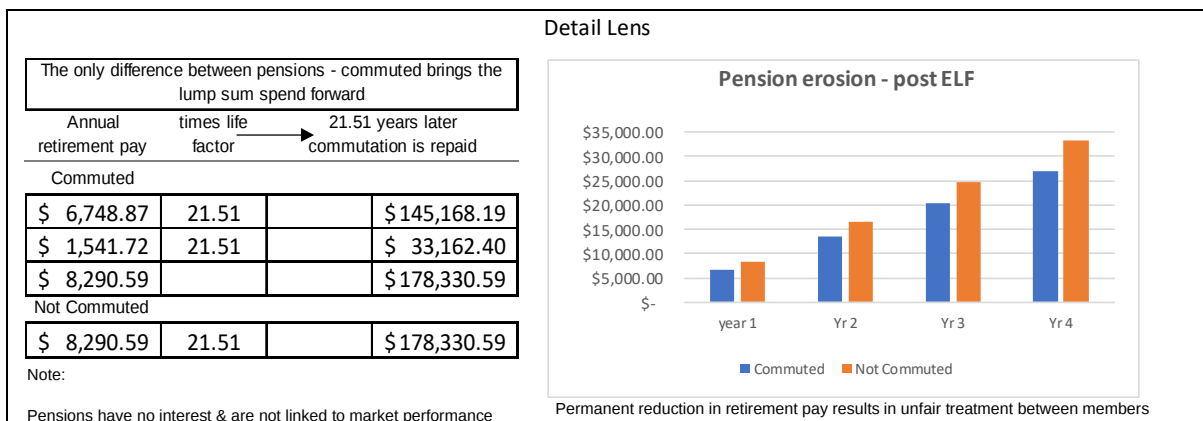
8. All members of the DFRDB class have contributed to what is a statutory scheme. It is extraordinary that fairness could be deemed to occur when members within the commuting cohort lose ~15% of their annual retirement pay, once they achieve their life expectancy factor (in years). This is not a system design issue it is an interpretation and administration issue. The wrong interpretation, as is presently applied, is manifestly unfair for what was initially expressed as a pension **supplementing civil employment earnings**.

9. The following chart uses information from **Reynolds vs DFRDB Authority** of 2001. The figures are used because the Magistrate and both parties have agreed that the figures are correct in terms of the legislation. With that understanding in mind, the chart below shows the payback time in column five based on the correct ELF for Mr Reynolds of 21.51. You can openly assess the unfairness caused by the permanent reduction in retirement pay between those who commuted (reduced RP in green highlight) and those who did not (RP in blue highlight) – at the blue arrow, see the labelled and figurative pension erosion factor.

MODEL SHOWING DIFFERENCE BETWEEN COMMUTATION AND NO COMMUTATION							
(Figures agreed to be correct between magistrate and parties (Reynolds vs DFRDB Auth:))						21.5 years (ELF)	
	Annual	51 yo - 55 yo Yr5	56 yo - 60 yo Yr10	61 yo - 65 yo Yr15	66 yo - 70 yo Yr20	71 yo - 75 yo Yr25	76 yo - 80 yo Yr30
RP	\$ 8,290.59	\$107,777.67	\$712,990.74	\$4,825,123.38	\$32,623,471.65	\$220,579,437.54	\$1,491,419,106.87
Commuted	\$33,162.36						
Lump sum/ELF	\$ 1,541.72	\$ 7,708.59	\$ 7,708.59	\$ 7,708.59	\$ 7,708.59	-\$ 7,708.00	-\$ 7,708.00
Reduced RP	\$ 6,748.87	\$ 87,735.31	\$132,587.92	\$ 897,281.04	\$26,556,803.45	\$179,560,435.22	\$1,214,074,470.91
Diff <> RP - RRP		\$ 20,042.36	\$580,402.82	\$ 3,927,842.34	\$ 6,066,668.20	\$ 41,019,002.32	-\$ 2,705,493,577.78
Lump sum repaid						\$ 33,162.36	Pension erosion factor

Notes:

- * 5 year increments were used to scale down the table to fit the page
- * Annual rate of pay is derived from Schedule 1
- * Expected life factor (ELF) is from Schedule 3 (21.51 years)
- * Lump sum is based on 4 years - \$33,162.36
- * Reduced retirement pay = lump sum / ELF - \$1541.72
- * No indexing was used in these figures



Those who commute experience anomalous retirement pay

10. What is not fully appreciated in the 6/2019 Report is that the factors used in Schedule 3 of the DFRDB Act – expected life table, are weighted to support commutation recovery sooner rather than later. This means (on a basis of relativity) a greater reduced retirement pay is in effect. The factors table relates to older (so not contemporary) ABS lifetime expectancy figures so that the Commonwealth sees less risk with members achieving their expected life milestone. The corollary to using this table is that veterans who commute will experience a relatively higher annual retirement pay reduction rate. This means that the commuting cohort experiences greater reduced retirement pay over the period to achieve an individual life expectancy milestone, as well as after via the false interpretation of a permanent retirement pay reduction. This is the lived experience of a veteran who commuted any portion of their pension.

My reading of the above issues

11. CSC has maintained a legacy position despite multiple inputs and requests for review from veterans. CSC also has on record (06/2019 Report) that some veterans with depression are significantly affected by this circumstance. This anomaly has been ongoing since the inception of the DFRDB system and no action has been taken by any Defence agency to fix what is an obvious concern. CSC, all this time, has been ignoring, not abiding, or is clueless by S 24(3)(b) of the DFRDB Act, and the associated Schedule 3 factor tables. Meanwhile, the Commonwealth is pocketing up to ~15% annually in appropriated retirement pay from every DFRDB member who elected commutation. Whether this is malfeasance or not – it is immoral.

Dispelling some of the more illogical contentions within the 06/2019 Investigation paper

12. The second paragraph in the forward incorrectly situates what commutation refers to. The correct statement is that 'commutation refers to eligible retiring Defence Force members having the choice to take their benefits as a pension, or they could opt to commute a part of their pension into a lump sum and access a reduced pension **until they achieve their expected life factor**'. The bold emphasis shows the qualifying piece missing from the forward of the 06/2019 paper. The factor table would not exist if any other interpretation was intended.

13. The forward in the 6/2019 Report also poses some considerations around DFRDB pension options. There were no options. Members are eligible for a pension upon retirement after 20 years. All members receive an identical equivalent pension amount no matter whether they commute or not; providing that a permanent reduction is not imposed in contravention of Schedule 3 of the DFRDB Act.

- a. A fundamental understanding behind why Schedule 3 exists – is to compensate DFRDB members given the disparity between Defence pay rates and the higher **civil pay rates**. The Jess Committee, in part, explains this as a concept for incentivising recruitment. There was also the undertaking that no detriment would occur to those transitioning from the DFRB scheme.
- b. Schedule 3 provides that all DFRDB members achieve the same pension. Those who commute will get reduced retirement pay up until they achieve the expected life milestone, whereupon reversion must occur. Any notion that those members who choose a lump sum deserve a reduced pension is morally bereft.
- c. And finally, why would parliament devise legislation where ~ 80 % of the membership who choose to enact a planned transition from Defence to civilian life, by using a lump sum, would then arbitrarily be subjected to a different standard in retirement pay? One would hope it

would be vehemently rejected.

14. Whereas in para 2.35, the words, '**on are after**' are suggested to legitimate an unqualified law determination whereby to commence and continue is construed as permanently reducing retirement pay. Schedule 3 of the DFRDB Act provides the statutory basis of a factors table that qualifies; age at the time commutation was elected, and a retirement pay reduction period in years (so commence and continue). The DFRDB Act, Schedule 3 must hold precedence given the understanding in para 13 a, (supplementing civil employment earnings).

15. Whereas in para 2.41, the Administrative Appeals Tribunal (AAT) considered the Reynolds case as neither ambiguous nor obscure in the provision. This was because no consequential understanding was held about the workings of the factors table in Schedule 3 of the DFRDB Act; which poses a definitive ambiguity.

- a. Also, s 15AB(1)(b)(ii) of the Interpretation Act provides that where a provision leads to a result that is **absurd or unreasonable**, another interpretation is more likely.
- b. Permanently reduced retirement pay that results in an annual 15% continuing loss in retirement pay for only the commuting cohort is both absurd and unreasonable. It also goes against the intent behind para 13 a, (supplementing civil employment earnings). The full context behind the words, '**on or after**', was never fully known to the tribunal.

16. At para 1.15 there was modelling commissioned. Trying to conflate market rate projections of invested lump sums to compel DFRDB members to feel comfortable about losing retirement pay is highly speculative and yet another anomaly. Two final points about that. There was never any obligation imposed on members about how they might use a lump sum. And, unfortunately, a modelling approach was not used to assess commuting versus not pension outcomes to establish a difference in the standards of retirement pay.



Australian Government
Defence



COMMITTEE EVIDENCE PACK – ITEM 2 – FIRST REASONS FOR DECISION

RE: YOUR APPLICATION UNDER THE COMPENSATION FOR DETRIMENT CAUSED BY DEFECTIVE ADMINISTRATION (CDDA) SCHEME

Dear Mr Jones,

1. I am writing about your claim under the Compensation for Detriment caused by Defective Administration (CDDA) Scheme¹ dated 26 February 2025. Your claim is about the Defence Force Retirement and Death Benefits Scheme (DFRDB). I apologise for the delay in responding.
2. I acknowledge your disappointment about the effect of commutation in the DFRDB scheme. As you are aware, in 2019, the Commonwealth Ombudsman (Ombudsman) investigated the administration of the DFRDB scheme, including the issues raised in your claim. I will discuss the Ombudsman's conclusions and how they impact on your claim, and claims like yours, in more detail below.
3. First, I want to explain how the CDDA scheme works. The CDDA Scheme permits a Commonwealth agency to pay compensation when a person or organisation has suffered detriment as a result of the agency's defective administration, and there is no legal liability to make a payment. For compensation to be payable under the CDDA Scheme, the decision-maker must be satisfied that there has been defective administration by the agency and that the defective administration has directly caused you to suffer detriment.
4. I am authorised to make decisions under the CDDA Scheme in the Defence portfolio. I have reviewed your claim and have concluded that compensation is not payable under the CDDA Scheme, in the circumstances of your claim. My reasons for the decision are set out below.

¹ See: [Scheme for Compensation for Detriment caused by Defective Administration \(Resource Management Guide 409\)](#).

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Reasons for decision

Defective administration

6. Under the CDDA Scheme, compensation for detriment caused by “defective administration” may be payable if there has been:
- a specific and unreasonable lapse in complying with existing administrative procedures that would normally have applied to the claimant's circumstances;
 - an unreasonable failure to institute appropriate administrative procedures to cover a claimant's circumstances;
 - giving advice to (or for) a claimant that was, in all circumstances, incorrect or ambiguous; or
 - an unreasonable failure to give to (or for) a claimant, the proper advice that was within the official's power and knowledge to give (or was reasonably capable of being obtained by the official to give) the minister or the authorised official may authorise a payment to the claimant.
7. In your claim, you state that the Commonwealth Superannuation Corporation (CSC) permanently reduces member retirement payments should they commute any amount of lump sum and that in your view, this is in contravention of section 24(3)(b) of the *Defence Force Retirement and Death Benefits Act 1973* (Cth) (the Act). Further, you allege that a report by the Ombudsman puts forward an incorrect argument that a “...*permanent reduction in retirement pay is a legislated outcome*”. You explain that what you want from your CDDA claim is for CSC to confirm that your “...*retirement pay to revert to full statutory pension once I achieve my expected life factor as per Schedule 3 of the Act...*”.
8. The DFRDB scheme, like all Commonwealth defined benefit schemes, was developed as a structured benefits scheme. The scheme, and commuted pensions available under it, have been reviewed multiple times, most recently by the Ombudsman in 2019 and by the Senate Foreign Affairs, Defence and Trade Reference Committee’s in 2021.
9. The Ombudsman concluded some DFRDB scheme members were led to believe incorrectly that their commuted pension would increase once they reached their life expectancy factor age.² This was not correct and, where a member relied on such incorrect advice, amounted to defective administration by Defence. As a consequence, the Secretary of Defence and the Chief of the Defence Force issued an apology on 3 December 2019, which was published in the Ombudsman’s report on 11 December 2019.³
10. The purpose of commutation is to allow members the flexibility to receive a lump sum if required, depending on their financial situation at the time, and to assist the member in resettling into civilian life. Permanently reducing the pension recognises that members who

² See: https://www.ombudsman.gov.au/_data/assets/pdf_file/0035/286487/FINAL-DFRDB-investigation-report.pdf.

³ As above.

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elect to commute will obtain a long-term advantage from the immediate use of their lump sum, depending on what they choose to do with the amount. It is important to note that a decision to commute part of the pension is voluntary but the resulting reduction to the pension is permanent from that point on. This issue of a permanent reduction in the pension is reflected in the express words of section 24(3) of the Act.

11. The commutation provisions in the Act reflect the recommendations of the 1972 Joint Select Committee on Defence Force Retirement Benefits Legislation, and include the retention of a proportionate reduction to the pension to account for the commutation.
12. The Actuary provided advice regarding commutation values for DFRDB members. The Actuary noted when the DFRDB scheme was introduced in 1973, the use of the 1960-62 Australian Life Tables as a commutation factor was favourable to members relative to the alternative pension.
13. In your claim, you raised the matter of *Reynolds and Defence Force Retirement and Death Benefits Authority* [2001] AATA 599 (28 June 2001) and asserted that there is support in the decision for your claim that, despite the wording of section 24(3) of the Act that describes a reduction ‘on and after’ commutation, figures from life expectancy tables operate to create a cap on the reduction referred to in section 24(3) of the Act. I cannot accept that argument, and refer you to paragraph 17 of the Tribunal’s decision which explains that the provision cannot be interpreted in the way that you have claimed:

‘It is not reasonable to say that the phrase “amount payable ... on and after the day on which the election takes effect ...” has a limitation based on the life expectancy factor used in a calculation to arrive at the amount. In the opinion of the Tribunal such an interpretation is simply untenable and would be counter to the plain words of the provision’.

14. More recently, the question of whether an election of commutation within the DFRDB scheme has the effect of permanently reducing a member’s entitlement or if the reduction is only until the member has reached their life expectancy factor age was addressed in the Federal Court of Australia in *McKenzie v Commonwealth Superannuation Corporation*.
15. The applicant, Mr McKenzie, a member of the DFRDB scheme, sought to challenge the permanent reduction of his retirement pay following his election to commute. On 2 May 2023, the Hon Justice Perry delivered her judgment and dismissed the case, stating in her view an election to commute does result in a permanent reduction in the annual amount of retirement pay to which that member is owed.⁴
16. I acknowledge some DFRDB scheme members are frustrated and disappointed with the outcome of the reviews and recent court case. However, the DFRDB scheme has been

⁴ Full details of the judgment are available at www.judgments.fedcourt.gov.au/judgments/Judgments/fca/single/2023/2023fca0396.

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reviewed multiple times, and these reviews have recognised the beneficial nature of the scheme. The commutation factor is used to work out how many years' worth of annual retirement pay will make up the commutation lump sum for an individual member. You may wish to check this for yourself online by reading the text of the Act, published at this link: [Federal Register of Legislation - Defence Force Retirement and Death Benefits Act 1973](#).

17. As outlined above, if you were one of the DFRDB scheme members that was led to believe incorrectly that your commuted pension would increase once you reached your life expectancy factor age, and you relied on this information, this amounted to defective administration by Defence. Based on the available information, it does not appear that you were actually misinformed by Defence specifically however, your misunderstanding is consistent with the common misunderstanding at the time.

Detriment

18. The other critical test under the CDDA scheme is whether you sustained detriment as a result of defective administration. The Ombudsman addressed this issue at length in his report. It is worth repeating here the critical passage from the foreword to the Ombudsman's report:

Although disappointing and frustrating, missing out on a benefit to which a person is not actually entitled under the law does not necessarily mean that the person suffered financial detriment. As a matter of principle, compensation should only be paid where poor administrative practices cause actual financial loss.

I wanted to determine whether those who were given misleading information were likely to have suffered overall financial loss as a result of their choice. I engaged two expert actuaries, the Australian Government Actuary (AGA) and KPMG to independently model a number of scenarios to compare the real financial results of commuting and not commuting—that is, the two options that were actually available.

In all of the scenarios we modelled, using conservative assumptions about how retiring members might have used the lump sum, commutation has resulted in a beneficial overall financial outcome for DFRDB members to date. This is particularly true for DFRDB members who retired in the years before 2010. While some of those who discharged in recent years may be able to make the case that at some time in the future they could be financially worse off having commuted, I am satisfied these decisions to commute were made after CSC improved its publications to explicitly advise that the commutation reduction is permanent.

I am satisfied the decision to commute is not likely to have, of itself, caused financial loss, relative to the only other option that was available at law. I have therefore concluded that it is not appropriate to recommend compensation in a broad sense.

19. Based on the modelling undertaken for the Ombudsman, there is a 'break-even' point and it is only after the break-even point that a member will be able to demonstrate a theoretical loss. The modelling did not identify any cohort of members who commuted prior to 2010 who experienced actual financial loss, compared to the only other available option, that is, not commuting and receiving a full pension (Ombudsman's report, paragraph 3.144). For members

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who invested the money, the earliest break-even point would be at 88 or 89 years old (Ombudsman's report, paragraphs 3.145, 3.146.). For members who used the money to buy a home, the earliest break-even point is after the member turns 100 years old (Ombudsman's report, paragraphs 3.148, 3.149).

20. The Ombudsman could not exclude the possibility that there may be outlying cases in which financial loss might have occurred and said those should be dealt with on a case by case basis under the CDDA scheme. In the CDDA application form, you are invited to explain what detriment you have suffered including for example, how your situation might have differed from others who commuted part of their pension in the same period as you.
21. There is nothing in what you have told us to suggest that your situation is different and has caused you to suffer a loss. You have alleged a future loss in your claim, explaining that you will not have suffered any detriment until you achieve your DFRDB life expectancy factor of 22.31 from December 2020 (which is the date you say you commenced reduced retirement pay to pay back your commuted lump sum). You say that your retirement pay will need to revert to full statutory payment from 29 April 2032 and you would like CSC to confirm that will occur.
22. Based on the information you have provided us, I am compelled to conclude that you have not suffered any detriment at this time, and that you may suffer a disappointment in 2032, which is the result of the normal operation of the relevant legislation. On the basis that there is no current loss that can be demonstrated, I do not consider that compensation can be provided to you under the CDDA scheme. Accordingly, I will not approve a payment of compensation to you. For completeness and as outlined above, I reiterate that a decision to commute part of the pension is voluntary however, the resulting reduction to the pension is permanent from that point on.

Review rights

Information about the CDDA scheme can be found at <https://www.finance.gov.au/resource-management/discretionary-financial-assistance/cdda-scheme/information-for-applicants-cdda/>.

If you do not agree with any of Defence's actions in response to your CDDA claim, you may seek a review by the Ombudsman. The Ombudsman can investigate the administrative actions and decisions of government agencies, impartially and informally, at no cost to the complainant. The Ombudsman may make recommendations to the agency, but has no power to substitute a decision. The Ombudsman's office can be contacted on 1300 362 072 or you can lodge an online complaint at <http://www.ombudsman.gov.au/making-a-complaint>.

If you have any questions about this decision, my point of contact is Lauren Armstrong who can be contacted via email at dl.deldc@defence.gov.au.

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Support services

The issues raised in these submissions may be distressing, we confirm that Open Arms Veterans Counselling is available if required to assist at no cost. The all hours support line can be contacted on 1800 011 046.

Yours sincerely

Director – Employment Law & Discretionary Claims
Defence Legal

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COMMITTEE EVIDENCE PACK – ITEM 3 – RESPONSE STATEMENT TO CCDA SEEKING RfD CONTENT ADDRESSING KEY ISSUES

Response to Reasons for Decision – CDDA Application

Date: 4 July 2025

I acknowledge receipt of the Reasons for Decision (RfD) dated 2 July 2025 regarding my CDDA application. I must record, however, my serious concern that several material issues raised in my submission have either been inadequately addressed or entirely omitted. This response identifies those deficiencies and offers clarification on the legal, financial, and equitable concerns that underpin my claim.

I. Contextual Foundations – Understanding DFRDB Membership

To appreciate the unique financial and legal implications of my claim, several foundational facts must be acknowledged:

- **Mandated Membership:** DFRDB was the sole superannuation scheme available to ADF members during my period of service. Membership was compulsory, with no alternative or opt-out mechanism available.
- **Punitive Taxation:** DFRDB is the second-highest taxed superannuation scheme in the OECD. Contributions, indexed retirement pay, and lump sums are subject to tax rates of 30–47%. Once a member re-enters the workforce, the pension is treated as secondary income, again taxed at 47%. A generic 10% offset for untaxed-sourced income does little to mitigate the financial impact. In effect, nearly half my pension has been used to fund consolidated revenue for over a decade—without recourse or flexibility.
- **Misapplication of Lump Sum Comparisons:** The Ombudsman’s references to comparative lump sum investment outcomes are irrelevant. Under s 3 of the DFRDB Act, the lump sum is defined as a **benefit**, not a loan, and its value is statutorily defined—not predicated on speculative return. Members voluntarily elect to receive this benefit, not on the basis of projected outcomes, but on statutory entitlement.
- **High-Contribution Profile:** I have contributed for 35 years—placing me in the top 2% of contributing DFRDB members. In essence, I have substantially funded my own lump sum benefit before electing to receive it. My situation is distinguishable and merits distinct analysis.

II. Material Issues Not Addressed in the Delegate’s Decision

1. Unacknowledged and Ongoing Financial Harm from Permanent Pension Reduction

The core issue remains: the permanent and cumulative reduction in my DFRDB pension. This results in a projected financial loss of approximately **\$170,000** over the remainder of my life expectancy.

- At no time during service, retirement, or correspondence with Defence/CSC was I advised this would be the outcome of commutation.
- This goes **beyond** repayment of the lump sum—it is an enduring penalty that cannot be justified by administrative discretion or statutory wording.

- Such an outcome is inherently unfair and would not withstand scrutiny under any reasonable policy framework.

2. Inequity Between Commuting and Non-Commuting Members

A manifest disparity exists between members who commute and those who do not. Commuting members face ongoing reductions not experienced by non-commuters.

- This results in two classes of members receiving **unequal outcomes** despite identical service and contribution histories.
- Defaulting to **Schedule 3**—with its actuarially fair, time-bound repayment structure—would correct this disparity.
- The current approach breaches basic principles of equity and fairness in public administration – see PGPA Act 2013 ss 15 and 16.

3. Improper Interpretation of Section 24(3) Overriding Schedule 3

Section 24(3) should not be read to override or negate the actuarial framework of Schedule 3. The interpretation offered in the RfD relies heavily on two words—“**on or over**”—to justify indefinite pension reductions.

- This misinterprets the Act’s structure and improperly elevates a minor phrase over a comprehensive statutory schedule.
- As per section 15AB(1)(b) of the Acts Interpretation Act 1901, extrinsic material must be used where statutory language yields **absurd or unreasonable outcomes**. That threshold is met in my case.

III. Legal and Constitutional Concerns

A. Inconsistent Application of Statutory Schedules

- **Schedule 1** (retirement pay) and **Schedule 2** (retirement age) are applied as binding. Yet elements of **Schedule 3**, which governs repayment methodology, are disregarded. This is an internal inconsistency that undermines statutory coherence.
- **Section 23(2)** and **Section 24(3)** both refer to their corresponding Schedules. The selective application of Schedules is legally indefensible.
- The two words “on or over” cannot override an entire actuarial structure (Schedule 3) which prescribes a finite repayment term.

B. Breach of Section 129 – Unlawful Assignment of Pension

Section 129 of the DFRDB Act makes clear that pensions are inalienable and non-assignable. The indefinite reduction to my pension, post-repayment, constitutes an effective assignment of my pension to the Commonwealth.

- I consented only to a finite repayment consistent with Schedule 3. The continuing reduction is neither consensual nor lawful.
- This breaches the protective purpose of s129 and is likely ultra vires the Act.

C. Constitutional Breach – Acquisition of Property Without Just Terms (s51(xxxi))

- My commuted lump sum was funded largely from after-tax personal contributions. This is private property.
- Section 66(4) of the DFRDB Act explicitly disqualifies employer attribution based solely on accrued interest.
- Forcing repayment plus continued reduction—without compensation—constitutes an acquisition without just terms under section 51(xxxi) of the Constitution.
- No statutory framework justifies this acquisition, and no “just terms” exist as long as reductions continue past repayment.

IV. Further Legal Support – The Necessity of Applying Schedule 3

Fact 1: Section 24(1) allows for commutation of a **portion** of retirement pay. Permanent reductions negate this intent—amounting to forfeiture over the entire pension.

Fact 2: Section 24(2B)’s formula, when paired with Schedule 3, caps commutation at 5 times the value. Ongoing reduction violates this cap and thereby the intent of the provision.

Fact 3: In *Reynolds v DFRDB Authority (2001)*, the Tribunal restricted itself to factual matrices and deferred to statutory interpretation per sections 15AA and 15AB of the Acts Interpretation Act. The RfD dismisses this precedent, though it clearly establishes Schedule 3 as critical to interpreting outcomes like mine.

- **Ambiguity:** The fact that DFRDB members have continuously raised this issue over decades suggests the law is neither clear nor fair.
- **Unreasonableness:** A \$170,000 loss above the lump sum repayment is plainly disproportionate and unjust.

V. Conclusion and Remedy Sought

In light of the above, I respectfully request:

1. **Reassessment** of the Reasons for Decision, addressing each material issue and argument raised;
2. **Acknowledgement** of the legal and constitutional inconsistencies identified, including those under:
 - o DFRDB Act: s24(3), Schedule 3, s129, s66(4)
 - o PGPA Act: s15 and s16
 - o Australian Constitution: s51(xxxi)
3. Rectification under the CDDA Scheme to prevent financial and legal harm resulting from the permanent reduction of my pension.

I remain open to resolving this matter through lawful and fair administrative channels. However, the inequities outlined above cannot be dismissed through narrow or inconsistent statutory interpretation.

Yours sincerely,
David Jones



Australian Government
Department of Defence

Directorate of Director Employment
Law and Discretionary Claims
Defence Legal
CP2-4-023
PO Box 7911
CANBERRA BC ACT 2610

COMMITTEE EVIDENCE PACK – ITEM 4 – SECOND REASONS FOR DECISION

Mr David Jones

[REDACTED]

Dear Mr Jones

I am writing to address your requests of 2 and 4 July 2025 for a reassessment of the decision about your claim under the Compensation for Detriment caused by Defective Administration (CDDA) scheme dated 2 July 2025. Thank you for raising your concerns, which generally relate to the reduction in your pension resulting from commutation of a lump sum under the *Defence Force Retirement and Death Benefits Act 1973* (the DFRDB Act).

Let me begin by acknowledging your disappointment because you consider you were misled about the effect of commutation in the DFRDB scheme. I can see from your response that you do not agree with the way that the Commonwealth has interpreted or applied the legislation.

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 and that the defective administration has directly caused you to suffer a financial loss. Decisions are made based on information provided by you, by Defence and by the Commonwealth Superannuation Corporation (CSC). The Deputy Prime Minister, the Hon Richard Marles MP, who is also the Minister for Defence, has authorised me to make some decisions under the CDDA scheme on his behalf.

After consideration of your claim and your emails of 2 and 4 July 2025, I affirm that compensation is not payable in the circumstances of your claim. These are the reasons for my decision, supplementary to the original reasons in my decision dated 2 July 2025.

REASONS

You commuted part of your DFRDB pension when you retired. You say that no Defence or CSC official who you spoke to about your pension explained that it would be reduced permanently following commutation. You have not indicated whether you read the DFRDB Book for the DFRDB scheme at the time you signed the election. The DFRDB Book¹ provided an explanation of the meaning of commutation:

¹ Both versions of the DFRDB Book dated September 2007 and December 2010.

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“Commutation is the lump sum prepayment of part of your future retirement benefit. If you have retired and are entitled to retirement benefits, you can elect to commute (that is exchange) a portion of that future retirement benefit for a lump sum...

Note: Commutation of a benefit results in a permanent reduction in your retirement benefit based on your life expectancy... Your retirement benefit will not be set to the pre-commutation rate, even if you attain or exceed your life expectancy.”

While it is not clear whether you read this at the time of your commutation decision, you appear to be saying that even if you had read this, the explanation was not sufficiently clear to have given you an understanding that the pension reduction would be permanent. Your understanding was that the commutation lump sum was an interest-free loan and your pension would be restored to the pre-commutation amount (indexed) when the commutation lump sum was ‘recovered’, and that this would happen at an age specified and applicable to you, in the table in the DFRDB Act.

Many Defence members held the same misunderstanding as you. We reviewed some of the historical information products provided to members and I agree the earlier products may not have alerted misinformed members that they were wrong. However, this is not the case with the more recent information, which has been modified to avoid misunderstanding.

You have explained that you consider the outcome of a commutation election under the DFRDB Act as drafted to be unfair.

You have also explained that you consider that section 24(3) of the DFRDB Act has been misinterpreted. Unfortunately, your view was not been supported in the most recent case of *McKenzie v Commonwealth Superannuation Corporation*² (*McKenzie*) nor does was it supported in the earlier case of *Reynolds and Defence Force Retirement and Death Benefits Authority*.³

I note that you have raised some Constitutional arguments. I do not think it necessary or appropriate to engage with them here, as in my view that would be a matter for a Court to consider, not a decision-maker under the CDDA scheme. I would refer you to the decision in *McKenzie*, which did not identify these concerns when it closely examined section 24(3) of the DFRDB Act.

The other critical test under the CDDA Scheme is whether you sustained detriment as a result of the defective administration. The Ombudsman’s report⁴ addressed this is issue at length. I will repeat here the critical passage from the foreword to the Ombudsman’s report:

“Although disappointing and frustrating, missing out on a benefit to which a person is not actually entitled under the law does not necessarily mean that the person suffered financial detriment. As a matter of principle, compensation should only be paid where poor administrative practices cause actual financial loss.

I wanted to determine whether those who were given misleading information were likely to have suffered overall financial loss as a result of their choice. I engaged two expert actuaries, the Australian Government Actuary (AGA) and KPMG to independently model

² *McKenzie v Commonwealth Superannuation Corporation* [2023] FCA 396.

³ *Reynolds and Defence Force Retirement and Death Benefits Authority* [2001] AATA 599 [2001] AATA 599 (28 June 2001).

⁴ See: https://www.ombudsman.gov.au/_data/assets/pdf_file/0035/286487/FINAL-DFRDB-investigation-report.pdf.

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a number of scenarios to compare the real financial results of commuting and not commuting—that is, the two options that were actually available.

In all of the scenarios we modelled, using conservative assumptions about how retiring members might have used the lump sum, commutation has resulted in a beneficial overall financial outcome for DFRDB members to date. This is particularly true for DFRDB members who retired in the years before 2010. While some of those who discharged in recent years may be able to make the case that at some time in the future they could be financially worse off having commuted, I am satisfied these decisions to commute were made after CSC improved its publications to explicitly advise that the commutation reduction is permanent.

I am satisfied the decision to commute is not likely to have, of itself, caused financial loss, relative to the only other option that was available at law. I have therefore concluded that it is not appropriate to recommend compensation in a broad sense.”

The Ombudsman could not exclude the possibility that there may be outlying cases in which financial loss might have occurred and said those should be dealt with on a case by case basis under the CDDA scheme. We invited you to explain how your situation might have differed from others who commuted part of their pension in the same period as you. However, the context that you have explained, about applicable taxation rates and the interaction of DFRDB benefits with alternative primary sources of income, does not support any specific detriment, noting that paying tax is the responsibility of all who earn a taxable income.

For the reasons set out in my earlier decision to you dated 2 July 2025, and added to above, compensation is not available to you under the CDDA scheme. I understand this was not the outcome you were hoping for. Defence and CSC have already taken on board your criticisms of the DFRDB scheme and the misinformation to members about their entitlements over a long period, which were also expressed by many members in the course of the Ombudsman’s investigation. As you are aware, an official apology was issued on 3 December 2019 by the Chief of the Defence Force and the Secretary of Defence. I can only add to their voices that I am very sorry this occurred and you were misled for so long.

REVIEW RIGHTS

More information about the CDDA scheme can be found at <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>.

If you are not satisfied with any of Defence’s actions in response to your CDDA claim, you may seek a review by the Commonwealth Ombudsman. The Ombudsman can investigate the administrative actions and decisions of government agencies, impartially and informally, at no cost to the complainant. The Ombudsman may make recommendations to the agency, but has no power to substitute a decision. The Ombudsman may also decide not to investigate a complaint, and in such cases will provide an explanation to the complainant for such a decision. The Ombudsman’s office can be contacted on 1300 362 072 or you can lodge an online complaint at <http://www.ombudsman.gov.au/making-a-complaint/australian-defence-force>.

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If you have any questions about this claim, the contact officer is Lauren Armstrong, who can be contacted by email to dl.deldc@defence.gov.au

ACCESS TO COUNSELLING

If this issue has caused you distress. I encourage you to use the support that is available from your treating practitioners. Alternatively, the Open Arms Veterans' Families' Counselling Service (formerly the Veterans' and Veterans' Families Counselling Service (VVCS)) provides counselling at no charge by calling 1800 011 046. Open Arms may also be able to refer you to other support services, if required.

Yours sincerely

Director Employment Law and Discretionary Claims

COMMITTEE EVIDENCE PACK – ITEM 5 – RESPONSE TO RFD No. 2 SEEKING KEY ISSUES TO BE FULLY ADDRESSED AND CONVERTING TO FINANCIAL HARM CAUSED METHODOLOGY TO PREVENT FURTHER NO IMPACT STATEMENTS

DFRDB Commutation: Misapplied and Legally Defective

Thank you for your response dated 31 July 2025. While I acknowledge your position, a valid Reasons for Decision (RfD) under administrative law must respond directly to the key arguments and evidence raised, and clearly show how the legislation was interpreted and applied. That has not occurred in either of the received responding RfDs.

I want to reiterate the situation here because I believe this blatant clouding of an issue is primarily motivated by systemic obfuscation or avoidance. Creating a complex legal inconsistency that results in a permanent reduction of my retirement pay has no lawful foundation under the DFRDB Act. Specifically, the phrase “on and after” in section 24(3) has been interpreted in past cases (e.g. *McKenzie* and *Reynolds*) as authorising a permanent reduction to pension payments. However, this reading is fundamentally flawed because it conflicts directly with:

- section 24(1), which only provides for partial commutation,
- section 24(2B), which limits the maximum lump sum commutation to five times the annual rate of retirement pay (i.e. 40%), not the entire pension at 100%, and
- Schedule 3, which provides the only legally permissible method for calculating the impact of commutation and actuarial life expectancy factors.

Schedule 3 is merely an administrative annex to the DFRDB Act.

If the Government intended a permanent reduction of pensions, it could have transparently enacted that intent by periodically updating Schedule 3, such as by applying contemporary ABS life expectancy data from 2007, for example. A simple amendment to the annex, not the legislation, and a corresponding budget adjustment would achieve that lawfully. Instead, the Government has relied on just two ambiguous words, “on and after”, within the body of the Act to justify a permanent reduction, thereby distorting all commuted pensions. Notably, this same legalese appears nowhere in the DFRDB booklet provided to members.

What does appear in the DFRDB booklet, however, are the words ‘you can elect to commute (that is exchange)’ which in legal and superannuation terms means trade one value for an equivalent value. Unfortunately, the government is unlikely to articulate that particular contentious understanding.

The entire structure of commutation under the DFRDB Act is contingent on Schedule 3 being applied in full, including its coded time-based factors and expected life (EL) assumptions. The only permissible EL for calculating any pension reduction is the one provided by the factor in Schedule 3, which determines a comparatively temporary adjustment to the member’s pension because it is obsolete. This factor reflects a finite period over which the lump sum is notionally repaid via reduced pension payments, based on achieving expected life years. These life years are not to be found anywhere else in the Act. Therefore, Schedule 3 cannot be applied partially or reinterpreted in isolation to justify a permanent reduction. If any part of Schedule 3 is omitted, or if its actuarial basis is ignored or selectively applied, then the calculation lacks a lawful foundation and the commutation fails in legal terms.

Interpreting the term “on and after” in s 24(3) as supporting a permanent reduction without this full application of Schedule 3 severs the mathematical and legislative basis for undertaking commutation. In essence, the Commonwealth is enforcing a lifetime pension cut without a valid EL

calculation or any mechanism to track whether the notional repayment has been completed. This is in direct contradiction to sections 24(1) and (2B), and it introduces a structural flaw into the administration of the scheme.

In short, there is no lawful commutation without full application of Schedule 3. The current arrangement unlawfully converts a capped partial commutation into a permanent forfeiture, and applies no actuarial life expectancy boundary, contrary to the structure and limits of the Act.

Moreover, Schedule 3's 1960s era factors deliberately overcharge veterans by 38-42% compared to a fair 2007 actuarial standard. By assuming that veterans die at age 68 (1960 ABS life expectancy) instead of age 81, 2007 data, and applying an obsolete 4% discount rate (vs. today's ~2.5%), the Commonwealth forces veterans to repay \$140 - \$150 for every \$100 commuted. Defence knows this under FOI 382/22/23 but has not taken action to update the actuarial table to save costs. It is Defence holding the risk in an unfunded pension scheme, not members.

Confusion is provided in the DFRDB booklet

The DFRDB booklet creates significant confusion by offering an internally contradictory definition and note on commutation. It first states that commutation is a *"lump sum prepayment of part of your future retirement benefit,"* implying a lawful **exchange** that reflects a **trade of present value** for an **equivalent capped portion of future value**. However, it then asserts that this exchange results in a *"permanent reduction"* of retirement pay based on *"your life expectancy"*, with no restoration even if the member lives longer than expected.

This is fundamentally misleading. The term *"life expectancy"* has no independent statutory definition in the DFRDB Act and is not specific as to whether the basis is on an individual, medical, or ABS life tables. The only legislated source for determining life expectancy within the Act is Schedule 3, which assigns an Expectation of Life (EL) value derived from fixed actuarial factors based on age and rank at retirement. So, the only possible life expectancy to be achieved is the one in Schedule 3. Therefore, the application of a permanent reduction, as stated in the booklet, contradicts both the logic of the defined exchange and the legislated repayment mechanism. Presenting the arrangement as both a fair exchange and an indefinite forfeiture creates confusion, misleads members, and misapplies the Act.

My claim is about applying the DFRDB Act correctly. That sits squarely within your CDDA responsibilities. I therefore request that this serious legal and actuarial misapplication be recognised as defective administration under the CDDA Scheme, and that a properly reasoned decision be issued that addresses these inconsistencies in full.

References:

- Defence Force Retirement and Death Benefits Act 1973 (Sections 24, 129, and Schedule 3)
- Acts Interpretation Act 1901 (Sections 15AA, 15AB)
- Public Governance, Performance and Accountability Act 2013 (Sections 15-17)
- MRCA 2004 s52
- Current interpretation is not supported by AASB 119, AGA actuarial reviews, or Institute of Actuaries standards.

1. Legal Basis for Claim

CDDA Regulation 12(1)(b) — Compensation for loss due to defective administration

A. Statutory Breaches – DFRDB Act 1973

- **Section 24(1) – Misinterpretation:** The Act permits commutation of “a portion” of retirement pay. A permanent cut to retirement pay (pension) contradicts this outcome. A lifelong reduction cannot be construed as “partial”; this is a clear ambiguity and an overreach.
- **Section 24(1) – Miscalculation and Use of Obsolete Data:** Schedule 3 continues to apply outdated 1960 mortality tables, jacking up lump sum repayments by 30 - 40%, despite clear and current ABS 2007 life expectancy data showing Australians now live significantly longer. At age 51, this misalignment inflated the annual reduction to my pension by \$5,153, resulting in a benefit loss of \$92,754 over time (YTD). This constitutes a systemic actuarial miscalculation that effectively transfers an unlegislated financial windfall to the Commonwealth, without consent, authority, or fairness.
 - The Commonwealth’s refusal to revise these flawed inputs breaches its duties under the *PGPA Act 2013* (ss 15-16) to ensure public money is used properly and calculations are accurate. Schedule 3 can only be an intentional over-recovery tool because it is based on obsolete life data; otherwise, routine actuarial updates would and should have been applied.
- **S24 (3) Malpractice:** The phrase, payment ‘on and after’ is being wrongly interpreted as authorising a permanent reduction, turning a time-based repayment into a lifetime penalty. This interpretation introduces ambiguity and significant absurdity while defying parliament’s intent for fair veteran benefits. As confirmed in *Sztal v Minister for immigration [2017 HCA 34]*, and *Cooper Brooks V Cth [1981] HCA 26*, provisions must be read in a way that gives coherent meaning to the whole Act and is beneficial to the recipient; not one that creates internal contradiction. A permanent cut is inconsistent with both partial and capped commutation in sections 24(1) and 24(2B), and ignores the finite time adjusted factors within Schedule 3. No other external non-statutory actuarial life factors can be substituted.
- **Section 24(2B) – Breach of Cap**

The Act sets a clear limit: commutation is capped at five times annual retirement pay or 40%. That is the figure I elected, and no other option existed other than lesser figures. A permanent reduction in retirement pay means the member commutes 100% of pension, breaching the statutory limit. The law allows either a capped, time-limited reduction unavoidably via Schedule 3 or a lifetime cut; not both. Treating capped commutation as an open-ended forfeiture is clear legal overreach.

B. Breach of *Public Governance, Performance and Accountability Act 2013*

- **Section 15 – Improper Use of Public Money**

Continued reliance on obsolete life expectancy tables in conjunction with permanent pension reduction allows the Commonwealth to over-recover pension amounts, breaching its financial duty to use public resources properly. This reflects unjust enrichment and pension liability mismanagement.
- **Section 16 – Failure to Ensure Accuracy**

Relying on 1960s mortality data in 2025 violates the duty to use accurate, evidence-based information. Schedule 3 must either revert pensions after the recovery period or else the actuarial input must support permanent reductions. You can’t stack obsolete assumptions on top of permanent reductions and ignore both current data and financial accountability standards. This is not just outdated, it's Robodebt on steroids, and it’s legally and actuarially indefensible.
- **Purpose of the Act**

The purpose of the Defence Force Retirement and Death Benefits Act 1973 (DFRDB Act) is to provide retirement and death benefits to eligible members of the Australian Defence Force. As such, the Act is drafted entirely in the context of meeting member entitlements and needs, and it imposes corresponding obligations on the Commonwealth and the administering authority (now CSC). The legislation does not confer any benefit, privilege, or financial advantage upon the Commonwealth or CSC itself. Its construction is wholly for the protection and provision of members' interests, and must be interpreted and administered accordingly.

C. Deprivation of Earned Entitlements

My DFRDB pension is deferred compensation, not a revocable allowance. As confirmed in *Nolan v Kerry Canada (2016 SCC 15)*, military pensions are earned rights. A permanent reduction in retirement pay on the back of obsolete life factors, unlawfully strips guaranteed value and converts a secure entitlement into a survival-dependent outcome, costing members a small fortune. This is logically and morally unfair and undermines trust in the Commonwealth's obligation toward veterans.

2. Conclusion and Application of the Acts Interpretation Act

Taken together, the above breaches, misinterpretations, and malpractice represent a systemic failure to apply the DFRDB Act in a manner consistent with its intent, purpose, and legal integrity. The application of permanent reductions contradicts the Act's plain intention, violates statutory caps, misuses outdated data, misleads by committing a faux exchange, and results in unequal treatment of veterans with identical service. These outcomes offend the principles of fairness and equity embedded in both the PGPA Act and administrative law.

Under the *Acts Interpretation Act 1901* (Cth), where legislative provisions are unclear or open to multiple meanings, courts and decision-makers are required to adopt an interpretation that avoids unjust or unreasonable outcomes and best advances the purpose and intent of the legislation (sections 15AA and 15AB). Interpreting the DFRDB Act to require the use of current actuarial data, which imposes a proportional pension reduction, remains the only construction that respects legislative purpose, ensures consistency across the Act, and protects the integrity of veterans' entitlements.

I therefore request that this interpretation be properly considered and addressed in a lawful, fair, and compliant Reasons for Decision, in accordance with the above findings and statutory obligations.

2. Quantified Losses

Loss Type	Assumptions	Amount Claimed
Nominal	Annual Gross Pension (Post-Commutation): \$65,054 Commuted Lump Sum: \$349,351 Schedule 3 EL Used in Calculation: 22.13 years (based on 1960 mortality tables) ABS 2007 EL at Age 51: 32.84 years Difference in EL: 10.71 years longer life expectancy Annual Pension Reduction (as currently calculated using 22.13 EL): $\$349,351 \div 22.13 = \$15,786$ Correct Pension Reduction Using ABS 2007 EL: $\$349,351 \div 30.0 = \$11,645$	Pension start date: 13 Dec 2010 Current age: 66 Elapsed time: ~14 years LE Schedule 3: 22.13 years ABS 2007: ~30 years (est.) YTD Losses Total Pension Loss: \$57,977 Excess tax paid (30%): \$17,393 Total Detriment to date: \$75,371
Nominal		Projected DFRDB losses (Aug 2025 – 2041) Based on ABS 2007 EL (30 years), from age 66 to 84 Remaining life expectancy in years ~ 18 years

		Projected pension loss: (2025 – 2041): \$74,542 Projected excess tax paid @ 30%: \$22,362 Total future detriment (2025 – 2041): \$96,905
Nominal		Total Nominal Detriment (past + future) \$172,277
Distress Payment	MRCA 2004 s52	\$15,000

3. Evidence Package

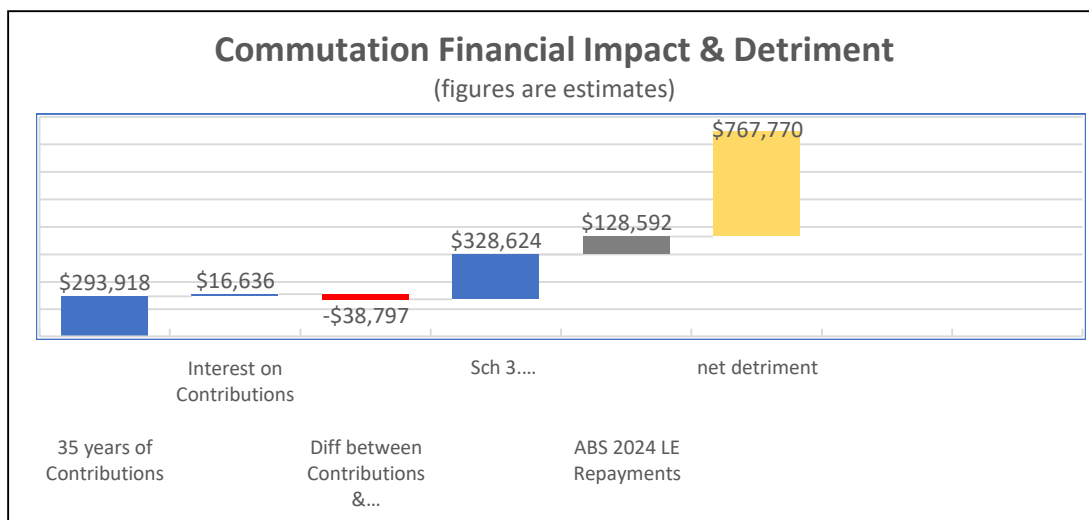
- Due to reliance on obsolete 1960 life expectancy data (EL 22.13), my pension has been reduced by \$5,153 per annum, more than it would be under ABS 2007 data (EL 32.84). This results in an unjustified excess tax burden of approximately \$1,546 annually at the current marginal tax rate of 30%. This constitutes a financial detriment caused by defective administration through the continued use of outdated actuarial inputs in the application of the DFRDB Act. Precedents already exist under FOI 382/22/23 to remedy this situation.
- In addition to the losses already incurred, I will continue to experience compounding financial harm for the remainder of my life expectancy. Based on ABS 2007 life tables, my remaining actuarial life expectancy from age 66 is approximately 14 years. At the current annual pension shortfall of \$5,153, the projected future loss to 2041 totals approximately \$72,142, with an additional \$21,643 in excess tax paid due to the inflated reduction. This results in a future financial detriment of \$93,785. These losses arise solely because the Commonwealth continues to apply outdated mortality data from 1960 and enforces an unlawful permanent pension reduction that exceeds the statutory cap. No legitimate actuarial, legal, or fiscal rationale justifies this continuing harm. It is neither fair nor lawful to allow this detriment to persist when corrective action is both possible and necessary.

Reference to MRCA Section 52 – Obligation to Act with Integrity

- Section 52 of the *Military Rehabilitation and Compensation Act 2004* (MRCA) states that the Commission must "provide adequate, accurate and timely information to persons about their entitlements, responsibilities and obligations under this Act." While the DFRDB scheme is governed by separate legislation, this provision reflects a broader Commonwealth obligation to deal fairly, transparently, and equitably with veterans across all schemes.

The persistent use of outdated actuarial data, the failure to disclose the true implications of commutation in plain terms, and the continued misrepresentation of 'exchange' as a permanent forfeiture directly contradict the spirit of this obligation. The stress and disadvantage imposed on affected veterans stem not only from legislative misapplication but from a longstanding pattern of inadequate information and institutional resistance to correction. In this context, Section 52 serves as a relevant benchmark for ethical administrative behaviour, even if not directly binding on the DFRDB authority.

DFRDB Commutation Financial Impact and Net Detriment



The above chart illustrates the substantial financial detriment suffered by a DFRDB member due to the misapplication of commutation and outdated actuarial assumptions. Over a 35-year career, a member contributes \$293,918, with an additional \$16,636 in imputed interest. This amount is reclassified as Government funding with an additional amount of \$38,797 kicked in to provide a lump sum of \$328,624. Lump sum repayments calculated under Schedule 3 life expectancy factors amount to \$328,624, significantly exceeding the fair value based on current ABS 2007 life expectancy (\$128,592). The cumulative net detriment is therefore \$767,770, highlighting the excessive and unlawful over-recovery of benefits under current administrative practice.

4. Resolution Demand

Per CCDA policy Directive 8.2, I require

Retrospective resolution

The misapplication of DFRDB commutation provisions has caused measurable and ongoing financial harm. To date, I have incurred a net financial detriment of \$54,105, comprising:

- \$77,295 in lost gross pension, and
- \$21,643 in overpaid tax,

arising from reliance on an obsolete 1960 life expectancy table and misinterpretation of the DFRDB Act 1973. The scheme unlawfully treats a capped, finite commutation, explicitly limited to five times annual pension, as the basis for a permanent pension reduction, without tracking repayment or updating actuarial assumptions. Based on current ABS 2007 life expectancy data and the statutory design of Schedule 3, this financial harm will continue to compound unless remedied.

Projected future losses to age 84

The relevant life expectancy based on ABS 2007 tables amount to a further \$93,785 in gross pension, bringing the total prospective financial detriment to \$214,365. In addition to this monetary harm, the issue has caused significant and prolonged psychological stress, exacerbated by the consistent dismissal of legitimate concerns raised by affected veterans and their advocates since the scheme's inception.

This systemic failure contradicts the Commonwealth's duty under section 52 of the *Military Rehabilitation and Compensation Act 2004*, which requires agencies to provide accurate, timely, and adequate information about veterans' entitlements. While this statutory obligation may not apply directly to DFRDB, it nonetheless embodies a fundamental standard of care and transparency that all Commonwealth entities—including CSC and the Department of Defence—are reasonably expected to uphold when dealing with veterans.

A fair and lawful retrospective resolution is not only justifiable under CDDA grounds but is also necessary to restore trust, correct systemic administrative failure, and ensure that DFRDB recipients are treated with the integrity and equity owed to them under Australian law.

Thank you for your consideration

Dave Jones

4 August 2025

Updated 7 August 2025

COMMITTEE EVIDENCE PACK – ITEM 6 – FOLLOWING UP STATEMENT CONVERTING ISSUES INTO ARGUMENTS TO SUPPORT UNDERSTANDING

The current application of the DFRDB commutation rules results in veterans with identical service records receiving significantly different lifetime benefits. In my case, the difference amounts to approximately **\$170,000**. This outcome raises serious concerns under the *Public Governance, Performance and Accountability Act 2013* (PGPA Act), which requires the ethical, proper, and fair use of public resources (sections 5 and 15).

Applying a permanent reduction to a veteran's pension, based on a one-time election and misunderstood commutation rules, fails to meet the required standards of integrity and accountability under the PGPA Act. A fairer and more appropriate interpretation would treat the life expectancy factor in Schedule 3 as defining a time-limited adjustment, after which the full pension would resume. This would ensure consistent treatment of members and uphold principles of equity and good public governance.

Obligations for Reasons for Decisions (RfDs)

Under administrative law, a valid Reasons for Decision (RfD) must address the central arguments and supporting evidence presented by the individual, and explain how relevant statutory provisions were interpreted and applied. On two separate occasions, the RfDs I received did not meet this standard. They failed to engage with my key points or explain how the legislation supports the outcome imposed. I am therefore restating my arguments and request a compliant and substantive RfD that properly addresses the legal and interpretive issues below.

Purpose of the DFRDB Act

The purpose of the DFRDB Act is to provide retirement and death benefits to members of the Defence Force. Permanent reductions to pensions for those who commute part of their benefit result in a financial penalty not connected to cost recovery or equity, but solely to benefit the Commonwealth. This is not supported anywhere in the Act and contradicts the stated purpose of the legislation.

Main Provisions and Arguments

Provision 1 – Section 24(1)

"A person who is, or is about to become, entitled to retirement pay may, by notice in writing given to CSC, elect to commute a portion of his or her retirement pay..."

Argument:

The phrase "a portion of his or her retirement pay" is clear. It does not suggest a permanent reduction of the entire pension over the member's lifetime. The provision only makes full sense when read in conjunction with the time-limited repayment structure set out in Schedule 3. There is no justification in the Act for members who commute to receive significantly less than their peers with the same service record.

Provision 2 – Section 24(2B)

The formula limits the commuted amount to no more than five times the annual retirement pay (a maximum of 40%).

Argument:

This establishes a finite limit to the amount that may be commuted. However, by applying a permanent retirement pay reduction, the government effectively recovers far more than 40% over the course of a member's life. In some cases, this is equivalent to commuting 100% of the pension,

despite the statute capping the amount that can be taken upfront. This contradicts the legislative intention of a limited and proportionate commutation.

Provision 3 – Section 24(3)

Defines the payment of the lump sum and the reduction to the retirement pay using a life expectancy factor from Schedule 3.

Argument:

This provision links the lump sum commutation to a reduction calculated using the life expectancy factor. The Act does not state that this reduction is permanent or lifelong. The fact that the reduction is calculated using a factor expressed in years implies that it is time-limited. The term *“is the amount per annum that, but for this paragraph...”* modifies what is payable “on and after” the election. It does not state that the reduction is indefinite. If Schedule 3 were merely a divisor for a lump sum with no role in limiting the period of reduction, its inclusion would be unnecessary. Yet the Act includes it deliberately, and its structure supports a temporary reduction period, not a lifelong penalty.

Systemic Inequity Created by Current Interpretation

Veterans who commute are subject to a permanent reduction based on Schedule 3’s life expectancy factors. However, the reduction does not end once that life expectancy is exceeded. The reduction continues until death, regardless of whether a member lives well beyond the life expectancy used to calculate it. This results in many members losing tens or even hundreds of thousands of dollars compared to peers who did not commute. The Commonwealth benefits financially from this practice, despite the fact that the actuarial liability associated with the commutation does not justify ongoing reductions beyond the Schedule 3 timeframe.

The result is a clear and measurable inequity, where one group of members is penalised indefinitely simply for choosing to access a portion of their benefit earlier, under misunderstood or misleading circumstances.

Conclusion and Request

The application of a permanent reduction conflicts with:

- The plain reading of key provisions of the DFRDB Act;
- The ethical principles outlined in the PGPA Act; and
- The principles of fair and equitable treatment of service members.

I request that these arguments be properly addressed in a compliant Reasons for Decision that identifies and applies the relevant statutory provisions, engages with the legal and interpretive points raised, and justifies the outcome in light of the Act's purpose and the administrative duties imposed by the PGPA Act.

☐ **Section 15:** Requires accountable authorities to **promote the proper (efficient, effective, economical and ethical) use of public resources.**

☐ **Section 18:** Officials must **comply with the duties of acting honestly, in good faith, and with care and diligence.**

☐ Collecting money without a lawful or justifiable purpose may violate this obligation and amount to misuse of public money.

- **Section 10(1)(b):** The APS is committed to **ethical behaviour and accountability.**
- **Code of Conduct (Section 13):** Requires employees to act with **integrity, honesty, and in accordance with the law.**

Collecting money without a purpose may breach the Code of Conduct if it's not tied to a lawful duty or violates public trust.

COMMITTEE EVIDENCE PACK – ITEM 7 – FOLLOW UP TO A FOLLOW UP STATEMENT CONVERTING CONTEXT INTO LEGAL LENS

DFRDB Commutation: Misapplied and Legally Defective

Thank you for your response dated 31 July 2025. While I acknowledge your position, a valid Reasons for Decision (RfD) under administrative law must directly address the key arguments and evidence presented, and clearly explain how the legislation was interpreted and applied. The responses I've received so far fail to meet this standard. They do not engage with my statutory claims or demonstrate how the DFRDB Act justifies the outcome applied to my circumstances, despite 33 years of contributions and substantial repayment of the lump sum.

The Ombudsman's modelling is not law. It is not part of the DFRDB Act and cannot override the Act's text, purpose, or limits. Administrative decisions must be made in accordance with legislation, not speculative financial comparisons.

My claim concerns the proper application of the DFRDB Act, not any request to change the law. The matter is squarely within your CDDA remit, and I am now restating my claims and requesting a legally compliant RfD that directly responds to the following breaches.

References:

- Defence Force Retirement and Death Benefits Act 1973 (Sections 24, 129, and Schedule 3)
- Acts Interpretation Act 1901 (Sections 15AA, 15AB)
- Public Governance, Performance and Accountability Act 2013 (Sections 15-17)

1. Legal Basis for Claim

CDDA Regulation 12(1)(b) — Compensation for loss due to defective administration

A. Statutory Breaches – *DFRDB Act 1973*

- **Section 24(1) – Misinterpretation:** The Act permits commutation of "a portion" of retirement pay. A permanent cut to retirement pay (pension) contradicts this outcome. A lifelong reduction cannot be construed as "partial"; it is an ambiguity and overreach.
- **Section 24(1) – Miscalculation and Use of Obsolete Data:** Schedule 3 continues to apply outdated 1960 mortality tables, despite clear and current ABS 2024 life expectancy data showing Australians now live significantly longer. At age 51, this misalignment inflates the annual reduction to my pension by \$27,066, resulting in a benefit loss of \$177,635 over time. This constitutes a systemic actuarial miscalculation that effectively transfers an unlegislated financial windfall to the Commonwealth, without consent, authority, or fairness.
 - o The Commonwealth's refusal to revise these flawed inputs breaches its duties under the *PGPA Act 2013* (ss 15–16) to ensure public money is used properly and calculations are accurate. Schedule 3 was not intended to become a permanent over-recovery tool based on 60-year-old life data.
- **S24 (3) Malpractice:** The phrase, payment 'on and after' is being wrongly interpreted as authorising a permanent reduction, turning a time-based repayment into a lifetime penalty. This interpretation introduces ambiguity and absurdity while defying parliament's intent for fair veteran benefits. As confirmed in *Sztal v Minister for immigration* [2017 HCA 34], and *Cooper Brooks V Cth* [1981] HCA 26, provisions must be read in a way that gives coherent

meaning to the whole Act and is beneficial to the recipient; not one that creates internal contradiction. A permanent cut is inconsistent with both partial and capped commutation in sections 24(1) and 24(2B), and ignores the modifying finite time adjusted factors within Schedule 3. Note that no other Schedule is used piecemeal in this fashion.

- **Section 24(2B) – Breach of Cap**

The Act caps commutation at five times annual pay (a 40% limit). Permanent reductions apply to 100% of the commuted value, breaching that statutory ceiling. The law can allow either a 40% one-off commutation or a lifetime reduction, not both. This is an obvious ambiguity.

B. Breach of *Public Governance, Performance and Accountability Act 2013*

- **Section 15 – Improper Use of Public Money**

Continued reliance on obsolete life expectancy tables allows the Commonwealth to over-recover pension amounts, breaching the duty to use public resources properly.

- **Section 16 – Failure to Ensure Accuracy**

Applying 1960s actuarial data in 2025 fails the obligation to base decisions on accurate, evidence-based information. This is inconsistent with modern actuarial practice and financial accountability standards.

C. Deprivation of Earned Entitlements

My DFRDB pension is deferred compensation, not a revocable allowance. As confirmed in *Nolan v Kerry Canada (2016 SCC 15)*, military pensions are earned rights. A permanent reduction unlawfully strips guaranteed value and converts a secure entitlement into a survival-dependent benefit. This undermines trust in the Commonwealth's obligation toward veterans.

2. Conclusion and Application of the Acts Interpretation Act

Taken together, the above breaches represent a systemic failure to apply the DFRDB Act in a manner consistent with its intent, purpose, and legal integrity. The application of permanent reductions contradicts the Act's plain intention, violates statutory caps, misuses outdated data, and results in unequal treatment of veterans with identical service. These outcomes offend the principles of fairness and equity embedded in both the PGPA Act and administrative law.

Under the Acts Interpretation Act 1901 (Cth), where provisions are ambiguous, courts and decision-makers must adopt a construction that avoids absurd or unjust outcomes and promotes the purpose and intent of the legislation (sections 15AA and 15AB). Applying Schedule 3 as a finite adjustment period, rather than authorising a lifelong penalty, is the only interpretation that aligns with legislative intent, maintains coherence across provisions, and upholds fair veterans' entitlements.

I therefore request that this interpretation be properly considered and addressed in a lawful, fair, and compliant Reasons for Decision, in accordance with the above findings and statutory obligations.

Additional arguments

- **Statutory Construction and Legislative Intent:** Purposive interpretation (Acts Interpretation Act 1901, s15AA) requires reading statutes in light of the DFRDB Act's Title. The purpose of commutation was to allow access to a portion of retirement pay, not to impose a lifetime

penalty. The word “portion” in s24(1) inherently implies a finite exchange. A permanent reduction equates to surrendering the *entire* pension over time, violating this intent.

- **Temporal Logic of Schedule 3:** Schedule 3 provides actuarial factors based on life expectancy at the time of commutation. If the reduction is calculated based on an expected lifespan, then once that lifespan is exceeded, the rationale for continued reduction vanishes. Failing to cease reductions at the Schedule 3 life expectancy converts a *risk-balanced mechanism* into an open-ended forfeiture.
- **Unjust Enrichment:** Continuing to reduce a pension after the recovery period (based on Schedule 3 factor) results in the Commonwealth retaining more than it is entitled to. This may constitute unjust enrichment at common law, where the Commonwealth benefits from funds that exceed the original lump sum trade-off, with no legal or moral basis post-recovery.
- **Disproportionate Treatment Between Veterans:** Veterans with identical service histories receive different total pension outcomes based solely on date of death, a “lottery of survival”. This violates equity and consistency, key administrative law principles, and undermines confidence in government-administered retirement schemes.
- **Proportionality and Reasonableness (Administrative Law):** A core principle of administrative law is proportionality. The means used must align with the outcome intended. A lifetime reduction to recover a 40% commutation breaches this balance. It is manifestly unreasonable (Wednesbury unreasonableness) to apply an indefinite penalty to recover a finite sum.

2. Quantified Losses

Loss Type	Calculation	Amount Claimed
Pension Underpayment	Current pay reduction x ABS LE 2024 – Schedule 3 recovery	Outdated EL - \$27,066 x 26.6 years = \$720,956 ABS 2024 EL - \$27066 x 33.2 years = \$898,591 Diff: \$898,591 - \$720,956 = \$177,635 Annualised: \$177,635 / 33.2 = \$5349 per year
Actuarial Surplus Recapture	Commuted sum x Actual survival – 1960 LE	Post Lump sum repayment \$5349 (OD EL) + \$1041 (full pension) x 9 years (EL for Aust Male) \$57,510
Distress Payment	MRCA 2004 s52	\$15,000

3. Evidence Package

- Pension underpayment due to obsolete EL, to date - arises as 16 years, @ \$5349 per year (\$85,584)
- Actuarial Surplus Recapture (future loss if not addressed) 2032 + 9 years (EI for Aust Male) (\$57510)

Note: CSC will need to confirm. I have been trying to obtain suitable data from them, but with limited success.

4. Resolution Demand

Per CCDA policy Directive 8.2, I require

Retrospective resolution

- I seek full repayment of all over-recovered pension amounts since my commutation date (13 December 2010), based on the principle that the reduction applied has exceeded both the financial and temporal intent of the DFRDB Act.

o **Alternatively:**

If the Commonwealth intends to continue applying Schedule 3 as written, it must do so in full, including the implied expiry of the reduction at the end of the applicable life expectancy period. It is clear that Schedule 3 was designed as a fixed-term actuarial adjustment to account for the risk that a member may pass away before reaching life expectancy. This approach only remains lawful and proportionate if the pension is restored at the end of that term. Any extension beyond that point results in unjust enrichment by the Commonwealth and undermines the statutory framework of partial commutation.

- Acknowledge future actuarial surplus recapture (\$57,510) if the alternative approach above is not addressed by April 2032
- Distress payment - \$15,000

Sent at: 7/08/2025 1:03:53 PM

RE: 250228:1355 Escalation – Request for Reconsideration of CDDA Claim (Attempt Three) [SEC=OFFICIAL:Sensitive, ACCESS=Personal-Privacy]

OFFICIAL: Sensitive Personal-Privacy

Dear Mr Jones,

Thank you for your below email.

We understand that you do not agree with the way that the Commonwealth has interpreted or applied the DFRDB legislation. However, the decision maker is satisfied that the decision dated 2 July 2025, and review decision dated 18 July 2025, outline the reasons why compensation is not payable in your case and why your view is not supported by recent case law.

As noted in our email to you dated 4 August 2025:

- If you are not satisfied with any of Defence's actions in response to your CDDA claim, you may seek a review by the Commonwealth Ombudsman (Ombudsman). The Ombudsman's office can be contacted on 1300 362 072 or you can lodge an online complaint at <http://www.ombudsman.gov.au/making-a-complaint/australian-defence-force>.
- If you do not agree with our position and you wish to pursue your matter outside of the CDDA scheme, we encourage you to seek independent legal advice to determine what, if any, other avenues may be available to you.

We hope this information is of assistance.

Kind regards,

Directorate of Employment Law & Discretionary Claims
Defence Legal

Department of Defence | Associate Secretary Group

IMPORTANT: This email remains the property of the Department of Defence. Unauthorised communication and dealing with the information in the email may be a serious criminal offence. If you

have received this email in error, you are requested to contact the sender and delete the email immediately.

Sent: Monday, 4 August 2025 5:19 PM

Subject: RE: 250228:1355 Escalation – Request for Reconsideration of CDDA Claim (Attempt Three)

[SEC=OFFICIAL:Sensitive, ACCESS=Personal-Privacy]

⚠ EXTERNAL EMAIL: Do not click any links or open any attachments unless you trust the sender and know the content is safe. ⚠

Thanks

There are several key points from my original submission that have not been addressed in either responding RfD. To be clear, the Standard required for RfDs is to address key points in terms of legislation and interpretation.

This morning's submission, dated 4 August, provided more detail to better clarify specifics around the unanswered key points. In other words, it provides depth to the disconnects in the legislation. These are complex matters, which have so far not been well handled.

Additionally, I have restated my claim from testing the waters to a year to date detriment with costings. That means, there is now a sound basis for both detriment and costs to be assessed against for definitive defective administration harm.

Additionally, the DFRDB booklet excerpts provided by the delegate in the last RfD, highlighted further misinformation to DFRDB members, which only seeds more confusion around commutation when communicating to members. I will address these concerns in a separate CCDA, if they are not addressed now.

I am also of the view that this latest clarification should have already been read. Given the importance and complexity of these matters, I must insist that a compliant RfD versed in all aspects of key issues and legislative interpretations be provided.

Failing a positive response, perhaps you can discuss with the Delegate how I go about lodging a complaint about RfDs that do not meet acceptable administrative standards, as was openly discussed in both of my responses.

Thanks for getting back to me.

Dave Jones

OFFICIAL: Sensitive Personal-Privacy

Dear Mr Jones,

Thank you for your **attached** emails and documents of 3 and 4 August 2025.

The decision-maker undertook a reassessment of the decision about your claim under the Compensation for Detriment caused by Defective Administration (CDDA) scheme dated 2 July 2025. In the review decision dated 18 July 2025, the decision-maker affirmed that compensation is not payable in the circumstances of your claim.

If you are not satisfied with any of Defence's actions in response to your CDDA claim, you may seek a review by the Commonwealth Ombudsman (**Ombudsman**). The Ombudsman can investigate the administrative actions and decisions of government agencies, impartially and informally, at no cost to the complainant. The Ombudsman may make recommendations to the agency, but has no power to substitute a decision. The Ombudsman may also decide not to investigate a complaint, and in such cases will provide an explanation to the complainant for such a decision. The Ombudsman's office can be contacted on 1300 362 072 or you can lodge an online complaint at <http://www.ombudsman.gov.au/making-a-complaint/australian-defence-force>.

If you wish to pursue your matter outside of the CDDA scheme, we encourage you to seek independent legal advice to determine what, if any, other avenues may be available to you.

Kind regards,

Directorate of Employment Law & Discretionary Claims
Defence Legal

Department of Defence | Associate Secretary Group

IMPORTANT: This email remains the property of the Department of Defence. Unauthorised communication and dealing with the information in the email may be a serious criminal offence. If you have received this email in error, you are requested to contact the sender and delete the email immediately.

CDDA Complaint Summary - 250228:1355 - DFRDB Commutation: Legal Misapplication and Systemic Defective Administration

To: CDDA Scheme Manager or designated complaints officer

From: Dave Jones

Date: 8 August 2025

I hereby submit a formal complaint under the Compensation for Detriment Caused by Defective Administration (CDDA) Scheme, arising from ongoing and measurable financial harm caused by the incorrect application of the Defence Force Retirement and Death Benefits Act 1973 (DFRDB Act), specifically in relation to pension commutation. This harm results from a continued failure to properly apply the legislative framework governing commutation, leading to excessive and unlawful reductions in retirement pay.

My complaint does not require the delegate to resolve legal questions, but rather to assess whether relevant statutory provisions were misapplied in an administrative manner that caused preventable financial detriment, consistent with the scope of the CDDA Scheme.

At the core of this DFRDB misapplication is permanent pension reductions, which create a fundamental paradox. Section 24(2B) of the DFRDB Act limits the commutation amount to five times the annual rate of retirement pay, while Schedule 3 provides expected life factors that are time-bound, effectively amortising repayment of the lump sums over obsolete projected lifespans.

It appears that CSC misapplies the factors set in Schedule 3, intended for a temporary actuarial adjustment, to impose permanent pension reductions without legislative authority or reference to actual member longevity. The result is a system that breaches both the statutory cap and the time-based repayment logic, leading to unfair over-recovery to subsidise broader scheme liabilities. This practice is legally flawed, ethically questionable, and distorts the intended purpose of commutation.

To be clear, there is no statutory mechanism to support permanent pension reductions, and Schedule 3 is both obsolete and finite, so it only authorises a pension reduction until the achievement of its coded expected life factors. Either outcome fails required actuarial and governance standards.

Despite receiving two CCDA Reasons for Decision (RfDs), neither complies with the procedural and substantive requirements outlined in Resource Management Guide 409 (RMG 409). Crucially, both RfDs fail to engage with my core administrative and actuarial arguments, including:

- The clear legislative limits in sections 24(1) and 24(2B), which restrict commutation to a partial, capped amount (five times annual retirement pay or 40%), and
- The mandatory and exclusive actuarial framework, coded into factors, within Schedule 3, which sets a finite, time-based repayment period using expected life (EL) assumptions to amortise lump sum repayments.

The received CCDA responses represent ongoing obstruction, because the key issues mentioned above are being willfully overlooked in preference to high-level legal and institutional gaslighting investigative arguments. Furthermore, the delegate initially rejected any claim without acknowledging that fundamental legislative disconnects existed, which make any precise financial detriment difficult to quantify. For example, should the basis be stopping pension reductions at

Schedule 3 expected life, or updating Schedule 3 to reflect accurate amortisation data, within the legislated commutation cap. I have since defaulted to the latter.

Further, the Commonwealth's ongoing enforcement of permanent pension reductions, despite lump sums being notionally repaid, flagrantly exceeds the lawful scope of the Act and what members signed up to: commutation at 5 times annual pension. This rests on the misinterpreted phrase "on and after" in section 24(3) as authorising lifetime cuts, which it is unable to do without being contrary to key actuary principles (providing a pension reduction factor and tracking repayments against accurate expected life).

As far as statutory interpretation goes, enshrined in the Acts Interpretation Act 1901 (ss 15AA and 15AB) and reinforced by High Court authorities such as *Sztal v Minister for Immigration and Cooper Brooks v Commonwealth*, resolving for ambiguity and absurdity, rejects any possibility that permanent pension reductions can be legal or administratively possible.

This systemic misapplication has caused significant financial detriment:

- I have suffered a cumulative pension loss of approximately \$75,371 to date, including excess tax paid, with a further projected loss of \$96,905 over my remaining life expectancy, totaling \$172,277 in financial detriment.
- This harm stems primarily from reliance on obsolete 1960 mortality tables, embedded with an obsolete 4% discount rate, in Schedule 3, resulting in inflated lump sum recovery and pension reductions as compared to modern ABS 2007 life expectancy data.
- Defence acknowledges this over-recovery under FOI 382/22/23, and while some members have had their pensions remediated, no systemic correction has been implemented.
- My member contributions of approximately \$293,918 (plus imputed interest) helped fund the Commonwealth's lump sum obligation, which is recovered well beyond fair actuarial value (paying a lump sum well past thrice over), constituting serious unjust enrichment and breaching the Commonwealth's financial duties under the PGPA Act (ss 15–16).

Moreover, the official DFRDB booklets describe commutation as a fair "exchange" or "prepayment" of part of future benefits. In the face of a permanent reduction regime, this explanation distorts the intent of the statute. The booklet is misleading to members and breaches public law standards of fairness, transparency, and accountability.

In light of these facts, this is not merely an administrative unfairness but a fundamental legal and actuarial defect in the application of the DFRDB Act. I therefore request that:

- The defective administration be formally acknowledged under CDDA principles, and
- Compensation be awarded reflecting the quantifiable financial detriment and systemic injustice caused.

Please find attached a detailed explanation outlining the legislative framework, actuarial analyses, precedent references, and quantified financial losses supporting this claim.

Thank you for your consideration.

Dave Jones

Attachment 1 to the complaint covering letter re 250228:1355

DFRDB Commutation: Misapplied and Legally Defective

Thank you for your response dated 31 July 2025. While I acknowledge the position conveyed, a valid Reasons for Decision (RfD) under administrative law must respond substantively to the key arguments raised and demonstrate how relevant legislative provisions were interpreted and applied. Neither of the RfDs I've received satisfy this standard.

I wish to restate my position, because the issues at hand continue to be obscured by what appears to be either institutional misapprehension or intentional obfuscation. The permanent reduction of my retirement pay resulting from DFRDB commutation lacks any valid foundation within the DFRDB Act 1973.

1. Legal Misinterpretation and Maladministration

The ongoing reliance on the phrase "on and after" in s 24(3) to justify a *permanent* pension reduction is fundamentally flawed (*generalia specialibus non derogant* or the general must yield to the specific law on the subject matter – Schedule 3), and contradicts:

- **Section 24(1)** – which permits only *partial* commutation,
- **Section 24(2B)** – which caps the lump sum at five times annual retirement pay (40%),
- **Schedule 3** - contains the only legally authorised method for calculating pension reductions after commutation, using actuarial life expectancy factors. The phrase "on or after" in section 24(3) becomes functionally meaningless in the context of commutation if these Schedule 3 factors, which include specific limits, are not applied.

Schedule 3 is integral to any lawful commutation. It's time-based actuarial factors implicitly define a period over which the lump sum is repaid. The DFRDB Act does not authorise a permanent reduction, nor does it permit selective application of Schedule 3. If the Commonwealth intended to impose a permanent reduction, the legislation could and should have been amended transparently, either by updating Schedule 3 actuarial factors (e.g., to reflect 2007 ABS life tables) or explicitly modifying the law. It did neither. Recognise that DFRDB is the only Defence superannuation scheme that relies on obsolete amortisation data.

Moreover, the term "life expectancy" is not defined anywhere within the Act, outside of Schedule 3. The only acceptable actuarial value is the Expectation of Life (EL) encoded in the schedule. Partial or distorted use of this schedule, by taking only the divisor, and ignoring the repayment timeframe, undermines both the legislative and mathematical validity of the commutation process.

To interpret "on and after" as authorising a lifetime reduction without reference to Schedule 3's time-bounded repayment period is both legally unsound and administratively untenable. It results in a structure where pensions are reduced permanently without regard to whether the lump sum has already been repaid, a violation of both s 24(1) and (2B).

2. Failure to Apply Accurate and Current Actuarial Data

The Commonwealth continues to rely on Schedule 3's outdated 1960s life expectancy assumptions, which grossly underestimate veteran longevity. In my case:

- EL under Schedule 3 at age 51: 22.13 years
- ABS 2007 EL at age 51: 32.84 years
- Difference: 10.71 years

This difference materially inflates my pension reduction.

Calculation Basis EL Used Annual Reduction

Schedule 3 (1960 EL) 22.13 \$15,786

ABS 2007 (EL) 30.0 \$11,645

As a result, I have incurred an annual loss of \$5,153, leading to a cumulative pension loss of \$57,977 and excess tax of \$17,393 as of August 2025. These losses are entirely avoidable and stem from defective actuarial assumptions and legal misapplication.

3. DFRDB Booklet: Misleading and Internally Contradictory

The DFRDB member booklet describes commutation as “an exchange” or “lump sum prepayment of future benefits,” suggesting a fair trade of equivalent value. Yet it also claims this will cause a “permanent reduction” in retirement pay. This directly contradicts the lawful design of commutation under the Act, which limits the reduction to a capped and time-bound adjustment, as per Schedule 3. Further, the absence of a statutory definition of life expectancy, combined with inconsistent booklet language, misleads members into believing that the permanent cut is lawful, fair, and based on individual lifespan, when it cannot. Members can live up to a decade longer than assumed under Schedule 3, creating an undisclosed benefit clawback. In effect, the longer a member survives, the greater the Commonwealth’s windfall; a structure fundamentally at odds with the principles of superannuation.

4. Statutory and Regulatory Breaches

A. Breaches of the DFRDB Act 1973

- **Section 24(1):** A permanent pension reduction contradicts the intent of *partial commutation*.
- **Section 24(2B):** The cap of five times annual pension (40%) is breached in effect when the reduction is imposed for life.
- **Section 24(3):** The “on and after” clause is improperly used to justify lifetime penalties without reference to the actuarial timeframe set by Schedule 3 (*Ultra vires* – or beyond powers).
- **Schedule 3:** Inappropriate reliance on obsolete EL factors constitutes a systemic miscalculation.

B. Breach of the PGPA Act 2013

- **Section 15:** Use of public money must be proper. Over-recovery caused by outdated EL factors breaches this duty.
- **Section 16:** Calculations must be accurate and evidence-based. Continued use of 1960s mortality tables in 2025 is indefensible.

C. Entitlement Deprivation

Military pensions are earned rights, not discretionary benefits. Permanent cuts under obsolete actuarial assumptions unlawfully reduce these entitlements, constituting financial deprivation without legislative authority or consent.

5. Financial Detriment Summary

Loss Type	Details	Amount
YTD Gross Pension Loss	14 years @ \$5,153	\$57,977

Loss Type	Details	Amount
Excess Tax Paid (30%)	30% of over-reduction	\$17,393
Total Loss to Date		\$75,371
Projected Pension Loss (to age 84)	18 years @ \$4,142	\$74,542
Future Excess Tax	30% of projected	\$22,362
Future Loss (2025–2041)		\$96,905
Total Financial Detriment		\$172,277
Distress Compensation (MRCA s52)	Psychological and administrative harm	\$15,000
Total Claimed		\$187,277

6. Evidence Package

- Use of obsolete EL (22.13 years) results in excessive pension reduction.
- Correcting to ABS 2007 EL (32.84 years) would reduce the annual cut by \$5,153.
- Current reduction yields an annual excess tax burden of ~\$1,546.
- Projected future harm over 18 years from age 66 to 84 totals ~\$93,785.
- FOI 382/22/23 confirms Defence is aware of the over-recovery and that a precedent exists where some members have had their pensions remediated; however, no broad corrective action has been taken to address this systemic issue. This reflects discrimination.

7. Relevant Legal Authorities

- **Acts Interpretation Act 1901 (Cth):** Sections 15AA and 15AB require interpretations that advance the purpose of legislation and avoid unjust outcomes. The DFRDB Act's purpose is to provide member benefits, not Commonwealth or CSC benefits.
- **Public Governance, Performance and Accountability Act 2013 (Cth):** Sections 15–17 establish duties of accuracy, fairness, and financial propriety.
- **MRCA 2004 s52:** Reflects a broader duty of care to veterans, mandating accurate and timely advice.
- **High Court Authorities:** *Sztal v Minister for Immigration [2017] HCA 34* and *Cooper Brookes v Cth [1981] HCA 26* confirm that statutory interpretation must favour coherent and equitable outcomes consistent with legislative purpose.

8. Resolution Sought

In accordance with CDDA Scheme Directive 8.2, I seek:

- Retrospective correction of the pension reduction to reflect appropriate EL data ie, ABS 2007).
- Compensation of \$187,277, incorporating past and future losses and a distress payment.

- A properly reasoned and compliant RfD that fully addresses the legislative inconsistencies raised.

The DFRDB Act must be interpreted in line with its original purpose: to provide secure, fair retirement benefits to veterans, not to generate actuarial windfalls for the Commonwealth. Permanent pension reductions can only apply through ambiguous wording and absurd outcomes, while obsolete data is contrary to law, policy, and principle.

Thank you for your consideration.

Dave Jones

Message 1 of 1

Sent at: 2/09/2025 9:59:08 AM

RE: Contact Us message from the ANAO website [SEC=OFFICIAL]

OFFICIAL

Good morning,

Thank you for contacting the Australian National Audit Office.

We have passed along your message to the audit team responsible for our cross-entity portfolio, as the Scheme for Compensation for Detriment caused by Defective Administration (CDDA Scheme) is administered by individual entities and their ministers. Your message may be used to inform a part a future Annual Audit Work Program (AAWP).

The ANAO publishes an AAWP in July each year. The AAWP reflects the ANAO's audit strategy and informs the Parliament, government entities and the public of the planned audit coverage for the Australian Government sector, covering financial statements audits, performance audits, performance statements audits and other assurance reviews. You can read about our current scope of our work in the cross-entity portfolio in our current AAWP: <https://www.anao.gov.au/work-program/portfolio/cross-entity>.

While your contribution will be considered, you will not automatically receive feedback about your contribution. To receive updates from the ANAO please subscribe to the ANAO website at: <https://www.anao.gov.au/subscribe-to-email-alerts>.

ANAO Communication

Classification: OFFICIAL

Classified on: 2/09/2025 9:58:37 AM

Sent: Friday, 15 August 2025 5:44 PM

To: ANAO Communication <communication@anao.gov.au>

Subject: Contact Us message from the ANAO website

CAUTION: This email originated from outside of the organisation. Do not click links or open attachments unless you recognise the sender and know the content is safe. If in doubt please contact IT Support.

Name: Dave Jones

Enquiry type: something else

Message:

Decisions under the CCDA Scheme regarding the DFRDB superannuation scheme have repeatedly failed to address clear legislative ambiguities and inconsistencies. Reasons for Decision are vague and generalized, obscuring the decision-making process and raising serious concerns of bias, lack of transparency, and procedural unfairness. I have been unsuccessful, to date, in engaging the internal complaints area within CCDA to resolve these issues, leaving substantive concerns unaddressed. I request ANAO scrutiny to ensure proper governance, accountability, and adherence to legislative and administrative standards.

Delivered to:

communication@anao.gov.au

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Sent at: 16/08/2025 8:33:30 AM

Obstruction Around the CCDA Process – Deficient RfDs, Failure to Address Legislative Disconnects, and lack of curiosity or blocking Independent Review

It appears that the Compensation for Detriment Caused by Defective Administration (CCDA) scheme has a blocking reality. In my claim, 250228:1355, the subject matter is the Defence Force Retirement and Death Benefits (DFRDB) Act 1973, where Reasons for Decision (RfDs), for reasons unknown, lack specificity, fail to address identified legislative ambiguities and inconsistencies, ignore breaches to the Public Governance, Performance and Accountability Act 2013, (PGPA), and instead rely on vague generalisations that obscure from actual reasoning.

My attempts to resolve the continued obstruction by asking for complaints handling or internal review have been unsuccessful. These actions undermine transparency, accountability, and proper decision making under the PGPA framework. I request GC-DRL oversight to ensure compliance with governance obligations, restore procedural fairness and address the unresolved legislative disconnects.

I have attached an updated complaint for understanding the situation.

Attachments:

CDDA Complaint Summary cover.docx (20 KB)

Complaint attachment.docx (25 KB)

The Attachments above are Items 9 and 10 respectively...

COMMITTEE EVIDENCE PACK – ITEM 13 – JCPAA ENGAGEMENT (MAILBOX MESSAGE NOT INCLUDED)

Joint Committee of Public Accounts and Audit (JCPAA)

Committee Secretary

5 August 2025

Dear Committee Members,

I write to raise serious concerns regarding the ongoing administration of the Defence Force Retirement and Death Benefits (DFRDB) scheme, managed by the Commonwealth Superannuation Corporation (CSC), particularly in relation to its compliance with the Public Governance, Performance and Accountability Act 2013 (PGPA Act).

Despite being closed to new members since 1991, the DFRDB scheme still applies actuarial assumptions derived from 1960s ABS life expectancy data, never updated to reflect modern demographics or medical advancements. As a result:

- Veterans experience permanent pension reductions well beyond the legislated commutation cap of five times annual pension and the Schedule 3 life expectancy factors.
- Members face unlegislated actuarial outcomes, leading to unpredictable and unequal benefits for members with identical service histories.
- A fixed 4% discount rate (instead of a more accurate ~2.5%) forces veterans to repay \$140–\$150 for every \$100 commuted, long past their legislated actuarial life expectancy.
- After-tax member contributions are reframed as government commutation lump sums, which members are then required to repay at confiscatory rates, despite Defence being the declared risk owner of the unfunded scheme.
- CSC has no internal mechanisms for actuarial review, fairness adjustment, or transparent risk reassessment.
- These practices appear inconsistent with PGPA Act Section 15 (proper use of public resources) and Section 16 (risk management and internal controls).

In contrast, other Commonwealth schemes such as MSBS and PSS have undergone actuarial reform. Yet DFRDB members are excluded from modern governance standards and suffer disproportionately as a result, without transparency, recourse, or fairness.

Request for Committee Review

I respectfully urge the Committee to initiate an inquiry into:

1. CSC's compliance with the PGPA Act in administering the DFRDB scheme.
2. The lack of reasonable governance and actuarial mechanisms to ensure fair and consistent outcomes for DFRDB beneficiaries.
3. The use and management of public resources in this scheme, particularly regarding risk, equity, and legislative consistency.

Thank you for your attention to this matter. I welcome the opportunity to provide further evidence or clarification if required.

Sincerely,

Dave Jones